AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

1-19-81
Vol. 46—No. 12
BOOK 1:
Pages
4659-5026

1-19-81
Vol. 46—No. 12
BOOK 2:
Pages
5027-5456

1-19-81
Vol. 46—No. 12
BOOK 3:
Pages
5457-5850

federal register

Book 1 of 3 Books
Monday, January 19, 1981

Highlights

4659–4677 **Presidential Executive Orders** (8 documents)

4679 **Presidential Proclamation**

4873 **Excise Taxes** Treasury/IRS changes rules relating to the windfall profit tax on domestic crude oil

5616 **Hazardous Materials** EPA issues requirements for public participation in the State enforcement process during interim authorization; comments by 3–20–81 (Part XXIII of this issue)

5053 **Loan Programs—Energy** DOE/Sec'y solicits applications by 1–29–81, for price support loans for new or existing facilities producing biomass energy from municipal waste

5298 **Radioactive Materials** DOT/RSPA establishes routing and driver training requirements for highway carriers of large quantity packages; effective 2–1–82 (Part IV of this issue)

5318 **Radioactive Materials** DOT/FHWA alters regulations to exempt materials from certain routing provisions; effective 2–1–82 (Part IV of this issue)

CONTINUED INSIDE



Highlights

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers, free of postage, for $75.00 per year, or $45.00 for six months, payable in advance. The charge for individual copies is $1.00 for each issue, or $1.00 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

4913, 4955, 5416 **Grant Programs—Education** ED adopts implementation regulations for: Training teachers of handicapped children, Centers for Independent Living Program, and Vocational Rehabilitation Service Projects (3 documents)

5003 **Medicaid** HHS/HCFA proposes to eliminate, under certain conditions, the "acknowledgement requirement", a prerequisite for payment of hysterectomies through Federal funds; comments by 3–20–81

4681 **Housing** USDA/FmHA revises rural housing loan policies, procedures and authorizations; effective 3–20–81

Privacy Act Documents

5100 IDCA/AID
5066 FHLMC

5122 **Sunshine Act Meetings**

Separate Parts of This Issue

5136 **Part II, ED**
5238 **Part III, ED**
5298 **Part IV, DOT/RSPA and FHWA**
5320 **Part V, ED**
5334 **Part VI, EPA**
5372 **Part VII, ED**
5394 **Part VIII, DOT/UMTA**
5410 **Part IX, ED**
5416 **Part X, ED**
5438 **Part XI, DOT/Sec'y**
5460 **Part XII, ED**
5476 **Part XIII, DOT/UMTA**
5480 **Part XIV, DOT/UMTA**
5484 **Part XV, DOT/FAA**
5500 **Part XVI, DOT/FAA**
5506 **Part XVII, DOT/FAA**
5514 **Part XVIII, DOE**
5522 **Part XIX, ED**
5566 **Part XX, Interior/HCRS**
5578 **Part XXI, Advisory Council on Historic Preservation**
5588 **Part XXII, DOT/Sec'y**
5616 **Part XXIII, EPA**
5620 **Part XXIV, CSA**
5642 **Part XXV, Interior/NPS**
5668 **Part XXVI, Interior/FWS**
5686 **Part XXVII, EPA**
5696 **Part XXVIII, EPA**
5702 **Part XXIX, DOT/UMTA**
5722 **Part XXX, DOE/ERA**
5730 **Part XXXI, Interior/FWS**
5736 **Part XXXII, EPA**
5748 **Part XXXIII, DOT/FAA**
5772 **Part XXXIV, Interior/BLM**
5784 **Part XXXV, Interior/BLM**
5794 **Part XXXVI, Interior/BLM**
5808 **Part XXXVII, DOT/UMTA**
5820 **Part XXXVIII, DOT/UMTA**
5832 **Part XXXIX, DOT/UMTA**
5838 **Part XL, EPA**

Contents

Federal Register
Vol. 46, No. 12
Monday, January 19, 1981

The President
EXECUTIVE ORDERS
4659 Export of banned or restricted substances, Federal policy (EO 12264)
4677 Federal Advisory Committees, continuation (EO 12271)
4665 Federal consumer programs, coordination (EO 12265)
4667 Food Security Wheat Reserve (EO 12266)
4669 Generalized System of Preferences, amendments (EO 12267)
4671 Hostage Relief Act of 1980 (EO 12268)
4673 Small Business Policy, President's Committee on, establishment (EO 12269)
4675 Spinal Cord Injury, President's Council on, establishment (EO 12270)
PROCLAMATIONS
4679 American Heart Month (Proc. 4816)

Executive Agencies

Agency for International Development
NOTICES
5100 Privacy Act; systems of records; annual publication
Senior Executive Service:
5100 Performance Review Board; membership

Agricultural Marketing Service
RULES
4681 Lemons grown in Ariz. and Calif.
PROPOSED RULES
4936 Oranges (naval and Valencia) grown in Ariz. and Calif.

Agriculture Department
See Agricultural Marketing Service; Farmers Home Administration; Forest Service.

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Meetings; advisory committees:
5069 February

Army Department
NOTICES
5034 Military Records Correction Boards, Army, Navy and Air Force; nondischarge cases; index subject/category listings; extension of time

Chrysler Corporation Loan Guarantee Board
NOTICES
5122 Meetings; Sunshine Act (2 documents)

Coast Guard
RULES
Military personnel:
4912 Cadet appointment program
PROPOSED RULES
Drawbridge operations:
4953 South Carolina

Commerce Department
See Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration; Patent and Trademark Office.

Community Services Administration
RULES
4919 Grantee lobbying prohibitions; interpretive ruling and waiver of special conditions
5620 Nondiscrimination on basis of handicap in federally-assisted programs
PROPOSED RULES
5632 Nondiscrimination on basis of handicap in federally-assisted programs; access to and use of newly acquired facilities
NOTICES
Grants; availability, etc.:
5034 New Congress of Neighborhood Women, Brooklyn, N.Y.; national clearinghouse and outreach center for low-income women

Conservation and Solar Energy Office
NOTICES
Consumer product test procedures; petition of waiver:
5057 Norris Industries; correction

Customs Service
RULES
Vessels in foreign and domestic trades:
4868 Poland and Kuwait; coastwise transportation
NOTICES
Tariff reclassification petitions:
5120 Radio remote control apparatus

Defense Department
See Army Department.

Economic Regulatory Administration
RULES
Petroleum allocation and price regulations:
4860 Normal business practices; extensions of credit for purchases of motor gasoline at retail level
5722 Puerto Rican naphtha entitlements
NOTICES
Consent orders:
5049 Crystal Oil Co.
5044 Moyle Petroleum Co.
5047 Park, Robert E.
5049 Union Texas Petroleum Corp.
Electric energy transmission; exports to Canada or Mexico; authorizations, permits, etc.:
5041 New York State Power Authority
5049, 5051 San Diego Gas & Electric Co. (2 documents)
Electric power outages or system emergencies; investigations:
5046 Utah, Wyoming, and Idaho; major electric power system blackout
Natural gas exportation and importation petitions:
5041 Boundary Gas, Inc.

5048 Transcontinental Gas Pipe Line Corp. et al.
Powerplant and industrial fuel use; prohibition orders, exemption requests, etc.:
5042 Great Western Malting Co.
5043 Missouri Public Service Co.
5045 Owatonna Public Utilities

Educational Research, National Council
NOTICES
5122 Meetings; Sunshine Act

Education Department
RULES
Elementary and secondary education:
5136 Special educational needs; financial assistance to local and State agencies
5372 Grants and contracts for fiscal year 1981, selection criteria
Postsecondary education:
5320 Pell grant program; family contribution schedules
5238 Student financial assistance programs, campus-based; national direct student loan, college-work study, and supplemental educational opportunity grant programs; funding procedures; final regulations and request for comments
Special education and rehabilitative services:
4912 Handicapped children, assistance to States for education; interpretation
5410 Independent living centers; final regulations and request for comments
5522 State vocational rehabilitation and independent living rehabilitation programs
4913 Teachers of handicapped children in areas with a shortage, training programs; final rules and request for comments
5416 Vocational rehabilitation service projects; final regulations and request for comments
Special educational and rehabilitative services and civil rights:
5460 Handicapped children education, assistance to States and nondiscrimination on basis of handicap in programs and activities receiving or benefiting from Federal financial assistance; interpretations
PROPOSED RULES
Civil rights:
4954 Handicapped in federally-assisted programs, nondiscrimination; hearing-impaired persons rights to access to television programs; advance notice
Educational research and improvement:
4991 Teacher corps program
Elementary and secondary education:
5236 Special educational needs; financial assistance to local and State agencies; cross-reference
Postsecondary education:
4956 Higher education facilities, construction, reconstruction, and renovation financial assistance programs; correction
4956 Parent loans for undergraduate students (PLUS) program
5295 Student financial assistance programs, campus-based; national direct student loan, college-work study, and supplemental educational opportunity grant programs; funding procedures; cross-reference
Special education and rehabilitative services:
4955 Independent living centers; cross-reference
4955 Teachers of handicapped children in areas with a shortage, training programs; cross-reference
5436 Vocational rehabilitation service projects; cross-reference
NOTICES
Grant applications and proposals, closing dates:
5039 Desegregation of public education programs
Organization and functions:
5034 Civil Rights Office; annual operating plan for 1981 FY; final

Employment Standards Administration
RULES
4886 Federal service contract labor standards; treatment of concession contracts under Service Contract Act

Energy Department
See also Conservation and Solar Energy Office; Economic Regulatory Administration; Federal Energy Regulatory Commission.
PROPOSED RULES
5514 Financial assistance; loans to minority business enterprises; bid or proposal preparation
NOTICES
Biomass energy development:
5053 Municipal waste energy price support loans; solicitation announcement for loan applications and presubmission conference
Environmental statements; availability, etc.:
5053 Davis Pumped Storage Project, W.Va.; alternatives study report; meeting
Floodplain and wetlands environmental review determinations; availability, etc.:
5055 Gladys McCall well site in Cameron Parish, La., drilling and flow testing a geopressured geothermal well
Meetings:
5053 International Energy Agency Industry Advisory Board
5055 Naval oil shale reserves, development; inquiry

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States, etc.:
4916 Massachusetts
4918 New Jersey
5616 Hazardous waste programs, State; interim authorizations; public participation requirements, interim rule and request for comments
Noise abatement programs:
4918 Transportation equipment; motorcycles and motorcycle exhaust systems; testing requirements; correction
Pesticide programs:
5696 Classification and uses of active ingredients for restricted use
PROPOSED RULES
Air pollution control; new motor vehicles and engines:
5838 Gaseous emissions; light duty trucks, 1985 and later model years, and heavy duty engines, 1986 and later model years; advance notice
5001 Nitrogen oxides (NO_x) emission standards, light-duty diesel vehicles; 1982 model year; waiver application hearing

Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
5003 Lecithin
NOTICES
Air pollution; ambient air monitoring reference and equivalent methods applications, etc.:
5064 Atomic absorption and X-ray fluorescence spectromentry methods
Air pollution control, new motor vehicles and engines:
5063 Carbon monoxide emission standards, light-duty vehicles; 1981 and 1982 model years; applications for waiver of effective date
5058 Conservation and solar energy program (DOE); 1980 final section 11 report; inquiry; republication
Environmental statements; availability, etc.:
5061 Agency statements; review and comment
Grants; State and local assistance:
5686 Minority and women's business enterprise policy; construction grants program; inquiry
Pesticide programs:
5334, 5365 Dimethoate; rebuttable presumption against registration, etc. (2 documents)
Pesticides; experimental use permit applications:
5064 Elanco Products Co. et al.
5065 Monsanto Co. et al.
5065 Rohm & Haas Co.
5736 Public participation policy; establishment
Toxic and hazardous substances control:
5058 Premanufacture notices receipts

Equal Employment Opportunity Commission
RULES
4888 Equal Pay Act, recordkeeping and administrative regulations
NOTICES
5123 Meetings; Sunshine Act

Farmers Home Administration
RULES
Rural housing loans and grants:
4681 Policies, procedures, and authorizations (Section 502)

Federal Aviation Administration
RULES
Air carriers certification and operations:
5500 Flight crew members; elimination of duties and activities not required for safe operation or aircraft
Airworthiness directives:
4862 Boeing
4863 Lockheed-California
4864–4866 McDonnell Douglas (3 documents)
4866 Transition areas
PROPOSED RULES
Air carriers certification and operations:
5506 Flight data recorder and cockpit voice recorder tapes; FAA access supplemental notice
Airports, Metropolitan Washington:
4944 Petition for rulemaking; widebody aircraft operations at Washington National Airport
4945 Control zones
4946 Control zones and transition areas
5484 Operations review program
4946–4948 Transition areas (3 documents)
NOTICES
5748 Aviation energy conservation policy; final
5116 Titanium in aircraft turbine engines; design considerations; draft advisory circular; availability and inquiry

Federal Communications Commission
RULES
Communications equipment:
4923, 4925 Radio frequency devices; standards for control of interference to radio and TV reception; waiver granted (2 documents)
PROPOSED RULES
Frequency allocations and radio treaty matters:
5009 High frequency radio spectrum
Radio services, special:
5011 Land mobile services; one-way paging stations policies and procedures; extension of time
Radio stations; table of assignments:
5011 South Carolina; extension of time
Satellite communications:
5008 Communications Satellite Corporation (COMSAT), corporate structure and operations changes, extension of time
NOTICES
5065 Rulemaking proceedings filed, granted, denied, etc.; petitions by various companies

Federal Deposit Insurance Corporation
NOTICES
5123 Meetings; Sunshine Act

Federal Election Commission
NOTICES
5123 Meetings; Sunshine Act

Federal Energy Regulatory Commission
RULES
Natural Gas Policy Act of 1978:
4867 Incremental pricing; acquisition cost thresholds

Federal Highway Administration
RULES
Motor carrier safety regulations:
5318 Hazardous materials transportation; radioactive materials routing
Planning:
5702 Urban transporation investment policy and procedure with UMTA, etc; final rule and request for comments
NOTICES
Grants; availability, etc.:
5117 Public transportation program under formula grant program in nonurbanized areas
Meetings:
5118 Outdoor Advertising and Motorist Information National Advisory Committee

Federal Home Loan Mortgage Corporation
NOTICES
5066 Privacy Act; systems of records; annual publication

Federal Housing Commissioner—Office of Assistant Secretary for Housing
RULES
Mortgage and loan insurance programs:
4872 Property improvement and manufactured (mobile) home loans, increases in loan amounts

Federal Maritime Commission
PROPOSED RULES
5008 Cargo inspection services, and/or self-policing; rate and exemption agreements

Federal Reserve System
NOTICES
Bank holding companies; proposed de novo nonbank activities:
5068 Chemical New York Corp. et al.

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
5121 New South Insurance Co.

Fish and Wildlife Service
RULES
Endangered and threatened species:
5730 Gypsum wild buckwheat and Todsens pennyroyal
PROPOSED RULES
5668 Alaska National Wildlife Refuges

Foreign-Trade Zones Board
NOTICES
Applications, etc.:
5029 Nevada

Forest Service
NOTICES
Environmental statements; availability, etc.:
5029 Allegheny National Forest land and resource management plan, Pa.
5029 Environmental statements for land and resource management plans; preparation in accordance with CEQ recommended format; correction

General Accounting Office
NOTICES
5068, 5069 Regulatory reports review; proposals, approvals, violations, etc. (ICC, NRC) (2 documents)

Health and Human Services Department
See Alcohol, Drug Abuse, and Mental Health Administration; Health Care Financing Administration; Human Development Services Office; Public Health Service; Social Security Administration.

Health Care Financing Administration
PROPOSED RULES
Medicaid:
5003 Sterilizations (hysterectomies) Federal financial participation in State claims; requirements
Medicaid:
5008 Foster care maintenance payments program and adoption assistance program; cash assistance entitlements; correction
5006 Shared-services organizations and cost to related organizations, reimbursement; withdrawn

Heritage Conservation and Recreation Service
PROPOSED RULES
5566 Archaeological Resources Protection Act of 1979; implementation
NOTICES
Historic Places National Register; pending nominations:
5090 California et al.
5090 National wild and scenic rivers system; State-administered rivers; correction

Historic Preservation, Advisory Council
PROPOSED RULES
5578 Urban development action grant program, historic preservation requirements

Housing and Urban Development Department
See also Federal Housing Commissioner—Office of Assistant Secretary for Housing.
NOTICES
Authority delegations:
5081 Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection et al.; revision and update

Human Development Services Office
RULES
4921 Insular areas; consolidated grants program
NOTICES
Grant applications and proposals; closing dates:
5075 Child abuse and neglect program; demonstration and service improvement projects
5078 Child abuse and neglect program; research projects
5072 Long term care gerontology centers

Immigration and Naturalization Service
RULES
4856 Nonimmigrant temporary workers, intra-company transferees, and students in occupations at place of strike or other labor disputes involving work stoppage; admission and continued employment restrictions

Indian Affairs Bureau
RULES
Off-reservation treaty fishing:
4873 Identification cards; deadline extension

Interior Department
See Fish and Wildlife Service; Heritage Conservation and Recreation Service; Indian Affairs Bureau; Land Management Bureau; National Park Service; Surface Mining Reclamation and Enforcement Office.

Internal Revenue Service
RULES
Excise taxes:
4873 Crude oil windfall profit tax, administrative provisions; temporary
PROPOSED RULES
Excise taxes:
4950 Crude oil windfall profit tax; administrative provisions; cross reference

International Communication Agency
NOTICES
Art objects, importation for exhibitions:
5100 West Germany et al.; "Kandinsky: The Improvisations"

International Development Cooperation Agency
See Agency for International Development

International Trade Administration
NOTICES
Countervailing duty petitions and preliminary determinations:
5030 Plastic animal identification tags from New Zealand

Interstate Commerce Commission
RULES
Practice and procedure:
4926 Motor carrier applications and temporary authority
Railroad car service orders; various companies:
4934 Chicago, Milwaukee, St. Paul & Pacific Railroad Co.; track use by various railroads
NOTICES
5091 Hearing assignments
Motor carriers:
5093 Fuel costs recovery, expedited procedures
5093–5099 Permanent authority applications (4 documents)
5095 Petitions, applications, finance matters (including temporary authorities), alternate route deviations, intrastate applications, gateways, and pack and crate
Railroad operation, acquisition, construction, etc.:
5098 Louisiana & Arkansas Railway Co.
Railroad services abandonment:
5092 Illinois Central Gulf Railroad Co.
5093 Montour Railroad Co.
5095 St. Louis-San Francisco Railway Co.

Justice Department
See Immigration and Naturalization Service; National Institute of Justice; Parole Commission.

Labor Department
See also Employment Standards Administration; Occupational Safety and Health Administration.
PROPOSED RULES
4951 Service Contract Appeals Board; withdrawn

Land Management Bureau
RULES
Grazing administration:
5784 Livestock grazing and trespass; grazing use adjustments, etc.
5772 Land use; leases, permits, and easements
5794 Land withdrawals; procedures
NOTICES
Resource management plans:
5082 Wilderness study and reporting schedules; status of current planning documents and projected new planning starts; 1982–1984 FY; inquiry
5088 Wilderness review of public lands status

Metric Board
NOTICES
5101 Consumer program; final

National Aeronautics and Space Administration
NOTICES
Meetings:
5104 Advisory Council
5104 Space and Terrestrial Applications Advisory Committee
5104 Space and Terrestrial Applications Steering Committee

National Credit Union Administration
NOTICES
5123 Meetings; Sunshine Act

National Highway Traffic Safety Administration
PROPOSED RULES
Fuel economy standards, average; passenger automobile; exemption:
5022 Avanti Motors Corp.
5012 Motor vehicle safety rulemaking and research; five-year plan

National Institute of Justice
NOTICES
Grants solicitation, competitive research:
5100 Local jail and its use

National Oceanic and Atmospheric Administration
NOTICES
Environmental statements; availability, etc.:
5032 Mullica River Estuarine Sanctuary, N.J.; scoping meeting
Meetings:
5033 Gulf of Mexico Fishery Management Council

National Park Service
PROPOSED RULES
5642 Alaska, National Park System units in

National Science Foundation
NOTICES
Meetings:
5107 Advisory Council
5105–5107 Behavioral and Neural Sciences Advisory Committee (5 documents)
5106 Materials Research Advisory Committee
5105 Physics Advisory Committee
5105–5107 Physiology, Cellular and Molecular Biology Advisory Committee (3 documents)

Nuclear Regulatory Commission
RULES
Plants and materials; physical protection:
4858 Physical security events; reporting
NOTICES
Meetings:
5107–5108 Reactor Safeguards Advisory Committee (4 documents)

Occupational Safety and Health Administration
RULES
4889 Carcinogens, potential occupational; identification, classification, and regulation; significance of risk

Parole Commission
NOTICES
5124 Meetings; Sunshine Act (3 documents)

Patent and Trademark Office
PROPOSED RULES
Patent cases:

5001 Practice rules; reexamination and fee provisions; advance notice

Pension Benefit Guaranty Corporation
RULES
Multiemployer plans:
4894 Vested benefits, unfunded; allocation; interim
4893 Pension plan termination; filing of notices of intent; address change

Public Health Service
RULES
Grants:
4918 Research projects, applicability of National Center for Health Care Technology program
PROPOSED RULES
Grants:
5003 Sterilizations (hysterectomies); Federal financial participation in State claims; requirements

Research and Special Programs Administration, Transportation Department
RULES
Hazardous materials:
5298 Radioactive materials; highway routing
NOTICES
Hazardous materials:
5118 Applications; exemptions, renewals, etc.

Securities and Exchange Commission
NOTICES
Hearings, etc.:
5109 Federated Cash Reserve Trust
5110 New Hampshire Ball Bearings, Inc.
5110 Northeast Utilities et al.
5113 Security Bond Fund, Inc., et al.
Self-regulatory organizations; proposed rule changes:
5111 American Stock Exchange, Inc. (2 documents)
5112 Options Clearing Corp.
5112 Pacific Stock Exchange, Inc. (2 documents)
Self-regulatory organizations; unlisted trading privileges:
5109 Boston Stock Exchange, Inc.
5110 Midwest Stock Exchange, Inc.

Small Business Administration
PROPOSED RULES
4937 Business loans; preferred lending institutions; authority delegation
NOTICES
Applications, etc.:
5115 Quidnet Capital Corp.
5115 Southern Orient Capital Corp.
Disaster areas:
5115 Guam
5114 Optional peg rate

Social Security Administration
RULES
Financial assistance programs:
4919 Eligibility; equity value for resources; extension of grace period
Social Security benefits and supplemental security income:
4869 Disability determinations; gainful activity guidelines
PROPOSED RULES
Supplemental security income:
4949 Income, earned; advance payments by employers, refunds of Federal income tax, and sheltered workshops services or work activities centers

State Department
NOTICES
Environmental statements; availability, etc.:
5115 Intelsat headquarters and international center expansion, Washington, D.C.; meeting

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program submission; various States:
4902 Oklahoma
PROPOSED RULES
Permanent program submission; various States:
4951 Illinois

Textile Agreements Implementation Committee
NOTICES
Wool textiles:
5033 China

Transportation Department
See also Coast Guard; Federal Aviation Administration; Federal Highway Administration; National Highway Traffic Safety Administration; Research and Special Programs Administration, Transportation Department; Urban Mass Transportation Administration.
PROPOSED RULES
5588 Nondiscrimination in federally-assisted programs
NOTICES
5438 Citizen participation in local transporation planning; final guidelines

Treasury Department
See Customs Service; Fiscal Service; Internal Revenue Service.

Urban Mass Transportation Administration
RULES
5480 Buses; emergency stockpiling
5808 Buy America requirements
Planning:
Urban transportation investment policy and procedure with FHWA, etc.; final rule and request for comments
5820 Urban initiatives program; funding for mass transportation projects
Urban mass transit program (section 5 formula):
5476 Public hearing requirements for service and fare changes
PROPOSED RULES
5815 Buy America requirements; determination of origin; subcomponents manufactured in U.S. retain domestic identity and definition of "final assembly"
5394 Charter bus operations; advance notice
5832 Technology introduction program; grants or loans
NOTICES
Grants; availability, etc.:
5119 Innovation in operating procedures; pilot program

Veterans Administration
NOTICES
Meetings:
5121 Educational Allowances Station Committee

Water Resources Council
NOTICES
Environmental statements; availability, etc.:
5121 Yadkin-Pee Dee River Basin level B Plan, N.C. and S.C.

MEETINGS ANNOUNCED IN THIS ISSUE

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration—
5033 Gulf of Mexico Fishery Management Council, San Antonio, Texas, 3–3 and 3–4–81
5032 Proposed estuarine sanctuary at Mullica River, environmental impact statement, Washington, D.C., 2–9–81

ENERGY DEPARTMENT
5053 Industry Advisory Board (IAB) to the International Energy Agency (IEA), Subcommittees A and C, London, England, 1–27–81
Office of the Secretary—
5053 Draft report of a study of alternatives to the Davis (West Virginia) pumped storage project, Washington, D.C., 2–5–81
5053 Price support loans for municipal waste energy products, Washington, D.C., 2–3–81

HEALTH AND HUMAN SERVICES DEPARTMENT
Alcohol, Drug Abuse, and Mental Health Administration—
5069 National Advisory Bodies, February meetings

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
5104 NASA Advisory Council, Informal Ad Hoc Solar System Exploration Committee, Pasadena, Calif., 1–26 through 1–28–81
5104 NASA Advisory Council, Space and Terrestrial Applications Advisory Committee, Geodynamics and Geology Ad Hoc Informal Advisory Subcommittee, Washington, D.C., 2–9 through 2–11–81
5104 Space and Terrestrial Applications Steering Committee (STASC), Proposal Evaluation Advisory Subcommittee, Washington, D.C., 2–4–81

NATIONAL SCIENCE FOUNDATION
5106 Behavioral and Neural Sciences Advisory Committee, Linguistics Program Subcommittee, Washington, D.C., 2–5 and 2–6–81
5105 Behavioral and Neural Sciences Advisory Committee, Memory and Cognitive Processes Subcommittee, Washington, D.C., 2–9 and 2–10–81
5105 Behavioral and Neural Sciences Advisory Committee, Neurobiology Subcommittee, Washington, D.C., 2–9, 2–10, 2–12 and 2–13–81
5106 Behavioral and Neural Sciences, Sensory Physiology and Perception Subcommittee, Washington, D.C., 2–5 and 2–6–81
5107 Behavioral and Neural Sciences Advisory Committee, Social and Developmental Psychology Subcommittee, Washington, D.C., 2–12 and 2–13–81
5106 Materials Research Advisory Committee, Facilities Subcommittee, Washington, D.C., 2–9 and 2–10–81
5107 National Science Foundation Advisory Council, Task Group No. 14, Washington, D.C., 2–10–81
5105 Physics Advisory Committee, Washington, D.C., 2–5 through 2–7–81
5107 Physiology, Cellular, and Molecular Biology Advisory Committee, Genetic Biology Subcommittee, Washington, D.C., 2–12 through 2–14–81
5106 Physiology, Cellular, and Molecular Biology Advisory Committee, Molecular Biology, Group A Subcommittee, Washington, D.C., 2–9 and 2–10–81
5105 Physiology, Cellular, and Molecular Biology Advisory Committee, Regulatory Biology Subcommittee, Washington, D.C., 2–4 through 2–6–81

NUCLEAR REGULATORY COMMISSION
5108 Reactor Safeguards Advisory Committee, Plant Features Important to Safety Subcommittee, Washington, D.C., 2–3–81
5107 Reactor Safeguards Advisory Committee, NRC Safety Research Program Subcommittee, Washington, D.C., 2–4–81
5108 Reactor Safeguards Advisory Committee, Regulatory Activities Subcommittee, Washington, D.C., 2–3–81
5108 Reactor Safeguards Advisory Committee, Safety Philosphy, Technical and Criteria Subcommittee, Washington, D.C., 2–4–81

STATE DEPARTMENT
5115 Federal International Center, Washington, D.C., 2–4–81

TRANSPORTATION DEPARTMENT
Federal Highway Administration—
5118 Outdoor Advertising and Motorist Information National Advisory Committee, Washington, D.C., 2–5 and 2–6, 3–5 and 3–6–81

VETERANS ADMINISTRATION
5121 Educational Allowances Station Committee, Nashville, Tenn., 2–10–81

HEARINGS

ENVIRONMENTAL PROTECTION AGENCY
5001 Motor vehicle pollution control, waiver of oxides of nitrogen emission standards, Peugeot's application for waiver of 1982 oxides of nitrogens (NO_x) emission standard, 2–2–81

INTERIOR DEPARTMENT
Heritage Conservation and Recreation Service—
5566 Archaeological Resource Protection Act of 1979, 2–7, 2–14, 2–21, 2–28, 3–7 and 3–14–81

CONSUMER SUBJECT LISTING

The following items have been identified by the issuing agency as documents of particular consumer interest. This listing highlights the broad subject area of consumer interest followed by the specific subject matter of the document, issuing agency, and document category.

SUPPLEMENTAL SECURITY INCOME

4949 Earned income; Social Security Administation; Proposed Rules.

TRANSPORTATION

Citizen participation in local transportation planning, guidelines; Transportation Department; Notices.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Executive Orders:

11888 (Amended by EO 12267)..... 4669
12135 (Amended by EO 12271)..... 4677
12160 (Amended by EO 12265)..... 4665
12258 (Amended by EO 12271)..... 4677
12264..... 4659
12265..... 4665
12266..... 4667
12267..... 4669
12268..... 4671
12269..... 4673
12270..... 4675
12271..... 4677

Proclamations:

4816..... 4679

7 CFR

Ch. XVIII..... 4681
910..... 4681

Proposed Rules:

907..... 4936
908..... 4936

8 CFR

211..... 4856
214..... 4856

10 CFR

73..... 4858
210..... 4860
211..... 5722

Proposed Rules:

800..... 5514

13 CFR

Proposed Rules:

122..... 4937

14 CFR

39 (5 documents)..... 4862–4866
71..... 4866
121..... 5500
135..... 5500

Proposed Rules:

Ch. I..... 4944
71 (5 documents)..... 4945–4948
121 (2 documents)..... 5484, 5506
135 (2 documents)..... 5484, 5506
145..... 5484
147..... 5484

18 CFR

282..... 4867

19 CFR

4..... 4868

20 CFR

404..... 4869
416..... 4869

Proposed Rules:

416..... 4949

23 CFR

450..... 5702
630..... 5702

24 CFR

201..... 4872

25 CFR

256..... 4873

26 CFR

150..... 4873

Proposed Rules:

51..... 4950

29 CFR

4..... 4886
1620..... 4888
1990..... 4889
2604..... 4893
2652..... 4894

Proposed Rules:

8..... 4951

30 CFR

936..... 4902

Proposed Rules:

913..... 4951

33 CFR

40..... 4912

Proposed Rules:

117..... 4953

34 CFR

104..... 4912
200..... 5136
201..... 5136
211..... 5372
215..... 5372
300..... 4912, 5460
305..... 5372
307..... 5372
309..... 5372
315..... 5372
318..... 5372
322..... 4913
324..... 5372
338..... 5372
361..... 5522
362..... 5416
365..... 5522
366..... 5410
369..... 5416
370 (2 documents)..... 5416, 5522
371..... 5416
372..... 5416
373..... 5416
374..... 5416
375..... 5416
378..... 5416
379..... 5416
395..... 5416
408..... 5372
525..... 5372
526..... 5372
527..... 5372
624..... 5372
643..... 5372
644..... 5372
645..... 5372
646..... 5372
674..... 5238
675..... 5238
676..... 5238
690..... 5320
726..... 5372
740..... 5372

Proposed Rules:

104..... 4954
200..... 5236
201..... 5236
322..... 4955
366..... 4955
369..... 5436
370..... 5436
371..... 5436
372..... 5436
373..... 5436
374..... 5436
375..... 5436
378..... 5436
379..... 5436
617..... 4956
618..... 4956
619..... 4956
620..... 4956
621..... 4956
674..... 5295
675..... 5295
676..... 5295
683..... 4956
791..... 4991
792..... 4991
793..... 4991
794..... 4991

36 CFR

Proposed Rules:

13..... 5642
801..... 5578
1215..... 5566

37 CFR

Proposed Rules:

1..... 5001

40 CFR

52 (2 documents)..... 4916, 4918
123..... 5616
162..... 5696
205..... 4918

Proposed Rules:

86 (2 documents)..... 5001, 5838
180..... 5003

42 CFR

52..... 4918

Proposed Rules:

50..... 5003
405..... 5006
435..... 5008
441..... 5003

43 CFR

9..... 5772
2090..... 5794
2300..... 5794
2310..... 5794
2320..... 5794
2340..... 5794
2350..... 5794
2920..... 5772
4100..... 5784

45 CFR

233..... 4919
1012..... 5620
1069..... 4919
1300..... 4921

Proposed Rules:

1012..... 5632

46 CFR

Proposed Rules:

524..... 5008

47 CFR

15 (2 documents)..... 4923, 4925

Proposed Rules:

Ch. I..... 5008
2 (2 documents)..... 5009, 5011
22..... 5011
73..... 5011
90..... 5011

49 CFR

171..... 5298
172..... 5298
173..... 5298
177..... 5298
397..... 5318
635..... 5476
639..... 5480
642..... 5820
660..... 5808
1003..... 4926
1033..... 4934
1100..... 4926

Proposed Rules:

Ch. V..... 5012
21..... 5588
531..... 5022
604..... 5394
641..... 5832
660..... 5815

50 CFR

117..... 5730

Proposed Rules:

36..... 5668

Federal Register
Vol. 46, No. 12
Monday, January 19, 1981

Presidential Documents

Title 3—

The President

Executive Order 12264 of January 15, 1981

On Federal Policy Regarding the Export of Banned or Significantly Restricted Substances

By the authority vested in me as President by the Constitution of the United States of America, and in order to further the foreign policy interests of the United States and to provide for effective and responsible implementation of the Export Administration Act of 1979 (50 U.S.C. App. 2401 *et. seq.*) and other statutes insofar as they relate to the export of banned or significantly restricted substances, it is hereby ordered as follows:

1–1. Scope of the Order

1–101. For the purposes of this Order, the term "banned or significantly restricted substance" means:

(a) a food or class of food which

(1) is adulterated, as defined by rules or orders issued under Sec. 402 (a) or (c) (21 U.S.C. 342 (a) or (c)), or

(2) is in violation of emergency permit controls issued under Sec. 404 (21 U.S.C. 344)

of the Federal Food, Drug, and Cosmetic Act;

(b) a drug which is

(1) adulterated, as defined by rules or orders issued under Sec. 501 (a), (b), (c), or (d) (21 U.S.C. 351 (a), (b), (c), or (d)),

(2) misbranded, as defined by rules or orders issued under Sec. 502(j) (21 U.S.C. 352(j)) or

(3) a new drug or new animal drug for which an approval is not in effect under Sec. 505 (21 U.S.C. 355) or Sec. 512 (21 U.S.C. 360), respectively,

of the Federal Food, Drug, and Cosmetic Act;

(c) an antibiotic drug which has not been certified under Sec. 507 (21 U.S.C. 357) of the Federal Food, Drug, and Cosmetic Act;

(d) a drug containing insulin which has not been certified under Sec. 506 (21 U.S.C. 356) of the Federal Food, Drug, and Cosmetic Act;

(e) a device which

(1) is adulterated, as defined by rules or orders issued under Sec. 501(a) (21 U.S.C. 351(a)),

(2) is misbranded, as defined by rules or orders issued under Sec. 502(j) (21 U.S.C. 352(j)),

(3) does not conform with a performance standard issued under Sec. 514 (21 U.S.C. 360d),

(4) has not received premarket approval under Sec. 515 (21 U.S.C. 360e), or

(5) is banned under Sec. 516 (21 U.S.C. 360f)

of the Federal Food, Drug, and Cosmetic Act;

(f) a cosmetic which is adulterated, as defined by rules or orders issued under Sec. 601 (21 U.S.C. 361) of the Federal Food, Drug, and Cosmetic Act;

(g) a food additive or color additive which is deemed unsafe within the meaning of Sec. 409 (21 U.S.C. 348) or Sec. 706 (21 U.S.C. 376), respectively, of the Federal Food, Drug, and Cosmetic Act;

(h) a biological product which has been propagated or manufactured and prepared at an establishment which does not hold a license as required by Sec. 351 (42 U.S.C. 262) of the Public Health Service Act;

(i) an electronic product which does not comply with a performance standard issued under Sec. 358 (42 U.S.C. 263f) of the Public Health Service Act;

(j) a consumer product which

(1) does not comply with a consumer product safety standard adopted under Secs. 7 and 9 (15 U.S.C. 2056 and 2058) other than one relating solely to labeling,

(2) has been declared to be a banned hazardous product under Secs. 8 and 9 (15 U.S.C. 2057 and 2058),

(3) presents a substantial product hazard under Sec. 15 (15 U.S.C. 2064), or

(4) is an imminently hazardous consumer product under Sec. 12 (15 U.S.C. 2061)

of the Consumer Product Safety Act;

(k) a fabric, related material, or product which does not comply with a flammability standard (other than one relating to labeling) adopted under Sec. 4 (15 U.S.C. 1193) of the Flammable Fabrics Act;

(l) a product which is a banned hazardous substance (including a children's article) under Secs. 2 and 3 (15 U.S.C. 1261 and 1262) of the Federal Hazardous Substances Act;

(m)(1) a pesticide which, on the basis of potential risks to human health or safety or to the environment,

(A) has been denied registration for all or most significant uses under Sec. 3(c)(6) (7 U.S.C. 136a(c)(6)),

(B) has been classified for restricted use under Sec. 3(d)(1)(C) (7 U.S.C. 136a(d)(1)(C)),

(C) has had its registration cancelled or suspended for all or most significant uses under Sec. 6 (7 U.S.C. 136d),

(D) has been proceeded against and seized under Sec. 13(b)(3) (7 U.S.C. 136k), or

(E) has not had its registration cancelled, but requires an acknowledgement statement under Sec. 17(a)(2) (7 U.S.C. 136o(a)(2))

of the Federal Insecticide, Fungicide, and Rodenticide Act, or

(2) a pesticide chemical for which a tolerance has been denied or repealed under Sec. 408 (21 U.S.C. 346(a)) of the Federal Food, Drug, and Cosmetic Act; and

(n) a chemical substance or mixture

(1) which is subject to an order or injunction issued under Sec. 5(f)(3) (15 U.S.C. 2604(f)(3)),

(2) which is subject to a requirement issued under Sec. 6(a)(1), 6(a)(2), 6(a)(5), or 6(a)(7) (15 U.S.C. 2605(a)(1), 2605(a)(2), 2605(a)(5), or 2605(a)(7)) or

(3) for which a civil action has been brought and relief granted under Sec. 7 (15 U.S.C. 2606)

of the Toxic Substances Control Act.

1–102. Each agency that is responsible for the administration of a statute or statutory provision referenced in Subsection 1–101 shall compile and, within 90 days after the issuance of this Order, shall publish in the **Federal Register** a list of those substances within its jurisdiction that are banned or significantly

restricted substances as defined by Subsection 1–101. Each agency shall revise the list of banned or significantly restricted substances within its jurisdiction as necessary to reflect new regulatory actions by the agency.

1–2. Regularization of Notification Procedures

1–201. Each agency that is required by statute to notify, or to be apprised of notifications to, foreign countries regarding exports of banned or significantly restricted substances to those countries shall adhere, to the extent not inconsistent with applicable law, to the following procedures:

(a) Each agency shall promptly provide to the Department of State such information regarding an export of banned or significantly restricted substances to a foreign government as is required by statute or agency regulation to be forwarded to the foreign government, either by the agency or by another party required to apprise the agency of its notification, and by the notification forms and procedures to be established by the Department of State pursuant to Subsection 1–201(b). As soon as feasible after the receipt of the required information from an agency, the Department of State shall transmit the information to the government of the foreign country to which the banned or significantly restricted substance is to be exported.

(b) The Department of State shall consult with affected agencies regarding the format and content appropriate for required notifications to foreign governments and shall establish, within 90 days after the issuance of this Order, notification forms and procedures. At a minimum, the following information shall be transmitted to foreign governments regarding banned or significantly restricted substances to be exported to them from the United States:

(1) the name of the substance to be exported;

(2) a concise summary of the agency's regulatory actions regarding that substance, including the statutory authority for such actions and the timetable for any further actions that are planned; and,

(3) a concise summary of the potential risks to human health or safety or to the environment that are the grounds for the agency's actions.

In addition, to the extent deemed appropriate by the agency with jurisdiction over the banned or significantly restricted substance to be exported, copies of additional documents may be forwarded to a foreign government, either at the same time as or subsequent to the required notification, to assist the foreign government in its assessment of the nature and extent of the risks associated with the substance.

(c) With respect to each required notification regarding an export of a banned or significantly restricted substance, each agency shall identify for the Department of State the persons or offices within that agency to be contacted in the event that the foreign government receiving the notification wishes to obtain through the Department of State additional information regarding the risks of, or regulatory actions taken with respect to, the banned or significantly restricted substance that is the subject of the notification.

(d) When it is required by statute or agency regulation that a foreign government acknowledge that it has received notification of an export of banned or significantly restricted substances, express approval of the export, or make any other type of response to notification, the notification shall advise the foreign government that its response should be directed to the Department of State for transmittal to the agency.

1–202. The procedures established by Subsection 1–201 shall not preclude an agency from contacting a foreign government directly regarding the export of banned or significantly restricted substances to that country, providing that such contacts are supplementary to, rather than substitutes for, adherence to the procedures established by Subsection 1–201.

1–203. Each United States embassy shall maintain on file, for a period of one year after transmission, copies of the notifications transmitted through the Department of State to the government of the foreign country in which the

embassy is located, as well as lists of United States agency contact points sent to the Department of State in connection with those notifications.

1–3. **Export Control Procedures**

1–301. It is the intent of this Order to rely primarily on the notification procedures, annual report, and participation in international efforts provided for in Sections 1–2, 1–4, and 1–5, respectively, in implementing the Order, and to resort to the imposition of export controls only in a very few instances. Specifically, export controls should be limited to extremely hazardous substances, as determined by the agency primarily responsible for regulating a substance on the basis of the record compiled in connection with regulatory action taken by that agency concerning that substance—

(a) which represent a substantial threat to human health or safety or to the environment,

(b) the export of which would cause clear and significant harm to the foreign policy interests of the United States, and

(c) for which export licenses would be granted only in exceptional cases.

Export controls shall not be applied to substances specified in Sections 1-101(b)(3), 1–101(e)(4), and 1–101(m)(1)(E) of this Order. Nor shall export controls be applied to "medicine or medical supplies," which are excluded from such controls by Section 6(f) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(f)). For the purposes of this Order the phrase "medicine or medical supplies" shall be construed so as to permit consideration for inclusion on the Commodity Control List of drugs and devices within the categories specified in Subsection 1–101(b–e) and representing a substantial threat to human health or safety or to the environment. Wherever practicable, export controls should be no more restrictive than the controls applicable to domestic commerce and use.

1–302. Within 90 days after the issuance of this Order, the Department of Commerce shall develop for interagency review proposed regulations to govern its consideration of applications for licenses to export banned or significantly restricted substances included on the Commodity Control List. Within 120 days after the issuance of this Order, the Department of Commerce shall publish the proposed regulations in the **Federal Register** for public comment.

1–303. In accord with its statutory role under the Export Administration Act, and consistent with the policy and standards enunciated in Subsection 1–301, the Department of State shall identify, subject to the concurrence of the Department of Commerce, candidates for inclusion on the Commodity Control List. If the Department of State and Department of Commerce are unable to agree on the inclusion on the Commodity Control List of a particular substance, the matter shall be referred to the President.

1–304. In order to assist the Department of State in the development of its advice to the Department of Commerce under subsection 1–303, there is hereby established an interagency task force, to be chaired by the Department of State. The task force shall consist of representatives of the following agencies:

(a) Department of State.

(b) Department of Commerce.

(c) Environmental Protection Agency.

(d) Food and Drug Administration, Department of Health and Human Services.

(e) Consumer Product Safety Commission.

(f) Office of the U.S. Special Trade Representative.

The Department of State, as chair of the task force, may invite representatives of non-member agencies to participate from time to time in the functions of the task force. The task force shall provide technical advice to the Department of

State as to which substances should be considered candidates for inclusion on the Commodity Control List. The task force shall endeavor to reach consensus on its advice, consistent with the policy and standards enunciated in Subsection 1–301.

1–305. To the extent possible, within the limits of available information and consistent with the policy and standards enunciated in Subsection 1–301, the task force shall consider, with respect to each banned or significantly restricted substance that is proposed for inclusion on the Commodity Control List by a member of the task force:

(a) the type, extent, and severity of the potential detrimental effects of the substance;

(b) the likelihood of the effects;

(c) the duration of the effects;

(d) the ability of foreign countries to avoid or mitigate the effects;

(e) the availability of the substance from sources other than the United States;

(f) the availability of other substances or methods that would serve the same purposes as the substance; and,

(g) the importance of the beneficial uses of the substances.

1–306. Before deciding whether to grant a validated license for the export of any banned or significantly restricted substance that is included on the Commodity Control List, the Department of Commerce shall consult with the Department of State, the agency with domestic regulatory authority, and any other agency deemed relevant by the Department of Commerce. Such consultation by the Department of Commerce is necessary within the meaning of Section 10(a)(3) of the Export Administration Act of 1979 (50 U.S.C. App. 2409(a)(3)). The Department of State shall not recommend issuing a license unless (1) it has determined that the export would not cause clear and significant harm to the foreign policy interests of the United States and (2) after appropriate consultations, it has received no objections to the export from the government of the foreign country to which the banned or significantly restricted substance is to be exported. The findings and recommendations of the Department of State shall be conveyed in writing to the Department of Commerce.

1–307. Except to the extent supplemented or further detailed by this Order, the procedures established by the Export Administration Act of 1979 (50 U.S.C. App. 2401 *et. seq.*), including required consultations with industry, shall be followed in all their particulars in the utilization of export control authority on foreign policy grounds with respect to banned or significantly restricted substances.

1–4. Annual Report on Regulatory Actions

1–401. The Regulatory Council shall compile each year a report that

(a) summarizes all final regulatory actions of the types described in Subsection 1–101 that were taken by Federal agencies by the end of the previous calendar year, including those antedating that calendar year but continuing in force, and that are of significant international interest;

(b) summarizes all proposed regulatory actions of the types described in Subsection 1–101 that were pending before agencies at the end of the previous calendar year and that are of significant international interest;

(c) indicates generally what additional information is available with respect to each of the final or proposed regulatory actions listed and how such information may be obtained; and

(d) contains such information as the Council, in consultation with affected agencies, determines is appropriate to include regarding substances the use of which in the United States is not generally banned but, on the basis of

potential risks to human health or safety or to the environment, is subject to maximum exposure levels or other restrictions or conditions.

1–402. Each agency shall provide to the Regulatory Council the information necessary for the preparation of the annual report on regulatory actions. The Regulatory Council shall establish, after consultation with affected agencies and within 90 days after the issuance of this Order, a standard format and timetable for the submission of information by the agencies.

1–403. The Regulatory Council shall publish the report required by subsection 1–401 in the **Federal Register** by March 1 of each year, and the Department of State shall distribute copies of the report to foreign countries and to appropriate public and private international organizations as soon as feasible after its publication.

1–5. **Participation in International Efforts**

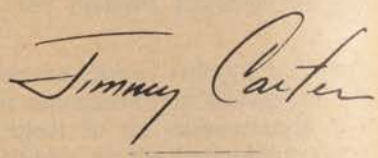
1–501. The Department of State, and other agencies and officials of the United States government in consultation with the Department of State, shall encourage and participate actively in international efforts to develop improved worldwide hazard alert systems, export notification programs, uniform hazard labeling, and other common standards and practices with respect to the export of banned or significantly restricted substances.

1–6. **Evaluation**

1–601. The Council on Environmental Quality, the Department of State, and the Department of Commerce, in consultation with agencies affected by this Order, shall submit to the President 18 months after the effective date of the Order and annually thereafter, a report summarizing U.S. agency activities pursuant to the Order, evaluating the effectiveness of the Order, and making any recommendations that are deemed appropriate.

1–7. **Trade Secret Protection**

1–701. Trade secrets or other confidential commercial or financial information that pertain to a banned or significantly restricted substance to be exported shall not be forwarded to a foreign government in the notifications or other documents prepared pursuant to this Order unless authorized or required by existing law.



WHITE HOUSE,
January 15, 1981.

[FR Doc. 81–2038
Filed 1–15–81; 3:24 pm]
Billing code 3195–01–M

EDITORIAL NOTE: The President's statement of Jan. 15, 1981, on signing Executive Order 12264, is printed in the Weekly Compilation of Presidential Documents (vol. 17, no. 3).

Presidential Documents

Executive Order 12265 of January 15, 1981

Providing for Enhancement and Coordination of Federal Consumer Programs

By the authority vested in me as President by the Constitution of the United States of America, and in order to enlarge the membership of the Consumer Affairs Council from twelve to twenty-four, Section 1–102 of Executive Order No. 12160 of September 26, 1979, is hereby amended to read as follows:

"1–102. The Council shall consist of representatives of the following agencies and such other officers or employees of the United States as the President may designate as members:

(a) Department of Agriculture.

(b) Department of Commerce.

(c) Department of Defense.

(d) Department of Energy.

(e) Department of Health and Human Services.

(f) Department of Housing and Urban Development.

(g) Department of the Interior.

(h) Department of Justice.

(i) Department of Labor.

(j) Department of State.

(k) Department of Transportation.

(l) Department of the Treasury.

(m) ACTION Agency.

(n) Administrative Conference of the United States.

(o) Community Services Administration.

(p) Department of Education.

(q) Environmental Protection Agency.

(r) Equal Employment Opportunity Commission.

(s) Federal Emergency Management Agency.

(t) General Services Administration.

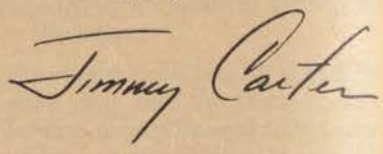
(u) Small Business Administration.

(v) Tennessee Valley Authority.

(w) Veterans Administration.

(x) Commission on Civil Rights is invited to participate.

Each agency on the Council shall be represented by the head of the agency or by a senior-level official designated by the head of the agency.".



THE WHITE HOUSE,
January 15, 1981.

[FR Doc. 81-2039
Filed 1-15-81; 3:25 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12266 of January 15, 1981

Food Security Wheat Reserve

By the authority vested in me as President of the United States of America by Section 302(a) of the Food Security Wheat Reserve Act of 1980 (Title III of the Agricultural Act of 1980 (Public Law 96–494)), it is hereby ordered as follows:

1–101. There is hereby established a Food Security Wheat Reserve composed of a reserve stock of wheat, which shall not exceed four million metric tons.

1–102. The Secretary of Agriculture is responsible for designating, in accordance with Section 302 of the Food Security Wheat Reserve Act of 1980, the specific reserve stocks of wheat which shall comprise the Food Security Wheat Reserve.

Jimmy Carter

THE WHITE HOUSE,
January 15, 1981.

[FR Doc. 81–2040
Filed 1–15–81; 3:26 pm]
Billing code 3195–01–M

Presidential Documents

Executive Order 12267 of January 15, 1981

Amending the Generalized System of Preferences

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Title V and Section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2461 *et seq.*; 19 U.S.C. 2483), and in order (1) to provide for the continuation, to the greatest extent possible, of preferential treatment under the Generalized System of Preferences (GSP) for articles which are currently eligible for such treatment from countries designated as beneficiary developing countries, notwithstanding the changes to the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202) which have resulted from the recent enactment of legislation, (2) to remove certain items from preferential treatment, (3) to make technical corrections to Executive Order No. 11888, of November 24, 1975, as amended, and (4) to make conforming modifications to the TSUS, it is hereby ordered as follows:

1–101. The Tariff Schedules of the United States are modified by amending the article description for item 652.97 by adding "and parts thereof" to the present article description therefor.

1–102. Annex II of Executive Order No. 11888 of November 24, 1975, as amended, listing articles that are eligible for benefits of the GSP when imported from any designated beneficiary country is further amended as provided in the Annex to this Order.

1–103. Annex III of Executive Order No. 11888, as amended, listing articles that are eligible for benefits of the GSP when imported from all designated beneficiary countries except those specified in General Headnote 3(c)(iii) of the TSUS, is further amended by deleting items 176.17 and 520.35 therefrom.

1–104. General Headnote 3(c)(iii) of the TSUS, listing articles that are eligible for benefits of the GSP except when imported from the beneficiary countries listed opposite those articles, is amended by deleting therefrom the following:

"176.17	Philippines
520.35	Thailand".

1–105. The amendments made with respect to items 470.15, 470.18, 470.25, 470.55, 708.51, 708.52, and 725.38 by Section 1–102 of this Order shall be effective as to articles that are both (1) imported on or after January 1, 1976, and (2) entered, or withdrawn from warehouse for consumption, on or after October 17, 1980, and as to which the liquidations of the entries or withdrawals have not become final and conclusive under Section 514 of the Tariff Act of 1930 (19 U.S.C. 1514).

1–106. The amendments made with respect to items 407.15, 407.16, and 408.31 by Section 1–102 of this Order shall be effective as to articles that are both (1) imported on or after January 1, 1976, and (2) entered, or withdrawn from warehouse for consumption, on or after December 2, 1980, and as to which the liquidations of the entries or withdrawals have not become final and conclusive under Section 514 of the Tariff Act of 1930 (19 U.S.C. 1514).

1–107. The amendments made by this Order, with the exception of those listed in Sections 1–105 and 1–106 shall be effective as to articles that are both (1) imported on or after January 1, 1976 and (2) entered, or withdrawn from warehouse for consumption, on or after January 16, 1981.

Jimmy Carter

THE WHITE HOUSE,
January 15, 1981.

ANNEX

Annex II to Executive Order No. 11888, as amended, is further amended—

(a) by deleting the following TSUS item numbers:

106.80	240.03	413.96	649.39
107.76	240.06	417.30	708.51
125.70	251.49	437.00	708.52
153.02	252.79	437.24	725.10
153.08	304.04	470.15	725.38
156.45	373.22	470.25	760.65
240.00	407.15	470.55	and

(b) by adding, in numerical sequence, the following TSUS item numbers:

407.16	408.31	412.96	470.18

[FR Doc. 81–2042
Filed 1–15–81; 3:37 pm]
Billing code 3195–01–M

Presidential Documents

Executive Order 12268 of January 15, 1981

Hostage Relief Act of 1980

By the authority vested in me as President by the Constitution and statutes of the United States of America, including the Hostage Relief Act of 1980 (Public Law 96–449; 94 Stat. 1967; 5 U.S.C. 5561 note) and Section 301 of Title 3 of the United States Code, and in order to provide for the implementation of that Act, it is hereby ordered as follows:

1–101. The functions vested in the President by Sections 103, 104, 105 and 301 of the Hostage Relief Act of 1980 (5 U.S.C. 5561 note) are delegated to the Secretary of State.

1–102. The Secretary of State shall consult with the heads of appropriate Executive agencies in carrying out the functions in Sections 103, 104, and 105 of the Act.

Jimmy Carter

THE WHITE HOUSE,
January 15, 1981.

[FR Doc. 81–2043
Filed 1–15–81; 3:28 pm]
Billing code 3195–01–M

Presidential Documents

Executive Order 12269 of January 15, 1981

President's Committee on Small Business Policy

By the authority vested in me as President by the Constitution of the United States of America, and in order to establish, in accord with the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), an advisory committee on the recommendations of the White House Conference on Small Business, it is hereby ordered as follows:

1–101. There is established a President's Committee on Small Business Policy which shall be composed of seven members appointed by the President.

1–102. The Committee shall advise the President, through the Administrator of the Small Business Administration, on appropriate responses to the recommendations of the White House Conference on Small Business.

1–103. The Administrator of the Small Business Administration shall provide the Committee with such administrative services and support as may be necessary.

1–104. Notwithstanding the provisions of any other Executive Order, the functions of the President under the Federal Advisory Committee Act (5 U.S.C. App. I), except that of reporting annually to the Congress, which are applicable to the Committee, shall be performed by the Administrator of the Small Business Administration in accordance with guidelines and procedures established by the Administrator of General Services.

1–105. The Committee shall terminate on December 31, 1982, unless sooner extended.

Jimmy Carter

THE WHITE HOUSE,
January 15, 1981.

[FR Doc. 81–2044
Filed 1–15–81; 3:29 pm]
Billing code 3195–01–M

Presidential Documents

Executive Order 12270 of January 15, 1981

President's Council on Spinal Cord Injury

By the authority vested in me as President by the Constitution of the United States of America, and in order to establish, in accord with the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), an advisory committee on spinal cord injury, it is hereby ordered as follows:

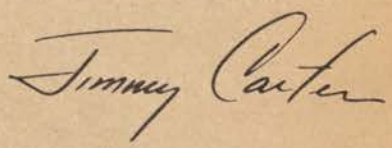
1–101. There is established a President's Council on Spinal Cord Injury which shall be composed of twelve members appointed by the President.

1–102. The Committee shall advise the President, through the Secretary of Education, on appropriate responses to the goals of prevention, diagnosis, treatment, and reversal of spinal cord injury.

1–103. The Secretary of Education shall provide the Council with such administrative services and support as may be necessary.

1–104. Notwithstanding the provisions of any other Executive Order, the functions of the President under the Federal Advisory Committee Act (5 U.S.C. App. I), except that of reporting annually to the Congress, which are applicable to the Council, shall be performed by the Secretary of Education in accordance with guidelines and procedures established by the Administrator of General Services.

1–105. The Committee shall terminate on December 31, 1981, unless sooner extended.



THE WHITE HOUSE,
January 15, 1981.

[FR Doc. 81–2045
Filed 1–15–81; 3:30 pm]
Billing code 3195–01–M

Presidential Documents

Executive Order 12271 of January 15, 1981

Continuance of Certain Federal Advisory Committees

By the authority vested in me as President by the Constitution and statutes of the United States of America, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), and in order to correct typographical errors, it is hereby ordered as follows:

1–101. So much of Section 1–101(h) of Executive Order No. 12258 (relating to the President's Advisory Committee for Women) that reads "Executive Order No. 12050" is corrected to read "Executive Order No. 12135".

1–102. So much of Section 1–101(o) of Executive Order No. 12258 (relating to the Federal Advisory Council on Occupational Safety and Health) that reads "Executive Order No. 12195" is corected to read "Executive Order No. 12196".

Jimmy Carter

THE WHITE HOUSE,
January 15, 1981.

[FR Doc. 81–2046
Filed 1–15–81; 3:31 pm]
Billing code 3195–01–M

Presidential Documents

Proclamation 4816 of January 15, 1981

American Heart Month, 1981

By the President of the United States of America

A Proclamation

Diseases of the heart and blood vessels afflict 40 million Americans, cause 950,000 deaths annually, and cost the Nation more than $60 billion each year in lost wages and productivity and in direct costs of medical care.

Cardiovascular diseases, still our Nation's leading cause of death, have been the target of a continuing national effort since 1948. Leading this assault on illness, disability, and premature death are the American Heart Association, a private health organization supported by individual contributions, and the National Heart, Lung and Blood Institute, part of the National Institutes of Health, a Federal agency supported by tax dollars. For more than 30 years, the two organizations have worked closely together conducting and supporting research, training, education and community service directed against heart diseases. In that joint effort, they have enlisted the cooperation and resources of numerous organizations and agencies—both public and private.

Diseases of the heart and blood vessels remain the number one killer in the United States, but we have made substantial and heartening progress toward reducing the devastating toll. Deaths from coronary heart disease have declined by 25 percent during the past decade. Deaths from stroke have declined by 37 percent during the same period. These dramatic declines are a significant factor in the marked increase over the past decade in life expectancy for all Americans.

We have developed a much better understanding of the disease process and in the detection and treatment of cardiovascular disease. As a people, we have improved our overall health practices. For example, there has been a sharp drop in cigarette smoking among middle-aged men who are at the highest risk of heart attack. There has been much progress in the control of high blood pressure which is the major cause of stroke and gratifying and productive changes in our approach to diet and physical fitness.

We still have a long way to go before diseases of the heart and blood vessels are brought under control or eliminated as a major cause of suffering and premature death. In recognition of the seriousness of this menace to the Nation's health and well-being, and to encourage the consolidation and extension of our efforts against cardiovascular disease, the Congress, by joint resolution approved December 30, 1963 (77 Stat. 843; 36 U.S.C. 169b) has requested the President to issue annually a proclamation designating February as American Heart Month.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby proclaim the month of February 1981, as American Heart Month. I invite the Governors of the States, the Commonwealth of Puerto Rico, the officials of other areas subject to the jurisdiction of the United States, and the American people, to join with me in reaffirming our commitment to the fight against cardiovascular disease.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of January, in the year of our Lord nineteen hundred and eighty-one, and of the Independence of the United States of America the two hundred and fifth.

Jimmy Carter

[FR Doc. 81-2124
Filed 1-16-81; 10:40 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 46, No. 12
Monday, January 19, 1981

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

CFR Part 910

[Lemon Reg. 288, and Lemon Reg. 287, Amendment 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period January 18–24, 1981, and increases the quantity of such lemons that may be so shipped during the period January 11–17. Such action is needed to provide for orderly marketing of fresh lemons for the period specified due to the marketing stiuation confronting the lemon industry.

DATES: The regulation becomes effective January 18, 1981 and the amendment is effective for the period January 11–17, 1981.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation and amendment are issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1980–81 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on July 8, 1980. A final impact analysis on the marketing policy is available from William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on January 13, 1981, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons is easier.

It is further found that there is insufficient time between the date when information became available upon which this regulation and amendment are based and when the actions must be taken to warrant a 60 day comment period as recommended in E.O. 12044, and that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective times.

1. Section 910.588 is added as follows:

§ 910.588 Lemon regulation 288.

(a) The quantity of lemons grown in California and Arizona which may be handled during the period January 18, 1981, through January 24, 1981, is established at 215,000 cartons.

(b) As used in this section, "handled" and "cartons" mean the same as defined in the marketing order.

2. Paragraph (a) of § 910.587 Lemon Regulation 287 (46 FR 2336) is amended to read as follows:

§ 910.587 Lemon regulation 287.

(a) the quantity of lemons grown in California and Arizona which may be handled during the period January 11, 1981, through January 17, 1981 is established at 235,000 cartons.

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: January 14, 1981.

D. S. Kuryloski,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 81-1909 Filed 1-14-81; 4:29 pm]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Ch. XVIII

Revision and Redesignation of Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration redesignates and amends its regulations for Section 502 Rural Housing Loan Policies, Procedures, and Authorizations. The action is taken to conform with general administrative restructuring of the Agency regulations, comply with requirements of Executive Order 12044 and recent legislation. The action clarifies and updates the regulation, revises income limitations, provides for interest credit for moderate-income borrowers, and will facilitate and improve the administration of services provided by the program.

EFFECTIVE DATE: March 20, 1981.

ADDRESSES: Submit written comments on Item C, "Granting Interest Credits to Moderate-Income Borrowers," only, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6346, South Agriculture Building, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Daryl L. Grove, Farmers Home Administration, USDA, Room 5345, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone 202–447–4295.

The Final Impact Statements describing the options considered in developing the final rule for items A and B in the supplementary information and the impact of implementing each option

is available on request from the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6346, Washington, DC 20250. The Final Impact Statement for item C in the supplementary information will be developed after publication and comments have been received.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in the Secretary's Memorandum 1955 to implement Executive Order 12044. This Instruction does not directly affect any FmHA programs or projects which are subject to A–95 clearinghouse review. The reference in the Catalog of Federal Domestic Assistance is 10.410 Low- to Moderate-Income Housing Loans.

A. On February 14, 1980, the Farmers Home Administration published a notice of proposed rulemaking (45 FR 10240 through 10268) to amend its regulations to establish under Chapter XVIII, Subchapter H, Title 7 in the Code of Federal Regulations, a new Part 1944 "Housing," Subpart A, "Section 502 Rural Housing Loan Policies, Procedures and Authorizations." The action was classified as "not significant." This new Part 1944, Subpart A will replace Part 1822, Subparts A and H. Interested persons were invited to submit comments concerning the proposed rule by April 14, 1980. In response to the notice of proposed rulemaking, written comments from 60 individuals and organizations were received by FmHA. This final rule contains revisions to the proposed rule which reflect FmHA's consideration of the comments received as well as other information available to FmHA. The following is a discussion of the comments received:

1. § *1944.1 General:* It was suggested the reference to FmHA Instruction 1901–E be deleted. This Instruction covers civil rights compliance requirements which must be applied as appropriate.

2. § *1944.2(c) Adjusted Annual Income:* Four comments recommended that the adjustments of 5 percent and $300 per dependent minor be increased to more accurately reflect current cost of living. This change is not made since income limitations as required by Pub. L. 96–153 will result in changes which more accurately reflect living costs by areas.

3. § *1944.2(d) Annual Income:* Comments requested clarification of income to be considered for those adults who live in the dwelling for less than a full year. The change made will require consideration of the income of all adult members of the household during the next twelve months.

4. § *1944.2(f) County Supervisor:* As per comment the paragraph has been amended to include Assistant County Supervisor only by delegation of authority.

5. § *1944.2(h) Extended Family:* One comment recommended this paragraph be eliminated because of cost of providing such housing. The suggestion is not adopted since all other eligibility requirements also apply. Other comments requested clarification of the term "Close relative." The examples cited are eliminated to coordinate with the definition of a household.

6. § *1944.3(a)(3) Refinancing Debts:* Change is made to clarify difference of authority to refinance secured or unsecured debts.

7. § *1944.3(b)(1)* The term minimum adequate site is cross referenced to § 1944.11 (c).

8. § *1944.3 (b)(12) Loan Purpose—Payment of Real Estate Taxes:* Two comments recommended authority to pay real estate taxes for subsequent loan applicants. No change is made because payment of such taxes is a part of the borrower's obligation as required by the security instrument.

9. § *1944.3 (15)(ii)* Soil and water (SW) Association loan is changed to Community Facilities loan.

10. § *1944.4(b)(1)* For the purpose of clarification the word repair is changed to "improve" and non-essential buildings are added as a restricted use of loan funds.

11. § *1944.8(a)(2) Repayment Ability:* As recommended by comments the reference to interest credit is changed to § 1944.26(g) which includes other considerations. The term "adequate repayment ability" is changed to "repayment ability." Guidelines for the determination of dependable income are also added.

12. § *1944.8(b)* One comment requested adult children not be required to sign the promissory note. Another believes a conflict exists with the applicant's right to maintain an account as an individual. No change was made.

13. § *1944.8(c)(1)* This paragraph is added to provide for a statement of intent for adults not presently employed but who have a recent work history. This is necessary to improve the accuracy of planned household income.

14. § *1944.8(c)(2)* Seasonal work which can be expected to be repetitious is added to be considered as part of annual income in paragraph (i). Paragraph (vi) is changed to qualify "living apart" as for reasons other than military or work assignment and to remove paragraphs (B) and (C) which are not necessary.

15. § *1944.8(c)(3)* One comment suggested inconistency between § 1944.8(b) and (c)(3)(i) regarding household members whose income will be included. No change is made since § 1944.8 (b) considers total household income necessary for repayment ability and (c)(3)(i) refers only to adjusted income. Paragraph (vi) is added to exclude payments received by "live-in" aides for senior citizens.

16. § *1944.8(c)(4)* One comment recommended allowing an income deduction for the moving expenses of migrant farm workers. Work related moving expenses are not allowed for any other applicants and for uniformity no change is made. It was also recommended this paragraph include a deduction for extraordinary medical expenses. This is not incorporated since all income calculations are based on projections for the next year. Such expenses cannot be projected with any accuracy. Paragraph (iii) is revised to clarify the term "limited expenditures" to "based only on income" actually paid to individuals or institutions.

17. § *1944.9(a)(1)* As suggested by comment this paragraph is changed to define "adequate dwelling."

18. § *1944.9(c)* One comment recommended the removal of the requirement for citizenship, permanent residence or indefinite parole. No change is made since most loans are amortized over a period of 33 years and repayment requries an extended commitment to residency in this country. Loans will therefore be limited to persons capable of meeting such a commitment.

19. § *1944.9(e)* One comment objected to the reference to military personnel as related to the requirement to occupy the dwelling on a permanent basis. Another recommended the reference to students be modified and migrant farmworkers be specifically excluded. No change is made since the regulation does provide exclusion under conditions which would result in a reasonable anticipation of a permanent residence.

20. § *1944.10(e)* Changed to provide for a State Supplement for identification of rural areas with population between 10,000 and 20,000 population. The change eliminates the proposed Exhibit A.

21. § *1944.10* Five comments suggested subsequent loans be allowed in areas which have been redesignated from rural to non-rural. In accordance with recent statutory amendments this change has been made to allow for necessary repairs.

22. § *1944.11(c)* Three comments recommended allowing the purchase of

more than one acre sites if necessary to comply with local zoning code requirements. The change was not adopted since allowance is established for adequate water supply or waste disposal systems. Additional exception is not in keeping with the basic objective of providing minimum adequate housing. The paragraph is revised to specify a limitation on the site for existing dwellings.

23. § *1944.15(a)(5)* Two comments recommended specific reference to Community Land Trusts as qualified lessors. No change is made as the regulation makes no exclusion.

24. § *1944.16(a)(1)* A total of 33 comments made reference to this paragraph. 15 objected to the reduction of the maximum allowable living area while 9 were supportive of the proposal. There were also objections to the limitation of only one bathroom. There was expressed some confusion and objection to the proposed method of calculating living area. In response to the comments the maximum living area is increased to 1200 square feet, the reference to 1 bathroom is removed, and the term unusually large family is more specifically defined. The reference to specific designs of homes is removed and the definition of space not to be included as living area is broadened.

25. § *1944.16(a)(3)* Four comments referring to this paragraph made recommendations ranging from authorization of double garages to disallowing garages of any kind. The paragraph as originally proposed remains unchanged.

26. § *1944.16(a)(4)* In regard to the authorization of solar systems one comment recommended involvement of the State Architect and four suggested the regulation discourages solar systems by requiring the State Director's authorization. The paragraph is revised to require the approval of the State Architect. This is considered necessary because County Supervisors do not have the expertise to complete a cost effective analysis of the many varied proposals. The agency is in the process of developing guidelines and plans for homes utilizing solar energy. To assure adequate safety and efficiency, woodburning devices must be approved by the State Architect and authorized by the State Director.

27. § *1944.16(b)* In response to comments the paragraph is revised to clarify the application of limitations of maximum living area and to cross reference the requirement of compliance with minimum standards.

28. § *1944.16(c)* The maximum limit for repairs under which the dwelling may lack some features is increased from $5,000 to $7,500 to coordinate with the maximum loan limit for Section 504 loans for repairs.

29. § *1944.17* One comment suggested the 10 year warranty will discourage builders. No change is made since the 10 year warranty is optional. Another comment questioned the effect of the 10 year insured warranty on FmHA responsibility for final inspections and construction defects. Because this paragraph is concerned only with maximum loan amounts and those responsibilities are required by other regulations, no change is made.

30. § *1944.18* In response to comment the terms "good reputation" and "strong financial position" are removed from subparagraph (b)(1). "Reputation" is replaced with "credit history which indicates an ability and willingness to pay debts when they are due".

31. § *1944.22* This paragraph is rewritten to comply with Pub. L. 96–153, The Housing and Community Development Amendments of 1979. The 5 year limitation on refinancing of debts is removed.

32. § *1944.24* In response to comments all reference to a $5,000 maximum loan is changed to $7,500. This will correspond with the maximum loan limit for Section 504 loans.

33. § *1944.25* It was suggested that the term of the note be reduced to a 5 year term to facilitate graduation. This is not considered feasible due to the administrative burden which would be imposed.

34. § *1944.26(a)* Many respondents commented on this paragraph. In response to those comments the entire paragraph is revised to provide a one-time numerical rating of applicants and to provide a specific objective basis for determining that rating. Applications for subsequent loans to complete assumptions, credit sales or essential repairs are removed from the priority rating. Applications for the refinancing of debts are also not included in the rating system. Exhibit F is included to provide a uniform method for recording the priority rating.

35. § *1944.26(c)* Four comments included the recommendation that the priority rating be considered an appealable decision. No change is made because the changes cited in subparagraph (a) set forth objective standards for the rating.

36. § *1944.26(f)* It was suggested that greater emphasis be placed on credit counseling and a pamphlet be prepared to advise applicants in plain English of their various rights and obligations. Such a publication will be considered as an item separate from this regulation.

37. § *1944.26(g)* A cross reference is added to tie in considerations for repayment ability. The use of budget forms to determine repayment ability is added. One comment recommended that paragraph (5)(ii)(E) be revised to define repayment ability of other credit as a housing cost of not more than 20 percent of the applicant's adjusted income. No change is made since there is no known lender who uses such a criteria and many FmHA loans currently being made exceed such a limitation.

38. § *1944.32* In response to several comments the wording in paragraph (a)(3) is changed to clarify when a single advance may be requested.

39. § *1944.33* In response to recommendations, paragraph (a) is revised to clarify the authority to close loans with interest credit when the income increases above the maximum limitation after loan approval. Several comments objected to the requirement to reverify employment. This requirement is not changed since the intent is to allow such cases to receive only the interest credit to which they are entitled at the time the interest credit agreement is effective. Paragraph (c)(1) is amended to clarify the deferment of principal and interest during construction and subparagraphs (ii), (iii) and (iv) are removed because they are a duplication of specific instructions in the paragraphs to which they refer. One comment suggested paragraph (f) will confuse borrowers while two agreed with the paragraph as published. No change is made since experience with this method has proven effective in assisting borrowers to maintain good payment records.

40. § *1944.34(b)* An objection was stated to paragraph (b)(4) including "regardless of whether such exemptions are actually claimed and received". No change is made as a result of this comment since the paragraph restricts the reduction to exemptions available to the borrower. It was also suggested that a paragraph should be included to define the type of insurance coverage which is acceptable. This addition is not made because the requirement is covered in § 1944.32(e).

41. § *1944.34(c)* One comment recommended that County Office Assistants be authorized to approve Interest Credit Agreements. This is not adopted since such approval is considered similar to loan approval authority and is not included in the responsibilities of a County Office Assistant.

42. § *1944.34(d)* One comment recommended paragraph (d)(1)(i) be changed to allow the inclusion of existing mortgage payments as a part of

the calculation of the borrower's total housing payment. This change is included. A change is also included to provide a method of calculating interest credit for moderate-income borrowers.

43. § *1944.34(f)* Three comments recommended that paragraph (f)(1)(i) be amended to provide interest credit for moderate income borrowers. This change is incorporated in the revision. Six comments referred to paragraph (f)(1)(ii). Two suggested the reserve allowed for the elderly be more specific, two believe the net worth limitation inequitable for farmers, two recommended increasing the limitation and one suggested all applicants over $5,000 net worth should be ineligible for loans. In response, the maximum net worth is increased to $7,500 except a limit of $10,000 is established for senior citizens. The reference to a reasonable reserve for elderly is eliminated. The total asset limitation is also removed. One comment suggested paragraph (f)(1)(iii) be revised to allow interest credit on loans with a term of less than 25 years because it would be less costly to the Government. This change is not made because the intent is to provide the lowest possible payment requirement for low income borrowers. Paragraph (f)(3) is revised to clarify the use of interest credit with transfers and credit sales and to include cases of reamortization. One respondent recommended paragraph (f)(4)(ii) be revised to allow interest credit for loans closed prior to August 1, 1968. No change is made as that is the date on which the law authorizing interest credit was effective. Paragraph (f)(5) is corrected to indicate a maximum income limitation of $10,000 to correspond with paragraph (d)(2)(iii).

44. § *1944.34(g)* Two comments suggested that the requirement for a new verification of employment is an unfair penalty on borrowers. No change is made since the intent is to provide the amount of interest credit which the borrower is properly entitled to receive at the time the interest credit agreement is approved. Paragraph (3) is changed to correct the distribution of items to the Finance Office and include reamortization. The reference to the date of the last cash charge is removed from paragraph (4). This is not considered when determining the effective date of interest credit.

45. § *1944.34(h)* Paragraph (2) has been revised to clarify the time when a corrected interest credit agreement is to be forwarded to the Finance Office. In response to comment, Exhibit G, referred to in paragraph (3), is revised to inform the borrowers of income deductions or exemptions to which they may be entitled. Other editorial changes are made in Exhibit G for clarity.

46. § *1944.34(i)* One comment recommended that paragraph (1)(iii) regarding home improvement is unnecessary and should be deleted. This change is not made because the agency believes the intent of authority for interest credit was to provide modest housing. In response to another comment the word "substantially" is removed and the standard is referred to that for previously occupied homes. As recommended by comment paragraph (3) is revised to delete the reference to "substantial" and to provide for corrective action on interest credit prior to the review period when the County Supervisor becomes aware of increases in borrower income. Paragraph (3)(ii) is changed to remove the determination of necessity to avoid liquidation to qualify for an increase of interest credit.

47. § *1944.34(j)* One comment recommended revision to consider instances where the applicant is receiving too little interest credit. Paragraph (j)(4)(ii) is added to incorporate the change. It was suggested that the requirement for payment in full as outlined in paragraph (3)(ii)(C) be deleted. No change is made since this covers a loan made to an ineligible borrower and the State Director's authority to continue with the loan is adequate provision for justified cases. One comment expressed the belief that borrowers should not be requested to repay improper interest credit in lump sum and that interest should not be charged on such improper advances. This is not adopted since there is provision for regular partial payments and interest is justified since the borrower received benefit to which there was not proper entitlement. Paragraph (4)(i) is revised to clarify the submission of corrected interest credit agreements.

48. § *1944.34(k)* The reasons for cancellation have been expanded to include all reasons covered in other paragraphs. As suggested by two comments a provision has been added for retroactive reinstatement of interest credits after a foreclosure action has been withdrawn.

49. § *1944.34(l)* As recommended the paragraph is revised to clarify that notice of appeal will not be given when the borrower acknowledges a disqualifying income.

50. § *1944.37* One comment suggested that borrowers receiving interest credit loans should not be eligible for unsecured note-only loans. This is not adopted but reference to § 1944.18(b)(1) is added to clarify the fact that all borrowers must meet the same requirements to qualify for a loan secured by note only. Paragraph (f) concerning subsequent loans for construction defects is removed as it is provided for in other paragraphs and has no application under present conditions.

51. § *1944.39* In response to one comment paragraph (g) is revised to clarify and simplify the requirements for servicing loans to employees and allow the State Director to designate servicing by an employee outside the borrower's area of employment. Two comments recommended allowing employees to purchase FmHA inventory property. This is not adopted because of the potential appearance of favoritism in establishing the value of such properties.

52. § *1944.45* One comment recommended that loan funds be set aside when conditional commitments are issued. This is not considered feasible under present shortage of loan funds and the policy of providing such limited funds to applicants having the greatest need for housing. Another suggested conditional commitment applicants be required to certify they have advised potential borrowers that they are not FmHA employees, that the borrowers may report discrimination and have given them the location of the FmHA office. No change is made since applicant eligibility is determined by FmHA only after a personal interview is held in the county office with each applicant.

53. *Exhibit A "Rural Areas of 10,000 to 20,000 Population":* This exhibit is removed and paragraph § 1944.10(e) is revised to require the list to be published in State Supplements.

54. *Exhibit E "Interest Credit Agreement Renewal":* This exhibit is redesignated as "Exhibit G." Changes are made to indicate income deductions to which the borrower may be entitled and to clarify instructions for completing necessary information.

55. *Exhibit E–1 "Borrowers Receiving Forms for Renewing Interest Credit Agreements":* This exhibit is removed since it is a routine report made by the Finance Office and serves no purpose as an exhibit.

56. *Exhibit E–2 "Borrowers Whose Interest Credit Agreements Have Not Been Received":* This exhibit is removed since it is a routine report made by the Finance Office and serves no purpose as an exhibit.

57. *Exhibit F "Mutual Self-Help Housing Guidelines":* The exhibit is redesignated as "Exhibit H." Several comments suggested a complete revision in conjunction with regulations covering

technical assistance grants. Such a revision is planned.

58. *Exhibit G "Information Required to Package Applications for Section 502 Rural Housing Loans":* This exhibit is redesignated as "Exhibit A."

59. *Exhibit H "Rural Housing Applicant Interview":* This exhibit has been redesignated as "Exhibit E."

60. *Exhibits F, F–1 and F–2* have been added as guides for the implementation of Application Priority Rating.

61. Two comments were received with recommendation that the regulation should include provision to allow repairs to mobile homes. The inclusion of mobile homes in the FmHA loan program is under consideration.

B. *Exhibit C—Maximum Adjusted Incomes for Rural Housing Programs.* This action has been classified as "significant."

The revision to Exhibit C and the deletion of Exhibit D of Subpart A of Part 1944 was a separate proposed action published for prior rule in the Federal Register September 19, 1980, pages 62432 to 62474. The combining of this action with the revision of 1944–A is taken because Exhibit C is an intricate part of 1944–A and putting the actions together adds to clarity.

In the proposed rule the definition of low income was 80 percent of area median income, or an income necessary to carry a mortgage on a new modest dwelling at a 2 percent interest rate, or the state average of area median income, whichever is greater, except that where 80 percent of area medians exceeds $14,000, low income is the same as the next highest low income in the state which is at or below $14,000, provided it is not lower than an income required to carry a mortgage on a new dwelling with interest at 2 percent.

We received 50 comments, most of which related to the definition of low income. Four comments expressed complete agreement with the definition. Most of the comments expressed disagreement and some stated the definition violated the intent of the law.

We grouped the comments into three general categories as follows:

(1) No low income limit should be below the current national limit of $11,200.

Concern was expressed that the lowering of the income limit eliminates many families from the market who were previously eligible as low income. The concerns were tempered with an understanding that the Agency could not arbitrarily determine that no income limit presently in use would be lowered. The respondents recommended that the benefit of interest credit be extended to moderate-income applicants to offset the deleterious effect of this action on the ability of the FmHA subsidized housing program to meet the needs of applicants at the thresholds that in the past could be served by the program.

No changes were made to the definition of low income because of these comments. The law is clear in its intent that some areas have a lower limit than the current national limit of $11,200. Simultaneously, with the change of income limits we are extending the benefit of interest credits to moderate-income applicants.

(2) Housing cost (affordability) should not be universally applied to all areas, but adjustments to the low income limit for cost justified on an area-by-area basis only after it is determined that the objectives of the RH programs cannot be met without such adjustments.

We agree and affordability is not part of the definition of low income in this Final Rule. A study of housing cost, on an area-by-area basis, showed a need to adjust above 80 percent of area median in the following areas: Puerto Rico, Northern Marianas, and the Trust Territories of the Pacific. No downward adjustments were made to the low income limit because of housing cost. The main impact of adopting this change is that in many areas low income limits are lower than in the proposed rule. This change more closely aligns the low income limit to 80 percent of area median income as intended by law.

(3) Adjusting area low income up to 80 percent of State median or down to 80 percent or the national median (estimated to be $14,000).

Comments received expressed the concern that this adjustment did not accomplish our defined intent.

The intent was to reduce the affect a concentration of an unusually low or high income group has on median income of a small area. Further, it was intended to reduce the affect a city has on the income of the rural areas surrounding the city. This adjustment avoided penalizing these and recognized that in some areas an estimate of median income may be imprecise.

We made the following change to the low income limit in the Final Rule because of these comments. To reduce the affect that an unusually high income group or cities have on rural median income, no area low income limit is higher than 80 percent of the non-metro census regional income (census regions are east, central, south and west). Also, no low income limit is below 60 percent of the non-metro census regional income. The upward adjustment to 60 percent reduces the affect a large concentration of a low-income group may have on the median income in a small area. The adjustment down to 80 percent of the non-metro census regional income reduces the effect an urban center has on rural median incomes.

In addition to the above three general categories of comments, we received comments on the proposed definition of an area. Some comments favored the definition and most preferred a State income limit.

No changes were made to the final rule because of these comments.

The proposed rule also included new moderate-income limits. As proposed moderate income is 110 percent of median, 4,400 over low income or $15,600, whichever was greater.

No changes were made to this definition because of comments received.

Therefore, the low and moderate income limits as set forth in Exhibit C are:

(a) Low income is 80 percent of area median but not less than 60 percent or greater than 80 percent of the non-metro census regional income with some adjustments for housing cost, and

(b) Moderate income is 110 percent of area median, 4,400 over low income or $15,600, whichever is greater.

C. *Granting Interest Credits to Moderate-Income Borrowers.* This final action has been reviewed under procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "significant." The emergency nature of this action warrants publication of this final action without completion of a Final Impact Statement. A Final Impact Statement will be developed after public comments have been received.

Gordon Cavanaugh, Administrator, has determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this final action because this action is a statutory requirement and previous public participation indicates a strong need for immediate action. Furthermore, the housing industry is suffering because high interest costs are keeping otherwise eligible families from purchasing homes. Comments have been solicited for 60 days after publication of this document, and this emergency final action will be scheduled for review so that a final document, discussing comments

received and any amendments required, can be published in the Federal Register as soon as possible.

FmHA has granted interest credits to low-income borrowers since 1968. In 1972, interest credits were extended to moderate-income borrowers if they were low income at the time the loan was made. This action extends interest credit to new and existing moderate-income borrowers who may qualify. The benefit will be extended to new borrowers at time of loan closing. It is also available to existing moderate-income borrowers if they qualify and request the County Supervisor to extend the benefit. Within the next six months FmHA will develop procedures for notifying existing moderate-income borrowers in writing that they may apply for interest credit.

Borrowers who take advantage of this benefit are affected by the provision of Part 1951, Subpart I of Chapter XVIII, Subtitle B, Title 7 of Code of Federal Regulations. (Recapture of Section 502 Rural Housing Subsidy.) In brief, this part requires that any subsidy (interest credit) received by the borrower may be recaptured at time of sale or non-occupancy of the dwelling by the borrower.

In this rule, the amount of interest credit a moderate-income borrower may receive is the lesser of an amount determined by formula or the use of an interest rate as determined from Exhibit D. The formula calls for 20 percent of the adjusted family income to pay principal, interest, taxes and insurance. Exhibit D sets minimum interest rates for different income levels. The minimum interest rate is 3½ percent at the lowest moderate income level for an area and ½ of a percent higher for each increase in income of $400 over the low income limit for an area.

The interest rates in Exhibit D are structured to provide a continuum of service from maximum subsidy for low income to full interest rate for those borrowers whose income exceeds median income level.

This method of granting interest credit to moderate-income borrowers was selected because it should encourage the participation of moderate-income applicants from the complete range of moderate-income households. It provides an incentive for applicants to negotiate the best price on a dwelling and for a level of subsidy which makes housing affordable and reduces government costs.

Therefore, Chapter XVIII is amended as follows:

Subchapter B—Loans and Grants Primarily for Real Estate Purposes

PART 1822—RURAL HOUSING LOANS AND GRANTS

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations [Removed]

1. Subpart A of Part 1822 is hereby removed from the Code of Federal Regulations.

Subpart B—Section 502 Rural Housing Weatherization Loans

§ 1822.21 [Amended]

2. In § 1822.21, lines 13, 14, 15, 16, 17, and 18 change the reference from "§ 1822.3(c), and (d), and § 1822.5 (FmHA Instruction 444.1, paragraph III C and D and paragraph V). Section 1822.3(e), (n), (o), and § 1822.4 (FmHA Instruction 444.1, paragraph III E, N, and O, and paragraph IV)" to "§§ 1944.10 and 1944.26(b) of Part 1944 Subpart A. §§ 1944.8, 1944.9 and 1944.15 of Part 1944 Subpart A".

§ 1922.25 [Amended]

3. In § 1822.25(a), line 10, change the reference from "1822" to "1944".

Exhibit A [Amended]

4. In Exhibit A, paragraph A.1., line 9, change the reference from "7 CFR 1822.3(c)" to "7 CFR § 1944.10".

5. In Exhibit A, paragraph A.2., lines 3 and 4, change the reference from "this part, available in any FmHA office" to "Part 1944."

Subpart G—Rural Housing Site Loan Policies, Procedures, and Authorizations

§ 1822.263 [Amended]

6. In § 1822.263(c), line 2, change the reference from "§ 1822.3(c)" to "§ 1944.10 of Part 1944 Subpart A".

§ 1822.267 [Amended]

7. In § 1822.267(1)(1), lines 1 and 2, change the reference from "Subpart H of Part 1822" to "§ 1944.44 of Part 1944 Subpart A".

Subpart H—Rural Housing Conditional Commitments [Removed]

8. Part 1822 Subpart H is hereby removed from the Code of Federal Regulations.

SUBCHAPTER F—SECURITY SERVICING AND LIQUIDATIONS

PART 1872—REAL ESTATE SECURITY

Subpart A—Servicing and Liquidation of Real Estate Security for Loans to Individuals and Certain Note-Only Cases

§ 1872.18 [Amended]

9. In § 1872.18(b)(14), line 12, change the reference from "1822 of Subchapter B" to "1944."

§ 1872.23 [Amended]

10. In § 1872.23, line 1, change the reference from "§ 1822.3(e)" to "§ 1944.2(e) of Part 1944 Subpart A".

SUBCHAPTER H—PROGRAM REGULATIONS

PART 1904—LOAN AND GRANT PROGRAMS (INDIVIDUAL)

Subpart G—Section 504 Rural Housing Loans and Grants

§ 1904.301 [Amended]

11. In § 1904.301, lines 10 and 11, change the reference from "Part 1822 of this Chapter (FmHA Instruction 444.1)" to "Part 1944".

§ 1904.304 [Amended]

12. In § 1904.304(a), lines 6 and 7, change the reference from "Part 1822 of this Chapter, (FmHA Instruction 444.1)" to "Part 1944".

13. In § 1904.304(a)(2), lines 8, 9 and 10, change the reference from "§ 1822.4(d) and § 1822.12(d) of this Chapter (Paragraph IV D and XII D of FmHA Instruction 444.1)" to "§§ 1944.8(a)(2)(ii) and 1944.30(b)(7) of Part 1944 Subpart A".

§ 1904.305 [Amended]

14. In § 1904.305(g), lines 2, 3 and 4, change the reference from "§ 1822.6(a)(14) of this Chapter, (Paragraph VI A 14 of FmHA Instruction 444.1.)" to "§ 1944.3(b) (9) and (10) of Part 1944 Subpart A".

§ 1904.306 [Amended]

15. In § 1904.306(d) lines 3, 4, and 5 change the reference from "§ 1822.12(d) of this Chapter (Paragraph XII D of FmHA Instruction 444.1)" to "1944.30(b)(7) of Part 1944 Subpart A".

PART 1910—GENERAL

Subpart B—Credit Reports (Individual)

§ 1910.53 [Amended]

16. In § 1910.53, lines 9, 10, 11 and 12, change the reference from "§ 1822.12(d), Subpart A, Part 1822, Subchapter B of this Chapter (paragraph XII D of FmHA

Instruction 444.1)" to "§ 1944.30(b)(7) of Part 1944 Subpart A."

PART 1924—CONSTRUCTION AND REPAIR

Subpart A—Planning and Performing Construction and Other Development

§ 1924.5 [Amended]

17. In § 1924.5(i) lines 5, 6, 7, 8 and 22, 23 and 24 change the reference from "FmHA Instruction 444.2 (available in all FmHA offices) and Subpart H of Part 1822 of this Chapter (FmHA Instruction 444.9)" to "Part 1944 Subpart A" and from "Subparts A and D of Part 1822 of this Chapter (FmHA Instructions 444.1 and 444.5)" to "Subpart D of Part 1822 (FmHA Instruction 444.5) and Part 1944 Subpart A".

PART 1933—LOAN AND GRANT PROGRAM (GROUP)

Subpart I—Self-Help Technical Assistance Grants

§ 1933.403 [Amended]

18. In § 1933.403(j), lines 2, 3 and 4, change the reference from "§ 1822.3(c) of this Chapter (FmHA Instruction 444.1)." to "§ 1944.10 of Part 1944 Subpart A".

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

Subpart A—Insured Farm Ownership Loan Policies, Procedures, and Authorizations

§ 1943.24 [Amended]

19. In § 1943.24(b)(2) lines 9, 10 and 11, change the reference from "Part 1822 of this Chapter (FmHA Instruction 444.1)" to "Part 1944".

PART 1944—HOUSING

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations

§ 1944.153 [Amended]

20. In § 1944.153(e), lines 4 and 5, change the reference from "Subpart A of Part 1822 of this Chapter (FmHA Instruction 444.1)" to "Part 1944 Subpart A".

§ 1944.164 [Amended]

21. In § 1944.164(j)(2)(ii) lines 2, 3, 4 and 5, change the reference from "Subpart A of Part 1822 and Subpart D of Part 1804 of this Chapter (FmHA Instruction 444.1 and 424.5)" to "Part 1804 Subpart D (FmHA Instruction 424.5) and Part 1944 Subpart A".

22. In § 1944.164(n), lines 5, 6, 7 and 8, change reference from "§ 1822.7 (j) of Subpart A of Part 1822 of this Chapter (FmHA Instruction 444.1, paragraph VII J)" to "§ 1944.18 (b) (5) of Part 1944 Subpart A".

§ 1944.168 [Amended]

23. In § 1944.168(c)(1)(ii) lines 3, 4, 5 and 6, change the reference from "Section 1822.10(b)(2) of Subpart A of Part 1822 of this Chapter (paragraph X B 2 of FmHA Instruction 444.1)" to § 1944.18(b)(6) of Part 1944 Subpart A".

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

§ 1944.205 [Amended]

24. In § 1944.205(d) change the reference from "Exhibits C and D of Subpart A of part 1822, (Farmers Home Administration (FmHA) Instruction 444.1)" to "Exhibit C of Part 1944 Subpart A."

25. In § 1944.205(1) change the reference from "§ 1822.3(c) of Subpart A to Part 1924 (paragraph III C of FmHA Instruction 444.1)" to "§ 1944.10 of Part 1944 Subpart A."

§ 1944.215 [Amended]

26. In § 1944.215(i) (1) change the reference from "Exhibits C and D of Subpart A to Part 1822, (FmHA Instruction 444.1)" to "Exhibit C of Part 1944 Subpart A."

§ 1944.222 [Amended]

27. In § 1944.222(b) change the reference from "Part 1807 and Subpart A of Part 1822 of this Chapter (FmHA Instructions 427.1 and 444.1, respectively)" to "Subpart A of Part 1944 and Part 1807 of this Chapter (FmHA Instruction 427.1)".

Subpart K—Technical and Supervisory Assistance Grants

§ 1944.506 [Amended]

28. In § 1944.506(d) lines 5, 6 and 9, 10 and 11 change the reference from "§ 1822.3(o) of this Chapter (FmHA Instruction 444.1, paragraph III O)" to "§ 1944.2(c) of Part 1944 Subpart A", and from "1822 of this Chapter (Exhibit C of FmHA Instruction 444.1)" to "1944."

29. In § 1944.506(f), lines 2, 3 and 4, change the reference from "§ 1822.3(c) of Subpart A of Part 1822 of this Chapter (paragraph III C of FmHA Instruction 444.1)" to "§ 1944.10 of Part 1944 Subpart A".

PART 1845—EMERGENCY

Subpart A—Emergency Loan Policies, Procedures, and Authorizations

§ 1945.89 [Amended]

30. In § 1945.89(a)(2)(ii), lines 8 and 9, change the reference from "1822 of this Chapter (FmHA Instruction 444.1)" to "1944".

Subpart C—Economic Emergency Loans

§ 1945.129 [Amended]

31. In § 1945.129(b)(2)(i)(D), lines 8 and 9, change the reference from "§ 1822 of this Chapter (FmHA Instruction 444.1)" to "1944".

PART 1948—RURAL DEVELOPMENT

Subpart B—Section 601—Energy Impacted Area Development Assistance Program

§ 1948.84 [Amended]

32. In § 1948.84(d)(2), lines 8 and 9, change the reference from "Part 1822 Subpart A (FmHA Instruction 444.1)" to "Part 1944 Subpart A".

PART 1951—SERVICING AND COLLECTIONS

Subpart A—Account Servicing Policies

§ 1951.17 [Amended]

33. In § 1951.17(a)(2)(i)(B), lines 4, 5 and 6, change the reference from "§ 1822.3(n) of Subpart A of Part 1822 of this Chapter (paragraph N of FmHA Instruction 444.1)" to "§ 1944.2(d) of Part 1944 Subpart A".

34. In § 1951.17(b)(1)(i), lines 2, 3, 4, change the reference from "§ 1822.11(c) of Subpart A of Part 1822 of this Chapter, (Paragraph XI of FmHA Instruction 444.1)" to "§ 1944.26(e) of Part 1944 Subpart A".

35. In § 1951.17(b)(6), lines 8, 9 and 10, change the reference from "Exhibit E Subpart A of Part 1822 of this Chapter (FmHA Instruction 444.1)" to "§ 1944.34 of Part 1944 Subpart A".

PART 1980—GENERAL

Subpart D—Rural Housing Program Loans

§ 1980.302 [Amended]

36. In § 1980.302(a), lines 5 and 6, change the reference from "Exhibit D to Part 1822, Subpart A (FmHA Instruction 444.1, Exhibit D)" to "Exhibit C of Part 1944 Subpart A".

§ 1980.305 [Amended]

37. In § 1980.305, lines 3, 4, 5 and 6, change the reference from "§ 1822.3(c) of Subpart A of Part 1822 of this Chapter (FmHA Instruction 444.1, paragraph III C)" to "§ 1944.10 of Part 1944 Subpart A".

§ 1980.330 [Amended]

38. In § 1980.330(h)(1), lines 6, 7 and 8, change the reference from "C to Subpart A, Part 1944 of this Chapter."

PART 1944—HOUSING

39. As added, Part 1944, Subpart A reads as follows:

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, Authorizations

Sec.
1944.1 General.
1944.2 Definitions.
1944.3 Loan purposes.
1944.4 Loan restrictions.
1944.5–1944.7 [Reserved]
1944.8 Income eligibility requirements.
1944.9 Other eligibility requirements.
1944.10 Rural area designation.
1944.11 Property requirements.
1944.12–1944.14 [Reserved]
1944.15 Ownership requirements.
1944.16 Building requirements.
1944.17 Maximum loan amounts.
1944.18 Security requirements.
1944.19–1944.21 [Reserved]
1944.22 Refinancing debts.
1944.23 Loans to Farm Ownership (FO), Individual Soil and Water (SW), and Recreation (RL) borrowers.
1944.24 Technical services.
1944.25 Rates, terms, and source of funds.
1944.26 Application processing.
1944.27–1944.29 [Reserved]
1944.30 Preparation of Loan docket.
1944.31 Loan approval.
1944.32 Actions subsequent to loan approval.
1944.33 Loan closing.
1944.34 Interest credit.
1944.35–1944.36 [Reserved]
1944.37 Subsequent section 502 loans.
1944.38 Mutual self-help housing loans.
1944.39 RH loans to FmHA employees and loan closing officials.
1944.40 Rural housing disaster (RHD) loans.
1944.41–1944.43 [Reserved]
1944.44 Borrower graduation.
1944.45 Conditional commitments.
1944.46 Construction financing for builders by private credit sources.
1944.47–1944.50 [Reserved]
Exhibit A Information Required to Package Applications for Section 502 Rural Housing Loans
Exhibit B Address for Authentication of Alien Registration Cards
Exhibit C Maximum Adjusted Income Limits for Rural Housing Programs
Exhibit D Minimum Interest Rates for Calculating Interest Credit for Moderate-Income Borrowers
Exhibit E Rural Housing Applicant Interview
Exhibit F Application Priority Rating
Exhibit F–1 Sample letter to applicants for quarterly notice of RH application priority
Exhibit F–2 Sample letter to notify those with applications on file, of the processing priority system
Exhibit G Interest Credit Agreement Renewal
Exhibit H Mutual Self-Help Housing Guidelines
Exhibit H–1 Membership agreement
Exhibit H–2 Promissory note

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

§ 1944.1 General.

This Subpart sets forth the policies and procedures and delegates authority for making Section 502 Rural Housing (RH) loans to individuals under Title V of the Housing Act of 1949 as amended. The objective of Section 502 loans is to provide eligible persons who will live in rural areas an opportunity to obtain adequate but modest, decent, safe, and sanitary dwellings and related facilities. The requirements of Farmers Home Administration (FmHA) Instruction 1901–E "Civil Rights Compliance Requirement" will be applied as appropriate. Loans and services provided under this Subpart shall not be denied to any person or applicant as a result of race, sex, national origin, color, religion, marital status, age, physical or mental handicap (applicant must possess the capacity to enter into a legal contract for services), receipt of income from public assistance, or because the applicant has, in good faith, exercised any right under the Consumer Protection Act.

§ 1944.2 Definitions.

The following definitions apply to this Subpart:

(a) *Area.* Areas for the purpose of determining maximum income limitations are set forth in Exhibits C and D. They may include substate planning districts, entire states, counties or FmHA districts.

(b) *Above-moderate income.* An adjusted annual income that exceeds the maximum limit for moderate-income households for the area as provided in Exhibit C of this Subpart.

(c) *Adjusted annual iincome.* Annual income as defined in Paragraph (d) of this section less 5 percent thereof and less an additional $300 for each dependent minor person (excluding the applicant and foster children) who is a member of the household.

(d) *Annual income.* Planned income to be received by the applicant, and all adult members of the household during the next twelve months. See § 1944.8(c) for supplemental rules on determining annual income.

(e) *Cosigner.* A party who joins in the execution of a promissory note to guarantee its repayment by the borrower. The cosigner becomes jointly and severally liable to comply with the terms of the note in the event of the borrower's default.

(f) *County Supervisor.* Includes Assistant County Supervisor for all duties and responsibilities which are included in the employee's job description and for authorizations which have been delegated in writing in accordance with FmHA Instruction 2006–F (available in any FmHA office.) For the areas of Alaska and the Western Pacific Territories it also includes the Area Supervisor.

(g) *Existing dwelling.* One which is (1) more than 1 year old, or (2) previously occupied as a residence.

(h) *Extended family.* A family unit consisting of parents, children and other relatives who will live together on a permanent basis as a part of the household.

(i) *Farm.* Includes the total acreage of one or more tracts of land which (1) is owned by the applicant, (2) is operated as a single unit, (3) is in agricultural production, and (4) annually will produce agricultural commodities for sale and home use with a gross value of at least $400 based on 1944 prices. To aid in estimating the gross annual value of agricultural commodities produced on a particular farm, a State Supplement will be issued listing the 1944 prices for the principal farm commodities in the State.

(j) *Household.* The applicant and all other persons who will make the applicant's dwelling their primary residence for all or part of the next 12 months.

(k) *Low income.* 80 percent of the area median income except that it shall not be less than 60 percent or greater than 80 percent of the non-metro census regional income adjusted for housing cost. Maximum limits for low-income are set forth in Exhibit C of this Subpart.

(l) *Moderate income.* The greater of 110 percent of the area median income, low-income + $4,400, or $15,600. Maximum limits for moderate-income are set forth in Exhibit C of this Subpart.

(m) *Nonfarm tract.* A parcel of land that is not a farm and is located in a rural area, or a building site that is part of a farm, and which secures an RH loan in accordance with § 1944.18(b)(10).

(n) *Place.* An area containing a concentration of inhabitants within a determinable unincorporated area.

(o) *Rehabilitation.* Major repairs and improvements to existing dwellings such as the installation or completion of bathroom facilities, installation of major items of equipment, additions, or structural changes.

(p) *Senior citizen.* A "senior citizen" is a person who is 62 years of age or older.

(q) *Town.* A "town" means a municipality similar to a city but not a New England-type town which resembles a township or county in most States.

(r) *Urban area.* Either a town, village, city, place or any associated combination thereof, which with the immediately adjacent densely settled areas has a population in excess of the limits prescribed in § 1944.10(a)(2) (i) and (ii).

(s) *Very low-income.* 50 percent of area median income. Maximum limits for very low-income are set forth in Exhibit C of this Subpart.

§ 1944.3 Loan purposes.

(a) A loan may be made to an eligible applicant for the following purposes:

(1) To buy, build, rehabilitate, improve or relocate a dwelling and provide related facilities for use by the applicant as a permanent residence.

(2) To buy, build, rehabilitate, improve or relocate a dwelling, and provide related facilities for a farm owner to provide housing to be occupied by the farm manager, tenants, sharecroppers or farm laborers.

(3) To refinance secured debts or unsecured debts incurred after the date of application as provided in § 1944.22.

(b) A loan made under § 1944.3(a) (1) or (2) may be used to:

(1) Purchase, in fee title, a minimum adequate site, as outlined in § 1944.11(c) on which the improvements are or will be located, if the applicant does not own an adequate site.

(2) Pay reasonable acquisition cost for a leasehold interest in a minimum adequate site at the time of making the initial RH loan.

(3) Provide an adequate and safe water supply and/or an adequate sewage disposal facility.

(4) Provide site preparation, including grading, foundation plantings, seeding or sodding of lawns, trees, walks, yard fences and driveways to building sites.

(5) Purchase and install essential equipment in the dwelling including items such as a range, refrigerator, clothes washer or clothes dryer, if these items are normally sold with dwellings in the area and if purchase of these items is not the primary purpose of the loan.

(6) Provide special design features or equipment when necessary because of physical handicap or disability of the applicant or a member of the household.

(7) Purchase and install approved solar systems and approved furnaces and space heaters which use a type of fuel that is commonly used, and is economical and dependably available.

(8) Provide storm cellars, and similar protective structures.

(9) Pay incidental expenses such as fees for credit reports, tax monitoring service, legal, title clearance, loan closing, architectural, surveying and other technical services.

(10) Pay reasonable connection fees for utilities such as water, sewer, electric or gas, which are required to be paid by the borrower and which cannot be paid from other funds.

(11) Pay the borrower's share of Social Security taxes for labor hired by the borrower in connection with making the planned improvements.

(12) Pay real estate taxes which are due and payable on the building and/or site at the time of closing on an initial loan, if this amount is not a substantial part of the loan.

(13) To establish escrow accounts for the payment of real estate taxes or property insurance premiums in those states where the use of escrow accounts is authorized by the National Office.

(14) Provide living area for all members of the applicant's household, including "extended family," as provided in § 1944.16(a)(5).

(15) Pay part of the cost of constructing, remodeling, repairing or buying a domestic water system or waste disposal system, provided that the following conditions are met, unless exceptions are authorized by the National Office:

(i) The facility must be jointly owned and used by not more than 10 participants.

(ii) The domestic water or waste disposal system cannot be provided with a Community Facilities loan.

(iii) The group must act as individuals and not as a legal entity such as a partnership, corporation or association.

(iv) The facility will be located in a rural area and will be used only for normal home use.

(v) The applicant will give FmHA a mortgage as required in § 1944.18(a), including the applicant's interest in the system if it is practical to mortgage the system. The interest of any co-owners of the jointly owned facility who are not applicants may be excluded from the mortgage on prior approval by the State Director, as provided in § 1944.18(b)(8).

(vi) The owners have written agreements as to the construction, use, maintenance and repair of the facility and obtain necessary jointly owned easements.

(vii) The facility will cost not more than $50,000 or have a depreciated replacement value that does not exceed $50,000 if such facility is being purchased, enlarged, or improved.

(viii) All funds to be used to finance construction or installation of the joint facility will be deposited in a supervised bank account.

§ 1944.4 Loan restrictions.

(a) Loans will not be made to a homestead entryman or desert entryman to improve the entry prior to receipt of patent.

(b) Loan funds may not be used to:

(1) Buy or improve income-producing land, or buildings to be used for income-producing purposes or buildings not essential for RH purposes.

(2) Pay fees, charges or commissions such as finders' fees, fees for packaging the application or placement fees for the referral of prospective applicants to FmHA.

(c) A loan will not be made to an applicant whose previous FmHA debts have been settled pursuant to Part 1864 of this Chapter (FmHA Instruction 456.1) or by release from personal liability under Subpart A of Part 1955, as reflected by the County Office records, or where settlement under such regulation is contemplated, unless failure to pay the indebtedness was the result of circumstances beyond the applicant's control, or the conditions which necessitated the debt settlement or release, other than weather hazards, disasters, or price fluctuations, have been removed or will be removed by making the loan. Before approving the property or causing such an applicant to incur any expense in connection with the loan the County Supervisor will complete Form FmHA 431-2, "Farm and Home Plan," or Form 431-3, "Household Financial Statement and Budget," and send it with the application, any available case folders, and recommendations to the State Office for a determination as to whether to proceed with the development of the loan docket.

§§ 1944.5-1944.7 [Reserved]

§ 1944.8 Income eligibility requirements.

(a) An applicant is eligible for a Section 502 loan only if the following requirements are met:

(1) The adjusted annual income of the applicant's household as defined in § 1944.2(c) does not exceed the applicable income limit in Exhibit C. Exceptions to this requirement may be authorized by the State Director in accordance with § 1944.33 (a) or (b), or by the National Office.

(2) Repayment ability, as provided in § 1944.26(g), is demonstrated in the following manner:

(i) The applicants have adequate and dependably available income. The

determination of income dependability will include consideration of the applicant's past history of annual income and/or the history of the typical annual income of others in the area with similar types of employment. Such income should be sufficient to meet living expenses, pay taxes, insurance and maintenance costs, and to make required payments on all obligations including the Section 502 loan; or

(ii) The applicants obtain a co-signer with dependably available income which, together with the applicants' income, will be sufficient to repay the loan. The co-signer must be an individual but may not be a member of the applicant's household.

(b) All adult members of the household whose income must be included to meet the repayment requirements in paragraph (a)(2)(i) of this section will be considered applicants, and their signatures on the promissory note will be required as necessary to assure repayment.

(c) Annual income as defined in § 1944.2(c) will be determined as follows:

(1) The income of all adults, including the spouse, will be included for either full-time or part-time employment if presently employed. If the other adult or spouse is not presently employed but there is a recent history of such employment, that person's income will be considered unless the borrower and the person involved sign a statement that the person is not presently employed and does not intend to resume employment in the foreseeable future or, if interest credit is involved, during the term of the Interest Credit Agreement. The statement will be filed in the borrower's case file.

(2) Income from all sources is included except as provided in paragraph (c)(3) of this section. Income sources include, but are not limited to:

(i) Gross income from wages, salaries, and commissions, including that from seasonal type work which can be expected to be repetitious.

(ii) All expected overtime and bonus income which can reasonably be considered dependable.

(iii) All net farm and nonfarm business income. Projected farm or nonfarm business losses will be considered as "0" in determining annual income.

(iv) Pensions, Social Security, welfare, and unemployment compensation.

(v) Child support payments and other payments made on behalf of minors.

(vi) The income of an applicant's spouse unless the spouse has been living apart from the applicant for at least six months for reasons other than military or work assignment or court proceedings for divorce or legal separation have been commenced.

(vii) GI bill benefits, fellowships, scholarships, and assistantships.

(viii) Alimony, or other spousal support payment.

(ix) Proceeds from the sale of equipment, mineral rights or real estate sold under long-term contract (usually more than 3 years).

(3) The following income will not be included in determining annual adjusted income, although it will be included under § 1944.26 (c)(2) and (f) for documenting repayment ability:

(i) Income received by a full time student (*who is not* the applicant or co-applicant) from employment or income from GI Bill benefits, fellowships, scholarships, or assistantships for schooling.

(ii) Proceeds from the sale of equipment, mineral rights, or real estate sold under a short term contract (usually 3 years or less).

(iii) Cash value of food stamps, real estate tax exemptions, or similar types of assistance.

(iv) Payments received for the care of foster children, foster adults or for services rendered as a volunteer on a project sponsored by any of the following programs:

(A) Retired Senior Volunteer Program.

(B) Foster Grandparent and Older American Community Service Programs (as either a foster grandparent, senior health aide or senior companion).

(C) National Volunteer Programs to Assist Small Business and Promote Volunteer Service by Person With Business Experience.

(D) Peace Corps, VISTA, or any other volunteer program sponsored by ACTION.

(v) Allowances, such as training and travel expenses, paid by the Department of Labor to CETA participants. (Wages paid by the employers of CETA workers will be included.)

(vi) Any payments received by "live in" aides for members of a senior citizen borrower's household, paid by state or federal programs which specifically exclude the cost of shelter from the amount received.

(4) In determining the applicant's annual income the following deductions are allowed:

(i) A deduction may be made in the same manner as outlined in Internal Revenue Service (IRS) regulations for the exhaustion, wear and tear, and obsolescence of depreciable property used in the applicant's trade, business, or farming operation. The applicant must provide an itemized schedule showing the depreciation claimed. The schedule should be consistent with the amount of depreciation actually claimed for these items for Federal income tax purposes.

(ii) A deduction may be made in the same manner as outlined in IRS regulations for necessary work related expenses actually paid by the employee in excess of the amount reimbursed by the employer. The deduction must be reasonable and, in the judgment of the approving official, should be deducted from an employee's income to reflect annual income on an equal basis with other employed persons. Deductions, however, are not permitted for the following:

(A) Transportation to and from work.

(B) Cost of meals incurred on one day business trips.

(C) Educational expenses except those incurred to meet the minimum requirements for the employee's present position.

(D) Fines and penalties for violation of laws.

(iii) A maximum aggregate deduction of $400 per month may be made for child care or disabled dependent care which is necessary to enable the borrower to be gainfully employed. The deduction will be based only on monies actually paid for care services. Payments for these services may not be made to persons whom the borrower is entitled to claim as dependents for income tax purposes. Full justification for such deduction must be recorded in detail in the applicant's loan docket.

(iv) A maximum aggregate deduction of $400 per month may be made for full time nursing home or institutional type care which cannot be provided in the home, for a member of the household. Such care must be expected to be required for a period of six months or more. The deduction will be limited to expenditures actually paid for such services.

§ 1944.9 Other eligibility requirements.

In addition to the income eligibility requirements of § 1944.8, the applicant must:

(a) Qualify as one of the following:

(1) A person who does not own a dwelling which is structurally sound, functionally adequate, and which is large enough to accommodate the needs of the applicant, or

(2) A farmowner without decent, safe and sanitary housing for the farmowner's own use or for the use of farm tenants, sharecroppers, farm laborers, or farm manager.

(b) Be without sufficient resources to provide the necessary housing or related facilities, and be unable to secure the necessary credit from other sources

upon terms and conditions which the applicant could reasonably be expected to fulfill. If the applicant has only an undivided interest in the land to be improved, those co-owners whose execution of the mortgage is required under § 1944.18(b)(8) must also be unable to provide the improvement with their own resources or obtain the necessary credit elsewhere either individually or jointly with the applicant.

(c) Be a natural person (individual) who resides as a citizen in any of the 50 States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands, or a non-citizen who resides in one of the foregoing areas after being legally admitted for permanent residence or on indefinite parole. Permanent residents can verify their status by presentation of Form I–551 "Alien Registration Receipt Card" or any later revision of the form. Those on indefinite parole must present Form I–94 "Arrival/Departure Card" or any later revision of the form. The County Supervisor must further authenticate such information through the Immigration and Naturalization Service if the authenticity of the information provided is in doubt (See Exhibit B).

(d) Possess legal capacity to incur the loan obligation, and have reached the legal age of majority in the State, or have had the disability of minority removed by court action.

(e) Have the potential ability to personally occupy the home on a permanent basis, if the loan is to provide housing for the applicant's own use. To illustrate, because of the probability of their being transferred or moving after graduation, military personnel on active duty and full-time students will not be granted loans unless:

(1) The applicant, if military personnel, will be discharged at an early date (usually within 1 year). The family must continue to occupy the home in case the borrower is transferred to another duty station before discharge, and

(2) The applicant intends to make the home a permanent residence and there are reasonable prospects that employment will be available in the area after graduation or discharge, and

(3) An adult member of the household will be available to make inspections if the home is being constructed and to sign checks for work performed.

(f) Have a credit history which indicates a reasonable ability and willingness to meet obligations as they become due. The following *will not* indicate an unacceptable credit history:

(1) "No history" of credit transactions by the applicant.

(2) Bankruptcies, foreclosures, judgments, or delinquent payment records which occurred more than 36 months before the application if no recent similar situations have occurred.

(3) Isolated incidents of delinquent payments which do not represent a general pattern of unsatisfactory or slow payment.

(4) Recent bankruptcy, foreclosure, judgment or delinquent payment when the applicant can satisfactorily demonstrate that:

(i) The circumstances causing any of the above were of a temporary nature, were beyond the applicant's control and have been removed. Examples: loss of job; delay or reduction in government benefits, or other loss of income; increased expenses due to illness, death, etc.

(ii) The adverse action or delinquency was the result of a refusal to make full payment because of defective goods or services or as a result of some other justifiable dispute relating to the goods or services purchased or contracted for.

§ 1944.10 Rural area designation.

(a) For the purposes of this Subpart, a rural area is:

(1) Open country which is not part of or associated with an urban area, or

(2) Any town, village, city or place, including the immediately adjacent densely settled area, which is not part of or associated with an urban area and which:

(i) has a population not in excess of 10,000 if it is rural in character, or

(ii) has a population in excess of 10,000 but not in excess of 20,000, and

(A) is not contained within a Standard Metropolitan Statistical Area (SMSA), and

(B) has a serious lack of mortgage credit for low- and moderate-income households as determined by the Secretary of Agriculture and the Secretary of Housing and Urban Development.

(b) A determination that open country, or any town, village, city, or place is not part of or associated with an urban area must include a finding that any densely populated section of the area in question is separated from the densely populated section of any adjacent urban area by open spaces (which are undeveloped, agricultural, or sparsely settled) other than open spaces due to physical barriers, commercial or industrial developments, public parks and similar open spaces, and areas reserved for recreational purposes. This determination should also consider such other factors as:

(1) The existence of known plans for development within the near future (e.g., 3 to 5 years) of a substantial portion of the intervening land between the area in question and an urban area.

(2) Separate school systems and separate utilities such as water and sewer and solid waste disposal; however, consolidated schools and/or combined facilities do not necessarily indicate being "associated with".

(c) Two or more towns, villages, cities, and places may have contiguous boundaries, and each be considered separately if they are not otherwise associated with each other, as determined after consideration of paragraphs (a) and (b) of this section.

(d) The latest official Bureau of the Census data or more recent official population counts will be used in determining population.

(e) The State Director will be responsible for determining boundaries of rural areas and shall issue an appropriate State Supplement to identify such areas by list and maps. Areas in excess of 10,000 population will be identified as "rural areas" in a State Supplement only after written authorization by the National Office and compliance with the requirement of subparagraph (a)(2)(ii) above.

(f) When a change of designation from rural to nonrural is anticipated, all developers and other interested parties should be notified.

(g) If an area designation is changed from rural to nonrural, loans may be made only in the following instances:

(1) Applications received by FmHA prior to the change of designation may be processed.

(2) New conditional commitments will be issued and existing conditional commitments will be honored only in conjunction with the approval of RH loan applications which were received prior to the date the area was designated nonrural.

(3) Credit sales and transfers with assumptions may be processed in such areas as authorized by § 1955.103(e) of Subpart C of Part 1955, and § 1872.18(c)(1)(i) of Subpart A, Part 1872, (FmHA Instruction 465.1 paragraph XVIII(C)(1)(a)).

(4) Subsequent loans may be made on property in an area where the designation was changed from rural to nonrural after the initial loan was made:

(i) To make necessary repairs.

(ii) To pay equity in connection with an assumption and transfer of an RH loan.

§ 1944.11 Property requirements.

(a) The property on which the loan is made must be located on a farm, or in a designated rural area as defined in § 1944.10 or in an area the designation of which has been changed as provided in § 1944.10(g). A nonfarm tract to be purchased or improved with loan funds must not include or be closely associated with farm service buildings.

(b) Unless an exception is granted by the National Office (notwithstanding the requirement of Part 1804 Subpart D § 1804.67(b) FmHA Instruction 424.5 Paragraph VII B) the property must be contiguous to and have direct access from an:

(1) All-weather street which has been dedicated to and accepted by a public body which shall be responsible for continuous maintenance, or

(2) Extended driveway if:

(i) The driveway does not potentially serve more than two individual dwellings,

(ii) The applicant obtains title or an easement to the driveway and it is included in the security for the loan, and

(iii) The maintenance cost for the driveway is considered in determining the applicant's repayment ability.

(c) If the property is being purchased with loan funds, it may not be larger than a minimum adequate site, which is the smallest area sufficient for the dwelling, related facilities, and a yard. In determining whether the property is a minimum adequate site the following considerations apply:

(1) In case of purchase of a site on which to construct a dwelling, or purchase of a new dwelling and site, the site should be not more than one acre of land unless more than one acre is needed to provide for an adequate water supply or waste disposal system.

(2) When an existing dwelling is being purchased or debts are being refinanced, the site may include more than one acre only under the following conditions:

(i) When an existing dwelling is being purchased, the seller will sell the dwelling only with the entire site on which it is located and the cost of extra land is not a substantial portion of the loan, or

(ii) In a refinancing case, the extra land cannot be sold for a significant amount, or

(iii) More than one acre is needed to provide an adequate water supply or waste disposal system.

(3) In all cases, the buying of a site of more than one acre must be fully justified and the reasons recorded in the loan docket. In no case may more than three acres be purchased unless authorized by the National Office.

(d) Loans made to buy, build, or repair dwellings located in an area having special flood or mudslide hazards are subject to the conditions of Subpart B of Part 1806, Subchapter A of this Chapter (FmHA Instruction 426.2).

§§ 1944.12—1944.14 [Reserved]

§ 1944.15 Ownership requirements.

(a) After the loan is closed, the applicant must have an interest in the property to be purchased, improved, or refinanced, which qualifies as one of the following:

(1) Full marketable title.

(2) The purchaser's interest under a land purchase contract which obligates payment of the purchase price, gives the rights of present possession, control and beneficial use of the property, and entitles the purchaser to a deed upon paying all or a specific part of the purchase price.

(3) An undivided fee interest if the co-owners meet the security requirements imposed by § 1944.18(b)(8).

(4) A life estate interest with rights of present possession, control and beneficial use of the property if the remaindermen meet the security requirements imposed by § 1944.18(b)(9).

(5) Leasehold interst if all of the following conditions are met:

(i) The applicant is unable to obtain fee title to the property and the rent charged for the lease does not exceed the rate being paid for similar leases.

(ii) The lessor owns the fee simple title.

(iii) Neither the leasehold nor the fee simple title is subject to a prior lien, unless the County Supervisor submits complete information to the State Director for review and authorization prior to approval of the loan. The amount of the RH loan plus any prior liens may not exceed the recommended market value of the leasehold.

(iv) The written lease contains the following provisions:

(A) The lessor's consent to the RH mortgage.

(B) Reasonable security of tenure. The borrower's interest must not be subject to summary forfeiture or cancellation.

(C) The right of FmHA to foreclose the RH mortgage and sell without restrictions that would adversely affect the market value of the security.

(D) The right of FmHA to bid at foreclosure sale or to accept voluntary conveyance of the security in lieu of foreclosure.

(E) The right of FmHA, after acquiring the leasehold through foreclosure or voluntary conveyance in lieu of foreclosure, or in event of abandonment by the borrower, to occupy the property or sublet it, and to sell for cash or credit. In case of a credit sale, FmHA will take a mortgage with rights similar to those under the original RH mortgage.

(F) The right of the borrower, in the event of default or inability to continue with the lease and the RH loan, to transfer the leasehold, subject to the RH mortgage, to an eligible transferee with assumption of the RH debt.

(G) Advance notice of a least 90 days to FmHA of lessor's intention to cancel or terminate the lease. Such advance notice will be long enough to permit FmHA to ascertain the amount of delinquencies, the total amount of the lessor's and any other prior interests, and the market value of the leasehold interest and, if litigation is involved, to refer the case with a report of the facts to the United States Attorney for appropriate action.

(H) Express provisions covering the question of liability of FmHA for unpaid rentals or other charges accrued at the time it acquires possession of the property or title to the leasehold, and those which become due during FmHA's possession or ownership, pending further servicing or liquidation.

(I) Any necessary provisions to assure fair compensation to the lessee for any part of the premises taken by condemnation.

(v) The lease has an unexpired term, from the date of loan approval, of at least 50 years (a lease for 25 years with an option to the lessee to renew for an additional 25 years would be considered a 50 year lease) except where:

(A) A lease is granted for the purpose of permitting a person to obtain an RH loan and the time required to process and approve the loan results in the unexpired term of the lease being not less than 49 years, or

(B) A lease is in existence at least 1 year prior to the date of the loan approval, and the unexpired term of the lease is at lease 50 percent longer than the repayment period of the loan. In no case may the unexpired term of the lease be less than 15 years.

(6) Possessory rights on an Indian reservation or State-owned land if the security requirements imposed by § 1944.18(b)(2) are met.

(7) The interest of an Indian in land held in severalty under trust patents or deeds containing restrictions against alienation if the security requirements imposed by § 1944.18(b)(3) are met.

(b) If an applicant's title to any part of the property does not qualify as an ownership interest under paragraph (a) of this section and is therefore defective, an RH loan may nevertheless be made if:

(1) The defect cannot be cured at a reasonable cost, and

(2) No improvements to be constructed or repaired with loan funds will be located on the parcel to which title is defective, and

(3) No security value will be accorded to the parcel to which title is defective.

§ 1944.16 Building requirements.

(a) *New dwellings:* Dwellings to be built or purchased new must provide decent, safe and sanitary housing that is modest in size, design, and cost, and consistent with the market and other dwellings owned or being built in the area by others with similar incomes. The dwelling should be designed to fit the needs of the applicant but may include 3 bedrooms and 1½ bathrooms if such a dwelling is within the applicant's repayment ability.

(1) The dwelling will contain no more than 1,200 square feet of living area. When the size of the household results in an average of more than two persons per bedroom a larger dwelling may be justified to provide adequate sleeping space. The following will be considered in determining living area:

(i) Living area will include all finished areas as well as unfinished areas that are designed for or normally considered as living area. This will include those areas which meet or can be improved to meet the Housing and Urban Development (HUD) Minimum Property Standards (MPS) requirements for habitable area.

(ii) Living area will not include such space as a stairway between living areas, enclosed stairway, enclosed entryway, space necessary for utilities in a home without a basement, general storage area, porch not suited for year-round use, solar greenhouse which provides heat to the living area, garage or carport which is attached, detached or in the basement area; basement or other area not designed for or normally considered living area.

(2) Special design features or equipment may be included when necessary because of physical handicap or disability.

(3) Two-car garages or carports will not be authorized. Single-car garages or carports may be included if customarily included in other homes in the area.

(4) Solar systems will be used only after approval by the State Architect and authorization by the State Director. Fireplaces and other woodburning devices may be authorized only if the loan approval official determines and documents that a dependable and economical wood supply is available. All fireplaces and other woodburning devices must comply with HUD Minimum Property Standards and with Exhibit D of FmHA Instruction 1924–A. To assure compliance and to remove uncertainties regarding safety and efficiency, fireplaces and other woodburning devices are authorized only after approval by the State Architect and subsequent authorization by the State Director.

(5) A dwelling for an extended family as defined in § 1944.2(g) may include bedroom area with an exterior entrance and an additional bathroom. This area should be designed in a manner that will not adversely affect the home's potential for resale.

(b) *Existing dwellings:* Existing dwellings purchased with RH funds must be structurally sound, functionally adequate, either be in good repair or placed in good repair with loan funds and meet the standards required by § 1924.5 (d) (1) (ii). The policies stated in paragraph (a) (1) of this section may be used as a guide in making a determination of adequate but modest existing dwellings, however, the maximum square footage of living area should be flexible to adjust for modest adequate existing homes that may be available.

(c) *Repairs:* Any dwelling repaired with RH funds must be structurally sound, functionally adequate, and be placed in good repair with loan funds. If the loan is not more than $7,500 and is scheduled for repayment in not more than 15 years from the date of the note, the dwelling may lack some equipment or features such as a complete bath, kitchen cabinets, closets, or completely finished interior in some rooms. Such dwellings must meet the basic housing needs of the applicant and provide decent, safe, and sanitary living conditions when the improvements financed with the loan are completed.

(d) *Improvements.* Improvements financed with loan funds must be on land which, after loan closing, is part of a tract owned by the borrower in accordance with § 1944.15(a), or on an easement appurtenant to such a tract.

§ 1944.17 Maximum loan amounts.

(a) An RH loan to buy or build a dwelling may be made up to the market value of the security less the unpaid principal balance and past-due interest of any other liens against the security property for:

(1) An existing dwelling which is more than a year old or previously occupied as a residence.

(2) A new dwelling when any of the following conditions exist:

(i) A conditional commitment was issued in accordance with § 1944.45.

(ii) The RH loan will be closed prior to the start of construction.

(iii) Construction is financed in accordance with § 1944.46.

(iv) The required construction inspections were made by the Federal Housing Administration (FHA) or Veterans Administration (VA). A complete set of plans and specifications will be submitted together with copies of inspection reports or certification by FHA or VA indicating the dwelling was build in accordance with approved plans and specifications. The builder will also furnish a certification of compliance with FmHA thermal standards for new construction as required by FmHA Instruction § 1924–A.

(v) The dwelling was constructed under an insured 10 year warranty plan. The builder will provide complete plans and specifications together with a certification that construction was completed in compliance with the plans and specifications, HUD–FHA Minimum Property Standards and FmHA thermal standards for new construction. The cost of the insured warranty will be included in the sale price of the dwelling, if it is to be charged to the borrower.

(b) Except as provided in paragraph (c) of this section a loan will be limited to 90 percent of the market value of the security for any dwelling that does not meet the requirements of paragraph (a) of this section.

(c) A loan which causes the total secured indebtedness to exceed the appraised value of the property securing the loan may be made when the amount exceeding the appraised value is all or part of a lien held by a public body, hospital or welfare institution for advances made for medical bills, welfare payments, or State motor vehicle judgments provided:

(1) The borrower is unable to settle or compromise such lien sufficiently to avoid exceeding the market value, and

(2) The lien securing the excess amount will at all times be inferior to the FmHA mortgage securing the initial loan and any subsequent loan or advances determined by the FmHA to be reasonably necessary to carry out the purpose of the initial loan or to protect the Government's financial interest, and

(3) The existence of the excess lien will not jeopardize the security or servicing so as to preclude the making of a sound RH loan, and

(4) The borrower has the ability to meet any payments on the excess debt as they become due or are likely to become due.

§ 1944.18 Security requirements.

(a) *Adequate security.* To protect the interests of FmHA all loans must be adequately secured. Except as provided in paragraph (b) of this section, a loan is adequately secured only when all of the following requirements are met:

(1) FmHA obtains at closing a mortgage on all ownership interests in the entire tract.

(2) No liens prior to the FmHA mortgage exist at the time of closing, and no junior liens are likely to be taken immediately subsequent to or at the time of closing.

(3) The provisions of Part 1807 of this Chapter (FmHA Instruction 427.1) regarding title clearance, and the use of legal services are complied with.

(b) *Exceptions.* Exceptions to the usual security requirements will be made as follows:

(1) *Note only.* A loan of $2,500 or less scheduled for repayment in not more than 10 years from the date of the note may be secured by the borrower's promissory note alone when the County Supervisor determines that:

(i) The applicant has a credit history which indicates an ability and willingness to pay debts when they are due;

(ii) The applicant will have sufficient income to readily meet all obligations; and

(iii) The applicant's equity in the real estate as improved equals or exceeds the amount of the proposed loan.

(2) *Mortgage insurance.* When the applicant is the holder of possessory rights on an Indian reservation or State-owned land, adequate security in the form of mortgage insurance guaranteeing payment from a State agency or Indian tribe will be acceptable. Separate State Supplements covering loan approval, title clearance, closing, appropriate loan documents and a Memorandum of Understanding with the State or Indian tribe insuring agency should be developed and used with the approval of the State Director and the concurrence of the Office of General Counsel (OGC). Approval of such supplements by the National Office is required prior to participation in any such program.

(3) *Indian land.* Indian land in trust or restricted status acquired with an RH loan will remain in trust or restricted status. In these cases mortgages must be approved by the Secretary of the Interior. When a lien is to be taken on trust or restricted property, the local Bureau of Indian Affairs (BIA) representative will be requested to furnish advice and information with respect to the property and each applicant. The FmHA State Director should arrange with the BIA Area Director or other appropriate local BIA official as to how the information will be requested and furnished. A State Supplement will be issued to prescribe the actions to be taken by FmHA personnel to implement the making of loans under such conditions.

(4) *Best mortgage obtainable.* Loans of $7,500 or less scheduled for repayment in not more than 15 years from the date of the note must be secured by a mortgage, except as provided in paragraph (b)(1) of this section, but title clearance and the use of legal services in accordance with Part 1807 of this Chapter (FmHA Instruction 427.1) are not required. The best mortgage obtainable without use of these procedures will be sufficient unless the loan approval official determines that the procedures in Part 1807 of this Chapter (FmHA Instruction 427.1) are necessary to assure repayment or accomplish the objective of the loan. Evidence of ownership must comply with § 1944.24 (d)(2) of this Subpart.

(5) *Leasehold.* When the applicant owns only a leasehold interest, FmHA may not require a mortgage on the lessor's interest but will treat the lessee's interest like any other type of ownership interest in determining whether a mortgage on the leasehold is required. The lease must meet the requirements of § 1944.15(a)(5) (iv) and (v). In any State in which applicants are likely to own a leasehold interest, the State Director will issue a State Supplement outlining the technical requirements for making such loans.

(6) *Security by junior lien.* FmHA may take a junior mortgage as security for an RH loan if the tract which will secure the FmHA mortgage provides adequate security for the entire prior lien debt and the RH loan, and

(i) The prior mortgage does not contain provisions that may jeopardize FmHA's security position or the borrower's ability to repay the loan, such as provisions for future advances, forfeiture, cancellation, foreclosure without adequate notice to junior lienholders; or

(ii) Such provisions are satisfactorily limited, modified, or waived.

(7) *Liens junior to FmHA lien.* Liens junior to the FmHA lien will be allowed at closing or immediately subsequent to closing only when:

(i) The junior lien will not interfere with the purposes or repayment of the RH loan, and

(ii) The total amount of the RH loan, the junior lien, and any prior liens will not exceed the market value of the security except as provided in § 1944.17(c).

(8) *Undivided interest.* When the applicant owns an undivided interest in the property, the co-owners' interests need not be included in the mortgage in the following cases:

(i) When one or more of the co-owners are not legally competent, or cannot be located, or the ownership rights are divided among such a large number of co-owners that it is not practical for all their interests to be mortgaged, the mortgaging of interests not exceeding 50 percent may be excluded from the security requirements upon prior approval by the State Director. The State Director should review the County Supervisor's recommendation accompanied by a full statement of ownership and conditions which justify the exclusion. All legally competent co-owners using or occupying the property will be required to sign the mortgage. Co-owners will be required to sign the note when necessary for a sound loan or to obtain the required security. The loan may not exceed the percentage of the market value of the property represented by the interests of the owners who sign the mortgage. In determining such value, consideration will be given to any adverse effect which might result from sale of the mortgaged interests separately from the nonmortgaged interests.

(ii) When an applicant owns an undivided interest in part of a farm and seeks a loan to build or improve facilities on another part in which the applicant owns the entire interest, or the applicant owns only an undivided interest in a building site which will be a part of the farm, the interest of the applicant's co-owners may be excluded from the security requirements upon approval by the State Director if:

(A) The loan will be adequately secured by the applicant's equity in the wholly owned tract,

(B) The market value of the jointly owned tract is at least equal to the debts against it, and

(C) The applicant's participation in the joint ownership of part of the farm and its operations has been and is likely to continue to be successful.

(9) *Life estate.* When the applicant owns a life estate interest in the property, the remaindermen's interests need not be included in the mortgage if one or more of the remaindermen are not legally competent or cannot be located or if the remainder rights are divided among such a large number of remaindermen that it is not practicable to obtain the signatures of all the remaindermen. In that case, the mortgaging of remainder interests, not exceeding 50 percent of the total remainder interest may be excluded

from the security requirements upon prior approval by the State Director. The State Director should review the County Supervisor's and District Director's recommendations accompanied by a memorandum stating complete ownership information and circumstances which justify the exclusion. In such cases, the loan may not exceed the percentage of market value of the property represented by the interests of those remaindermen who sign the mortgage, determined with due regard to all adverse factors involved. Remaindermen will be required to sign the note when necessary for a sound loan or to obtain the required security.

(10) *Farm dwelling.* When the applicant is the owner of a farm, a mortgage may be taken only on the dwelling and dwelling site provided the following conditions can be met:

(i) The tract to be mortgaged must not include or be close to farm service buildings, must be in a good residential location, be otherwise suitable as a residential type of nonfarm tract, provide adequate security for the loan, be contiguous to and have direct access to a public road, or

(ii) The tract to be mortgaged must contain at least enough land to clearly provide adequate security for the loan and to make the tract readily saleable in the area.

(11) *Land Purchase Contract.* When the ownership interest is by virtue of a land purchase contract a prior lienholder's agreement must be obtained as required by Part 1807, (FmHA Instruction 427.1 Paragraph II F 5.)

(c) *Additional security.* When necessary to supplement the applicant's equity in the farm or nonfarm tract on which the dwelling is located, or to facilitate servicing the loan, FmHA may also take a mortgage on other real estate owned by the applicant.

(d) *Assignment of income from real estate to be mortgaged.* Income to be received by the borrower from royalties, leases, or other existing agreements under which the value of the real estate security will be depreciated will be assigned and disposed of in accordance with § 1872.11 of Part 1872, of this Chapter (FmHA Instruction 465.1, paragraph XI), and the provisions for written consent of any prior lienholder. In small nonfarm tract cases, the State Director may authorize witholding transmittal of assignments to lessees for execution until production begins. The State Director may, in individual cases, waive the requirement of taking an assignment if repayment of the loan is reasonably assured from other sources.

§§ 1944.19–1944.21 [Reserved]

§ 1944.22 Refinancing debts.

(a) Refinancing of FmHA debts is not authorized.

(b) Loan funds may be used for refinancing non-FmHA debts only if the debt was incurred by the applicant prior to the date the application was filed and the following conditions can be met:

(1) The debt was incurred for purposes for which a Section 502 RH loan could be made or is a protective advance by the mortgagee for items covered by the mortgage to be refinanced, such as accrued interest, insurance premium or real estate tax advances or preliminary foreclosure costs.

(2) The debt must be a lien against the property which will be security for the RH loan. The promissory note and security instrument for the debt must represent rates and terms that were typical and customary for long-term residential financing in the area at the time the debt was incurred. A loan to refinance a qualified secured debt may also include short-term or unsecured debts, if necessary to establish a sound repayment ability, if such short-term or unsecured debts were incurred for authorized Section 502 loan purposes and are not a significant portion of the loan.

(3) Payments on the debt are so seriously delinquent, for reasons beyond the control of the applicant, except as noted in Paragraph (b)(4) below of this section, that the applicant is likely to lose the dwelling at an early date if the debt is not refinanced. Such delinquency must be due to loss of employment or income, illness, or such other similar events or unforeseen circumstances.

(4) If a loan of $5,000 or more is necessary for repairs to correct major deficiencies to make the dwelling decent, safe and sanitary, an existing lien may be refinanced regardless of delinquency, if necessary for the applicant to have repayment ability for the existing loan and the requested loan for repairs.

(5) A statement will be obtained for each debt to be refinanced showing the purpose for which the debt was incurred, the date on which it was incurred, the final due date, interest rate, amount and frequency of installment. Amount of delinquency, unpaid principal and accrued interest.

(c) Debts or costs incurred after the date of application may be refinanced if the costs were incurred for:

(1) Fees for legal, architectural and other technical services, or

(2) Materials, construction or site acquisition. The County Supervisor may authorize the use of RH funds to pay such costs only when all of the following conditions exist:

(i) The costs were incurred after the applicant filed a written application for a loan but before the loan was closed. In the case of a subsequent loan to complete improvements previously planned, the costs must have been incurred after the initial loan was closed.

(ii) The applicant is unable to pay such costs from personal resources or to obtain credit from other sources and failure to authorize the use of RH funds to pay such costs would jeopardize the applicant's capability of repaying the loan.

(iii) The construction or repair work conforms to that shown on the building plans and specifications or Form FmHA 424–1, "Development Plan," when applicable, and the costs were incurred for authorized Section 502 loan purposes.

§ 1944.23 Loans to Farm Ownership (FO), Individual Soil and Water (SW), and Recreation (RL) borrowers.

A Section 502 loan may be made to an FO, SW, or RL borrower or simultaneously with an FO loan and a loan from another lender if all conditions of this Subpart are met. In these cases, the borrower's current FO, SW, or RL loan may be reamortized in accordance with § 1951.40 of Subpart A, Part 1951.

§ 1944.24 Technical services.

(a) *Planning and performing construction work.* Any construction work will be planned and completed in accordance with Part 1924 Subpart A.

(b) *Planning and performing site development work.* Any site development will be planned and completed in accordance with Subpart D of Part 1804. (FmHA Instruction 424.5).

(c) *Appraisal.* The value of property securing RH loans will be determined as follows:

(1) When a mortgage will be taken on a nonfarm tract or small farm, or on a leasehold interest in a nonfarm tract or small farm, to secure a total indebtedness of more than $7,500, an appraisal of the security property will be made in accordance with FmHA Instruction 422.3 (available in any FmHA office). A small farm for the purpose of this Subpart is a farm as defined in § 1944.2(h) of this Subpart which has value primarily as a residence rather than for the production of agricultural commodities, and repayment of the RH loan is not dependent on farm income.

(2) When a mortgage will be taken on a farm tract or leasehold interest in a farm tract to secure a total indebtedness of more than $7,500, an appraisal of the security property will be made in accordance with Subpart A of Part 1809, of this Chapter (FmHA Instruction 422.1).

(3) When the total indebtedness will be not more than $7,500, an appraisal of the real estate or leasehold interest is not required, unless the County Supervisor or loan approval official is uncertain as to the adequacy of the security. When an appraisal is not completed the County Supervisor will document in the case file the estimated market value of the property.

(4) When a loan is being made to an FmHA real estate borrower and the FmHA appraisal report in the borrower's case folder indicates the value of the security property is adequate to secure the total real estate indebtedness, including the planned loan, an appraisal is not required.

(5) Real estate mortgaged as additional security will be appraised when it represents a substantial portion of the security for the loan or when requested by the loan approving official.

(d) *Title Clearance and legal services.* (1) When real estate will be taken as security except on a best mortgage obtainable basis (including a mortgage on a leasehold), title clearance and legal services for making and closing the loan will be provided in accordance with Part 1807, of this Chapter (FmHA Instruction 427.1). Title clearance and legal services will not be requested until the loan is approved.

(2) When real estate will not be mortgaged or when the best real estate mortgage obtainable is taken as security without title clearance or use of legal services, each applicant will be required to submit evidence of ownership of the farm or nonfarm tract. This may be the original or a certified or photostatic copy of the deed, purchase contract, or other instrument evidencing ownership. When the County Supervisor is uncertain as to whether or not the applicant is a qualified owner, such action will be taken as the County Supervisor considers necessary, such as requiring the applicant to furnish additional information or obtaining the advice of the OGC regarding the evidence of ownership submitted and any further information or action that may be needed. Proof of ownership need not be as much as that required by Part 1807, of this Chapter (FmHA Instruction 427.1). For example, it may include such evidence as the levy and payment, in the applicant's name, of taxes on the real estate and affidavits by others in the community to the effect that the applicant has occupied the property as the apparent owner for a given length of time and is believed and generally reputed to be the owner. No loan will be made if the County Supervisor has actual knowledge that the applicant does not have a valid title to the property.

§ 1944.25 Rates, terms, and source of funds.

(a) *Source of funds.* Insured loan funds from the Rural Housing Insurance Fund (RHIF) will be used for all Section 502 loans.

(b) *Interest rate per annum on unpaid principal.* Loans will be made at the interest rate(s) specified in FmHA Instruction 440.1, Exhibit B (available in any FmHA office). If only one interest rate is so specified such rate will be the maximum interest rate established for mortgages under section 203(b) of the National Housing Act by the Secretary of Housing and Urban Development (HUD). If there are two interest rates for section 502 insured RH loans specified in FmHA Instruction 440.1, Exhibit B, borrowers will pay the HUD rate if the annual payments required for principal and interest on existing section 502 RH loans, if any, the annual principal and interest payments on the loan for which application is being made (with payments calculated at the HUD rate), taxes, and insurance are not more than twenty percent (20%) of the borrower's adjusted annual income; in all other cases the borrower will pay the rate specified as the section 502 rate.

(c) *Amortization.* Each loan will be scheduled for repayment over a period not to exceed 33 years from the date of the note or such shorter period as may be necessary to assure that the loan will be adequately secured, taking into account the probability of depreciation of the security. A loan for $2,500 or less not secured by a real estate mortgage will be scheduled for repayment over a period not to exceed 10 years from the date of the note.

(d) *Interest credit.* Borrowers may be eligible for an interest credit subsidy which can reduce the borrower's effective interest rate to as low as 1 percent. The policies and procedures for granting and servicing interest credit on RH loans are set forth in § 1944.34.

§ 1944.26 Application processing.

(a) *Processing priorities.* In an effort to provide assistance to applicants with the greatest need, the order of processing applications will be determined in each county office in accordance with the provisions of this paragraph. Applications for persons who have been advised that funds are available for their loan, and for whom loan processing has begun, will be processed to completion without regard to priorities. Seventy-five (75) percent of each quarterly allocation will be used to process, in the order received, the other applications received prior to the effective date of this instruction. Until the applications on hand prior to the date of this instruction have been processed, 25 percent of each quarterly allocation will be used for applications with the highest numerical priority ranking, including those received after the effective date of this instruction.

(1) Those with applications on file and not in process prior to the effective date of this subpart will be given the opportunity to keep their application on file or have it withdrawn. Such applicants may be considered for processing in the order received or under the priority rating, which ever is to the applicants' benefit. Each applicant will be assigned a numerical rating in accordance with § 1944.26(a)(3). Exhibit F–2 may be used as a guide letter to notify those applicants of the implementation of the priority system and to request them to furnish information necessary for a priority rating. Those who do not respond will be processed for possible withdrawal of the application on accordance with § 1910.4(f) of Part 1910 Subpart A.

(2) Applications for the following types of loans will not be subject to the priority system and will be processed as they are received:

(i) Subsequent loans which are necessary to complete transfers by assumption, credit sales, essential improvements or repairs, or weatherization purposes;

(ii) Refinancing of debts in accordance with Section 1944.22(b).

(3) Numerical ratings will be completed for all other signed applications received in the county office on or after the effective date of this Subpart. During the applicant interview, the County Supervisor will obtain from the applicant the information required to assign a numerical rating and will provide each applicant a full explanation of the factors considered in establishing the order of processing applications. The County Supervisor is not required to make a physical inspection to verify the information but should do so if there is reason to believe the information provided may not be accurate. Subsequent changes may be made in the numerical rating if verified information becomes available which would justify a change. Exhibit F may be used as a guide for the rating and documentation

which will be made a part of the application file. The numerical rating will be based solely and directly on the following objective standards.

(i) *40 points (maximum).* Adjusted annual income at the following levels for a period of at least 6 months prior to the date of application.

(A) *20 points.* Not more than 65 percent of medial income for the area.

(B) *40 points.* Not more than 50 percent of median income for the area.

(ii) *30 points (maximum).* Applicants living in deficient housing either owned or rented, for a period of more than 6 months prior to the date of application. A maximum of 30 points may be assigned using any combination of the following:

(A) *30 points.* Lack of complete plumbing; the housing does not have a bathtub or shower, wash basin, flush toilet or hot running water, for the exclusive private use of the occupant.

(B) *30 points (maximum).* Overcrowded; more than one person per room. The number of rooms in a dwelling will include bedrooms, living rooms, dining rooms, kitchen, and any other rooms designed for living area.

(1) 15 points. More than 2 persons per bedroom.

(2) 30 points. More than 3 persons per bedroom.

(iii) *20 points.* Low-income participants in FmHA authorized Mutual Self-Help projects.

(iv) *10 points.* Household with 2 or more persons.

(4) Application processing order will be determined one month prior to the beginning of each quarterly funding period with those applications not subject to the priority system to be processed first then those applications having the highest number of points on the numerical rating. All applications having the same numerical rating will be processed in the order received, after all applications having a higher numerical rating are processed. Those applicants for whom funds are expected to be available will be notified and be requested to furnish all information necessary to complete the application processing. The applicant should be given a time limit, usually 60 days, to provide the required information. Should the applicant not respond within the specified time limit the priority for that funding period will be assigned to the next applicant with priority rating.

(5) When available funds are not adequate to complete the processing of all applications as they are received, a preliminary determination of eligibility will be made in accordance with § 1910.6(c) of Part 1910 Subpart A. Applicants who appear eligible will be advised of the estimated waiting period and that a final determination of eligibility will be made when loan funds are available for the processing of their application. Applicants on the waiting list and not in process will be notified at the beginning of each quarter after the applications to be processed have been selected. Exhibit F–1 may be used as a guide for preparation of the notice.

(6) The State Office will maintain a reserve fund to be used for those loans listed in paragraph (a)(2) of this section which are not subject to priority ratings and which are received during a quarter after all of the county office allocation has been committed to other applicants. The amount of the reserve will be determined by past lending history, but should not exceed 10 percent of the quarterly allocation without prior authorization by the National Office.

(b) *Veterans preference.* Veterans preference will apply within each priority criteria when:

(1) There is a shortage of funds,

(2) Obligating forms are ready to be submitted to the Finance Office, and

(3) There is more than one application having the same date.

(c) *Appeal.* Since the priority given any applicant is based solely on objective standards the placing of an application in a particular priority is not a decision appealable under FmHA Instruction 1900–B.

(d) *Application forms.* (1) Applications for Section 502 RH loans will be made on Form FmHA 410–4, "Application for Rural Housing Loans (Nonfarm Tract)", or Form FmHA 410–1, "Application for FmHA Services", which are available at local County Offices, and processed in accordance with Subpart A of Part 1910 of this Chapter.

(2) If Form FmHA 410–4 does not provide sufficient information to clearly determine the applicant's repayment ability, or if the applicant needs credit counseling, Form FmHA 431–3 will be completed by the applicant and County Supervisor. In preparing Form FmHA 431–3 the following will be considered:

(i) Non-cash items (e.g., food stamps, scholarships, free clothing, or transportation which help reduce the applicant's budgeted expenses) will be properly documented, and budgeted expenses will be reduced accordingly.

(ii) Income from all sources not used to determine adjusted annual income, such as earnings from employment of minors or full-time students, foster care payments, and similar income items, will be considered to the extent it is used to offset budgeted expenses even though such income will not be included in "annual income."

(3) An applicant who completes Form FmHA 410–1 will also complete Form FmHA 431–2 as prescribed in Subpart B of Part 1924. In preparing Form 431–2, the provisions of paragraphs (2) (i) and (ii) of this section will apply to allow consideration of all income and non-cash items. When a loan is to be made to a non-operator farmowner, the colums in Tables B and C pertaining to the operator's share will be changed to the owner's share. If an application is being considered early in the crop year for a borrower who has a current Form FmHA 431–2, such form will be revised to show changes in the financial statement and significant changes in the planned operation. However, if the crop year is well advanced or completed, a farm and home plan will be developed for the ensuing year. The applicant will also complete Form FmHA 431–1, "Long-Time Farm and Home Plan", when needed.

(e) *Applicant interview.* A personal interview will be conducted by FmHA employees with all applicants before approval of the requested loan. During the interview, the applicant will verify information, including any submitted by a packager or others, concerning the applicant's employment and income. The applicant will also verify information concerning persons who will occupy the dwelling and on whose income eligibility for the loan and any interest credit is based. The County Supervisor will inform the applicant, and reach an understanding with the applicant, as to the FmHA loan making and servicing authorities, and the responsibilities of the borrower. The *discussion* will include an explanation of all options of assistance which may be available to the applicant or borrower. A documentation of the items *discussed* will be placed in each borrower case file and will be dated and signed by both the applicant and County Supervisor. A copy will be provided to the applicant or borrower at the time of the personal interview. Exhibit E of this Subpart sets forth items which must be included and may be used as a guide in preparing the required documentation for this purpose. *No housing loan will be approved without such evidence that a personal interview has been completed.*

(f) *Credit counseling.* During the time of the applicant's initial interview and application processing, consultation will be provided as necessary to assist the applicant in preparing and understanding a meaningful budget, Form FmHA 431–2, or Form FmHA 431–3, which will reasonably reflect the applicant's repayment ability. County Supervisors will work closely with

applicants to better understand all sources of income and cash substitutes. Credit and financial counseling will also be provided, as needed, to suggest financial management methods by which the applicant's success as a homeowner may most likely be achieved. When the County Supervisor determines that the applicant does not have sufficient income to repay the requested loan, other alternatives will be considered such as reducing amenities in the dwelling, selecting a less expensive dwelling or site, obtaining a cosigner, reduction of present debt load or when appropriate, building the dwelling by the self-help method.

(g) *Determining eligibility.* (1) The County Committee will determine eligibility of RH applicants who are also applying for or are indebted for a Farmer Program loan. The County Supervisor will determine eligibility for all other RH applicants.

(2) Repayment ability as outlined in § 1944.8(a)(2), will be evaluated on the circumstances surrounding the individual case including possible eligibility for interest credits as provided in § 1944.34. Obvious repayment ability may be determined by use of the short budget on Form FmHA 410–4. Form FmHA 431–3 will be completed by the applicant and the County Supervisor if eligibility cannot be clearly determined from the short budget. Under no condition will arbitrary guidelines or "rules of thumb" be used. If the applicant(s) can verify payment of a comparable or greater amount for housing costs for the previous 12 months, the applicant will be presumed to have repayment ability for the requested loan unless:

(i) Projected annual income is less than current or past income,

(ii) Planned expenses are proportionally greater than current expenses, when compared to income, or

(iii) The applicant has increased debts, or failed to pay existing debts in order to maintain the present standard of living.

(3) Credit history will be considered to the extent that it is used in evaluating all applicants for similar types and amounts of credit. For instance, credit requirements for a female applicant will not differ from those of a male applicant.

(4) The age of the applicant will not be used as a consideration of eligibility, except as provided in § 1944.9(d).

(5) The County Supervisor must determine whether the applicant could obtain housing credit elsewhere as follows:

(i) In any case in which a County Supervisor determines there is no possibility of the applicant's obtaining adequate housing credit elsewhere and, therefore, does not require the applicant to provide evidence that an effort has been made to obtain such credit, the County Supervisor will record that conclusion and the basis for it in the loan docket.

(ii) In any case where there may be a possibility that credit could be obtained from another source, the County Supervisor will require the applicant to make a diligent effort to obtain other credit.

(A) Applicants will be expected to apply for credit from lenders engaged in extending long-term housing credit in the area.

(B) Applicants should be advised to request lenders to indicate the amount, interest rate, and terms of housing credit they would be willing to extend to the applicant.

(C) When appropriate, the County Supervisor should verify evidence presented by an applicant that adequate credit is not available elsewhere.

(D) Letters from the lenders and any other evidence indicating that the applicant is unable to obtain credit elsewhere will be included in the loan docket.

(E) In no case will a loan be made to an applicant who is able to obtain the credit needed at terms that can reasonably be expected to be within the applicant's repayment ability.

(h) *Optioning of real estate.* The County Supervisor should advise the applicant with respect to the size, design, quality, cost and location of the dwellings and dwelling sites suitable for the RH program. If possible this should be done before the applicant selects a property to be purchased. Form FmHA 440–34, "Option to Purchase Real Property", should be used; however, other option forms may be used if their provisions are acceptable.

(i) *Application assistance.* Builders, brokers, contractors, and others including organizations such as those providing self-help assistance, who can provide complete information on the applicant and the house that is to be purchased, may assist in the assembly and processing of loan applications. Form FmHA 1944–12 "Rural Housing Loan Application Package" will be used for this purpose. Builders or sellers who received Conditional Commitments may also assist applicants in applying for an RH loan to buy a house for which a Conditional Commitment was issued in accordance with § 1944.45 of this Subpart. The County Supervisor will meet with such interested parties to explain:

(1) The eligibility requirements of RH loans,

(2) The size, design, cost and location of homes that can be financed,

(3) The requirements of Farmers Home Administration (FmHA) Instruction 1901–E "Civil Rights Compliance Requirements",

(4) How applications will be handled, and

(5) The type of information that must be submitted. The information to be submitted is listed in Exhibit A of this Subpart which may be used as a guide for preparation of information material for interested parties.

§§ 1944.27–1944.29 [Reserved]

§ 1944.30 Preparation of loan docket.

(a) Forms and documents will be fastened in the designated filing positions of the case folder as prescribed in Exhibit A of FmHA Instruction 2033–A (available in any FmHA office). Appropriate loan docket forms will be prepared in accordance with the Forms Manual Insert (FMI) for distribution as follows:

BILLING CODE 3410–07–M

Form No.	Name of Form	Total No. of Copies	No. Signed by Borrower	Loan Docket	Copy for Borrower
FmHA 410-1	Application for FmHA Services	1	1-0	1-0	
FmHA 410-4	Application for Rural Housing Loans (Nonfarm Tract)	1	1-0	1-0	
FmHA 1944-12	Rural Housing Loan Application Package	1		1-0	
FmHA 410-5	Request for Verification of Employment	1		1-0	
FmHA 410-7	Notification to Applicant on use of Financial Information from Financial Institution	2		1-C	1-0
FmHA 410-8	Applicant Reference Letter	1		1-0	
FmHA 410-9	Statement required by the Privacy Act	2	2-0 & C	1-C	1-0
FmHA 431-2	Farm and Home Plan	1	1-0	1-0	(in record book)
FmHA 431-1	Long-Time Farm and Home Plan	2	2-0&C	1-C	1-0
FmHA 431-3	Household Financial Statement and Budget	2	2-0&C	1-C	1-0
FmHA 440-2	County Committee Certification or Recommendation	1		1-0	
FmHA 427-8	Agreement with Prior Lienholder (or similar form)	3***		1-0	1-C

Form No.	Name of Form	Total No. of Copies	No. Signed by Borrower	Loan Docket	Copy for Borrower
FmHA 440-34	Option to Purchase Real Property	3****	2-O&C	1-O	1-C
FmHA 424-1	Development Plan (including any plans, specifications, and cost estimates)	2**	1-O	1-O	1-C
FmHA 422-1	Appraisal Report (Farm Tract) (with attachments)	1		1-O	
FmHA 427-9	Preliminary Title Opinion	2		1-O	1-C(Designated Attorney)
FmHA 1944-6	Interest Credit Agreement (Section 502 RH Loans)	3	1-O	1-O	1-C(Finance) 1-C
FmHA 440-1	Request for Obligation of Funds	4	2-O&C	1-O	1-C
FmHA 444-2	Single Family Housing Fund Analysis	4		1-C	
FmHA 440-35	Acceptance of Option	2	1-O	1-C	1-O
FmHA 440-42	Credit Sale Disclosure Statement	3	(See FMI)	1-C	2-O+C
FmHA 440-43	Notice of Right to Rescind	3	(See FMI)	1-C	
FmHA 400-3	Notice to Contractors and Applicants	3		1-C	1-C 1-O(contractor)
FmHA 400-6	Compliance Statement	3		1-C	1-O(contractor) 1-C
FmHA 440-9	Supplementary Payment Agreement	2	1-O	1-O	1-C
FmHA 440-45	Nondiscrimination Certificate (Individual Housing)	2	2-O	1-O	1-C

O Original; C - Copy

** When contract method will be used, 3 copies of plans and specifications will be required.

*** Copy to lienholder

**** Signed copy of option previously delivered to seller.

+ Original to seller.

BILLING CODE 3410-07-C

(b) All other documents necessary for approval of the particular loan will be included in the loan docket. This will include the following or others as appropriate:

(1) A copy of Exhibit E, "Rural Housing Applicant Interview", or a similar document executed by the applicant.

(2) Credit report(s) on the applicant(s).

(3) Evidence of ownership such as a certified copy of the applicant's deed, lease, purchase contract, or other evidence specified in § 1944.24(d), or a statement by the County Supervisor that such documents have been reviewed.

(4) Estimates of the value of any security for which a formal appraisal report is not required.

(5) Agreements from prior lienholders, if any, when necessary to comply with § 1944.18(b)(6) and Part 1807 § 1807.2(f). If required by a State Supplement issued in accordance with § 1807.2(f)(5) (paragraph II F 5 of FmHA Instruction 427.1), foreclosure or assignment notice agreements should also be included in the docket.

(6) When the loan is to be secured by a junior real estate mortgage, the docket must include a copy of each prior mortgage and, if available, a copy of each secured note or other obligation, furnished by the applicant at the applicant's own expense. The docket must include a current statement signed by the mortgagee showing the amount of unpaid principal secured by the mortgage; the amount of any accrued interest; the amount of any delinquency, with interest and principal shown separately; and, if a copy of the note is not furnished, its maturity date, payment schedule, interest rate, and a summary of any other provisions of the note.

(7) When the applicant obtains a co-signer, the docket must include that co-signer's current financial statement, income statement, and employment or business history. This will be supplemented by a statement from the County Supervisor as to the co-signer's financial condition and reputation for paying debts, and any other information, such as a credit report, that will be of assistance to the loan approval official.

§ 1944.31 Loan approval.

(a) The State Director, District and Assistant District Directors, County and Assistant County Supervisors are authorized to approve or disapprove loans in accordance with FmHA Instruction 1901–A (available in any FmHA office).

(b) The loan approval official is responsible for reviewing the docket to determine that the proposed loan complies with established policies and all pertinent regulations and that funds are available for the loan.

(c) Prior to loan approval a new verification of employment will be required if more than 90 days have elapsed since the date of the last verification of employment, or if evidence is brought to the attention of the loan approval official that indicates the applicant's financial status has changed significantly.

(d) When a loan is approved, the loan approval official will:

(1) Indicate on all copies of Form FmHA 440–1 any condition that must be met before the loan is closed. Also, the loan approval official will specify all security requirements that the applicant will need to meet, such as a first real estate lien or a junior lien subject to certain prior liens. If title evidence is required in accordance with Part 1807 of this Chapter (FmHA Instruction 427.1) or in accordance with any special requirements for the loan but is not included in the docket, the loan may be approved subject to the applicant's furnishing the required title evidence. When the applicant furnishes required title evidence, the County Supervisor will proceed with processing the loan. In those cases in which the title evidence does not comply with the conditions specified by the approval official, the docket will be reconsidered by the loan approval official.

(2) Sign the approval certification on the original and one copy of Form FmHA 440–1 and insert title in the space provided. The remaining copies will be conformed.

(3) If a loan is not approved after the docket has been developed, the reason for such action with date and initial of the approval official will be shown on the original Form FmHA 440–1; the County Supervisor will notify the applicant in accordance with § 1910.6.

(b) of Subpart A of Part 1910.

(e) After the loan is approved the docket forms will be distributed as outlined below.

(1) *To the Finance Office.*

(i) Form FmHA 440–1 (original)

(ii) Form FmHA 444–2 (original)

(2) *To the State Office.* If the loan is approved by the County Supervisor, or the District Director, an unsigned copy of Form FmHA 440–1 (unless exempted by State Supplement) and a copy of Form FmHA 444–2 will be sent to the State Office. If the loan is approved in the State Office, an unsigned copy of Form FmHA 440–1 and a copy of Form FmHA 444–2 will be retained in the State Office.

(3) *To the borrower.* A signed copy of Form FmHA 440–1, the original of Form FmHA 440–41, "Disclosure Statement for Loans Secured by Real Estate," and if applicable, the original and copy of Form FmHA 440–43.

§ 1944.32 Actions subsequent to loan approval.

(a) *Requesting a loan check.* (1) A loan check may be requested when all approval conditions can be met and necessary curative actions have been taken to provide a satisfactory title to real estate security. Form FmHA 440–57, "Acknowledgment of Obligated Funds/Check Request," will be completed and a copy sent to the Finance Office to request the check.

(2) A loan check may be requested at the time of loan approval by entering the amount of the check requested on Form FmHA 440–1 when one of the following conditions exist:

(i) The loan will be secured by a promissory note only, or

(ii) Real estate security will be taken and the County Supervisor is reasonably certain that satisfactory title evidence can be obtained and the loan can be closed within 21 days from the date of the check request.

(3) When not more than $4,000 of the loan funds will remain unexpended for more than 15 days after loan closing the total amount of the loan will be requested in a single advance.

(4) If loan funds cannot be expended within 15 days the County Supervisor will enter in the appropriate "block" of Form FmHA 440–1 the amount of loan funds to be disbursed at loan closing. Additional loan funds will be requested when, and in amounts, needed by submitting a completed copy of Form 440–57 to the Finance Office, or by telephone request if the additional funds cannot be received by the date needed using mail service. The County Supervisor should work with borrowers, developers, and others to be sure that funds will be available when needed and to reduce the future advances to a reasonable number. Any loan funds not requested by the "amortization effective date" for the loan, will be disbursed by the Finance Office to the County Office by check dated on the amortization effective date. The check will be deposited in the borrower's supervised bank account if it cannot be endorsed directly to a payee within 20 working days from the date of the check.

(b) *Handling Loan Checks.* (1) When the loan check or borrower's personal funds are to be deposited in the designated loan closing agent's escrow account, this will be done no later than the date of loan closing. If loan funds or borrower's personal funds are to be deposited in a supervised bank account,

this will be done in accordance with § 1902.6 of Part 1902 Subpart A no later than the first banking day following the date of loan closing.

(2) If a loan check is received and the loan cannot be closed within 20 working days from the date of the check, the County Supervisor will take appropriate action in accordance with FmHA Instruction 102.1 (available in any FmHA office).

(c) *Cancellation of loan.* Loans may be cancelled before loan closing by the use of Form FmHA 440–10, "Cancellation of Loan or Grant Check and/or Obligation", prepared in accordance with the FMI for that form. Checks received in the County Office will be returned with a copy of Form FmHA 440–10 to the Disbursing Center, U.S. Treasury Department, P.O. Box 3329, Kansas City, Kansas 66103. Interested parties will be notified of the cancellation as provided in § 1807.6 of Part 1807, of this Chapter (FmHA Instruction 427.1). If the cancellation is not a voluntary action by the applicant, the applicant will be notified in accordance with § 1910.6(b) of Part 1910 Subpart A.

(d) *Increase or decrease in amount of loan.* If it becomes necessary that the amount of the loan be increased or decreased prior to loan closing, the County Supervisor will request that all distributed docket forms be returned to the County Office. The loan docket will be revised accordingly and reprocessed.

(e) *Property insurance.* Buildings on the property which is to be taken as security for the loan will be insured in accordance with Subparts A and B of Part 1806 of this Chapter (FmHA Instructions 426.1 and 426.2) when appropriate.

§ 1944.33 Loan closing.

(a) *Loans approved with interest credit.* If the loan will be closed and Form FmHA 1944–6 or 1944–A6, "Interest Credit Agreement (Section 502 RH Loans)", will be executed more than 90 days after the last "Verification of Employment", or if there is evidence to indicate the applicant's financial status has changed significantly, a current "Verification of Employment" will be obtained and the amount of interest credit will be determined on the basis of the applicant's new circumstances. If the adjusted income exceeds the moderate-income limit set forth in Exhibit C of this Subpart, the loan will not be closed unless authorized by the State Director. Such authorization may be granted if there is documented evidence to clearly indicate other credit is not available. Interest credit will not be granted in any case in which the adjusted income exceeds the moderate-income limit set forth in Exhibit C.

(b) *Loans approved without interest credit.* Further review of the applicant's financial status is not required at the time of closing unless the loan is closed more than 90 days after the date of loan approval, or there is evidence to indicate the financial status has changed significantly. If the adjusted income exceeds the limit for moderate-income set forth in Exhibit C of this Subpart, the case will be referred to the State Director. The State Director may authorize closing of the loan if there is documented evidence to clearly indicate other credit is not available.

(c) *Promissory note.* Form FmHA 440–16, "Promissory Note", will be prepared and signed in accordance with Part 1807 of this Chapter (FmHA Instruction 427.1), and the FMI for the form.

(1) The payment alternatives of the note will be completed in accordance with the FMI for the form. Payments of principal and interest will be deferred during the period the dwelling is not expected to be suitable for occupancy as a residence because of construction or repairs to be made. In such cases if the loan is closed before any funds are advanced by the Finance Office or loan funds are distributed by multiple advance, accrued interest is added to principal and repaid in regular amortized installments (payment alternative II) after the deferment period.

(2) The payment provision of the note will be completed in accordance with the FMI for the form and the following:

(i) The monthly payment provision will be used for all borrowers who regularly receive monthly income and who can repay the loan in 12 equal monthly payments.

(ii) The annual payment provision will be used only for borrowers who do not regularly receive monthly income throughout the year. If installments are not to be deferred, the following provisions apply:

(A) The amount of the first installment will be determined by the County Supervisor after considering the immediate debt paying ability of the borrower. The amount of the first installment may be less, but not more, than a regular annual installment.

(B) The amount of the first installment may not be less than the amount equal to interest on the loan from the date of loan closing to the next January 1.

(C) Form FmHA 440–9 should be used to supplement this payment provision to facilitate servicing of loans for borrowers who pay more than one time a year.

(d) *Real estate mortgage.* Form FmHA 427–1, "Real Estate Mortgage for (state)————" will be used for loans to be secured by a real estate mortgage. Any changes made in the text by deletion, substitution, or addition (excluding filling in blanks) will be initialed in the margin by all persons signing the mortgage. Additions will be made on the mortgage in the following cases:

(1) For a loan secured by a mortgage on a leasehold, the following language, or similar language which in the opinion of OGC is legally adequate, will be inserted in the mortage just before the legal description of the real estate:

All Borrower's right, title, and interest in and to the leasehold estate for a term of—— years beginning on———, 19—, created, executed and established by certain Lease dated——, 19—, by ————as lessor(s), and recorded at Book——, Page ——of the —— Records of said County and State, and any renewals and extensions thereof, and all Borrower's right, title, and interest in and to said Lease, covering the following real estate:

(2) For a loan secured by a mortgage on a leasehold an additional covenant will be inserted in the mortgage to read as follows:

Borrower will pay when due all rents and any and all other charges required by said Lease, will comply with all other requirements of said Lease, and will not surrender or relinquish, without the Government's written consent, any of Borrower's right, title or interest in or to said leasehold estate or under said Lease while this instrument remains in effect.

(3) For all initial and subsequent Section 502 RH loans, until the mortgages are revised, the following additional covenant will be inserted above the signature line on the mortgage and be initialed at loan closing by all parties signing the mortgage.

This instrument also secures the recapture of any interest credit or subsidy which may be granted to the borrower(s) by the Government pursuant to 42 U.S.C. 1490a.

(e) *Collection of first installment.* If the annual payment provision of the note is used and payments are not deferred, the first installment of a loan closed during December will be collected at the time of loan closing.

(f) *Direct payments.* Direct payment cards for all new borrowers, including transferees, will be retained in the County Office until the borrower has made at least three monthly payments on time. The cards will then be delivered to the borrower and payments will be made direct to the Finance Office. The County Supervisor may retain the payment cards for a longer period if such action is considered to be necessary to determine that the

borrower is able to make timely payments as agreed. Payments made to the County Office will be forwarded to the Finance Office with the appropriate direct payment card in the Finance Office mail. Cash payments, refunds, and extra payments made by borrowers will be handled in accordance FmHA Instruction 451.2.

(g) *Owner's policy of title insurance.* If an owner's policy of title insurance is obtained, it will be delivered to the borrower as soon as it is received from the title insurance company.

(h) *Real estate mortgage after filing.* When the real estate mortgage is returned by the filing official or loan closing official, the original will be filed in the borrower's case folder. If the original is retained by the filing official in the official records, a copy conformed to show the recording data including the date and place of recording and the book and page number will be filed in the borrower's case folder. A copy of the mortgage will be delivered to the borrower.

(i) *Effective date of loan closing.* A loan secured by a real estate mortgage is closed when the mortgage is filed for record. In other cases a loan is closed when the borrower executes the note and any other required instruments.

(j) *Water stock certificate or other such collateral.* When water stock certificates or other such collateral are part of the security, they will be retained in the County Office. A notation will be made on Form FmHA 1905–1, "Management System Card—Individual", or Form FmHA 1905–5, "Management System Card—Individual (RH only)", as appropriate, showing that such security has been retained.

(k) *Account record and case folder.* The account record and case folder will be established in accordance with FmHA Instruction 2033–A and 1905–A (available at any FmHA office).

§ 1944.34 Interest credit.

(a) *General.* It is the policy of FmHA to grant interest credit on loans to lower income borrowers to assist them in obtaining decent, safe, and sanitary dwellings and related facilities.

(b) *Definitions.* (1) *Annual payment borrowers.* Borrowers who signed promissory notes providing for annual payments, including borrowers converted to monthly payments through the use of Form FmHA 451–37, "Additional Partial Payment Agreement".

(2) *Monthly payment borrowers.* Borrowers who signed promissory notes providing for monthly payments.

(3) *Review period.* The review period for an annual payment borrower will be the months of August, September, and October. The review period for a monthly payment borrower will be the third, fourth, and fifth months prior to the anniversary date of the borrower's current Interest Credit Agreement.

(4) *Real estate taxes.* Real estate taxes for interest credit purposes means the amount of real estate taxes and assessments that will actually be due and payable on the dwelling and the dwelling site during the interest credit period, reduced by the amount of any tax exemption available to the borrower, regardless of whether such exemption is actually claimed. Tax exemptions may include such things as homestead exemptions, special exemptions for low-income families, senior citizens, veterans and others

(c) *Approval authority.* Those FmHA officials who are authorized to approve Section 502 loans are also authorized to approve the Interest Credit Agreement.

(d) *Amount of interest credit.* (1) Loans qualified to be considered in the interest credit calculation include only those advanced for authorized section 502 RH purposes and which are a lien against the FmHA security by virture of a prior mortgage or a junior mortgage consented to by FmHA. Except as provided in paragraph (d)(2) of this section, the amount of interest credit will be determined as follows:

(i) For low-income borrowers the amount of interest credit will be the lesser of:

(A) The difference between 20 percent of the borrower's adjusted annual income and the sum of the annual installment due at the note interest rate on qualified loans plus the cost of real estate taxes and insurance, or

(B) The difference between the annual installment due on the FmHA promissory notes eligible for interest credit and the amount the borrower would pay if the loan were amortized at an interest rate of 1 percent.

(ii) For moderate-income borrowers the amount of interest credit will be the lesser of:

(A) The amount as calculated in paragraph (d)(i)(A) of this section, or

(B) The difference between the annual installment due on the FmHA promissory notes eligible for interest credit and the amount the borrower would pay if the loan were amortized at the appropriate rate specified for the borrower's area and income in Exhibit D.

(2) For repair and rehabilitation loans which meet the requirements of paragraph (f)(5) of this section, interest credit will be granted in an amount to achieve the following effective interest rates:

(i) For borrowers whose adjusted annual income is not more than $5,000, interest credit will be calculated to reduce the effective interest rate to 1 percent.

(ii) For borrowers whose adjusted annual income is more than $5,000 but not more than $7,000, interest credit will be calculated to reduce the effective interest rate to 2 percent.

(iii) For borrowers whose adjusted annual income is more than $7,000 but not more than $10,000, interest credit will be calculated to reduce the effective interest rate to 3 percent.

(3) Borrowers qualifying for interest credit assistance under both paragraphs (d) (1) and (d) (2) of this section will be granted only the one type of interest credit assistance that is most beneficial to them. Interest credit on initial and subsequent loans will always be the same type. There is no provision for switching from one type of interest credit to the other.

(e) *Recapture.* At the applicant interview, the County Supervisor will advise all Section 502 RH applicants that interest credit is subject to recapture. Applicants who receive interest credit will be required to sign a "Subsidy Repayment Agreement" (Part 1951, Subpart I, Exhibit A) at the time the initial interest credit agreement is signed.

(f) *Eligibility.* To be eligible for interest credit, a borrower must qualify for a Section 502 loan, must personally occupy the dwelling, and must meet the following additional requirements:

(1) *Initial loans.* Interest credit may be granted at loan closing if:

(i) The borrower's adjusted annual income does not exceed the applicable moderate-income limit in Exhibit C.

(ii) The borrower's net worth does not exceed $7,500 (a maximum net worth of $10,000 will be allowed for senior citizens) unless an exeption is authorized. The calculation of net worth will exclude the value of the dwelling and dwelling site, cash on hand which will be used to reduce the amount of the loan, and household goods and the debts against them. For the purpose of determining whether an exception is justified, consideration will be given to the nature of the assets, particularly whether they are assets upon which a borrower is currently dependent for a livelihood or which could be used to reduce or eliminate the need for interest credit. The District Director may authorize exceptions of the net worth limitation up to $20,000. Cases recommended by the State Director for which the net worth exceeds $20,000 will be submitted to the National Office for authorization to grant interest credit.

(iii) The term of the loan is for 33 years, unless authorized otherwise by the State Director, based on complete documentation of the justifiable reasons on an individual case basis. Interest credit will not be granted on loans with a term of less than 25 years, except as provided in paragraph (f) (5) of this section.

(iv) The loan was approved on or after August 1, 1968.

(v) The amount of interest credit exceeds $5 per month or $60 annually.

(2) *Subsequent loans.* Interest credit may be granted on subsequent loans which meet the requirements of paragraph (f) (1) of this section or the following conditions:

(i) Interest credit is presently being or will be granted on the initial loan and the borrower's adjusted income does not exceed the moderate income limit for the State as shown in Exhibit C, and

(ii) The sum of interest credit being granted on the initial and subsequent loans will be $5 or more per month or $60 or more per year.

(3) *Reamortization, transfers and credit sales.* Interest credit may be granted to a borrower buying an inventory dwelling or assuming an RH loan, or when a loan approved after August 1, 1968, is being reamortized provided:

(i) The requirements of paragraph (f)(1) of this section are met except that if the loan being assumed was initially approved before August 1, 1968, the assumption must be on new terms.

(ii) The loan will be reamortized for a term of 25 years or more except as provided in paragraph (f)(5) of this section.

(iii) The note being assumed is not an above-moderate loan.

(4) *Existing loans.* Interest credit may be granted at any time after loan closing if:

(i) The requirements of paragraph (f) (1) of this section are met.

(ii) The loan was approved as a "low or moderate" Section 502 loan on or after August 1, 1968.

(iii) The borrower requests interest credit, or the County Supervisor determines that interest credit is needed to enable the borrower to repay the loan. In the case of married borrowers, when one spouse has left the dwelling due to marital discord, interest credit based on the remaining spouse's income may be extended to the remaining spouse if:

(A) The remaining spouse is occupying the dwelling, owns a legal interest in the property, and is liable for the debt,

(B) The FmHA loan account is put in the remaining spouse's name,

(C) Legal papers have been filed with the appropriate court to commence divorce or legal separation proceedings, or one spouse has not been living in the dwelling for at least six months. Interest credit will not be granted if separation is due only to work assignment or military order.

(D) The remaining spouse is informed and agrees that should the spouse begin to live in the dwelling, that spouse's income will then be counted toward annual income and interest credit may be reduced or cancelled.

(5) *Repair and rehabilitation loans.* Interest credit may be granted on Section 502 RH loans made to repair or rehabilitate a dwelling already owned by the applicant provided the following conditions are met:

(i) The initial interest credit will be granted at the time of loan closing;

(ii) The dwelling is, or will be, occupied by an eligible borrower after the loan is made;

(iii) The amount of the loan may not exceed $10,000, or be amortized for more than 25 years;

(iv) The applicant's adjusted annual income does not exceed $10,000;

(v) The repairs will be made to bring a substandard dwelling up to the standards outlined in § 1944.16(c); and

(vi) The net worth requirements in paragraph (f)(l)(ii) of this section are met.

(g) *Processing interest credit.* (1) *General.* The amount of interest credit for which a borrower may be eligible will be determined by use of Form FmHA 1944–6 or Form FmHA 1944–A6 as outlined in paragraph (d) of this section.

(i) *Determination of income.* The County Supervisor is responsible for determining the borrower's adjusted annual and annual income as defined in § 1944.2, paragraphs (c) and (d) respectively of this subpart. A borrower interview will be conducted in all cases for granting interest credit. Form FmHA 410–5 will be used to verify the earnings from employment of all persons whose income is included in "Annual Income".

(ii) *Effective period.* Interest Credit Agreements on loans made to monthly payment borrowers will be effective for a two-year period. For annual payment borrowers the agreement will be in effect until the second December 31 after the effective date. The effective date will be as indicated on the FMI.

(iii) *Partial year interest credit.* For an annual payment borrower with an initial installment less than a regular installment, and who will receive less than a full year of interest credit assistance, the interest credit granted will be a pro rata portion calculated on the number of months left in the current calendar year, including the month in which the loan is closed.

(iv) *Advance from the insurance fund.* The repayment schedule for advances made from the Rural Housing Insurance Fund will be computed at the interest rate shown on the promissory note. However, interest will accrue and payments will be applied on the amount advanced at the reduced interest rate in effect at the time of payment.

(v) *Preparation of the transaction record.* For borrowers receiving interest credit, the following changes will be shown on Form FmHA 451–26, "Transaction Record", when prepared by the Finance Office:

(A) Interest rate field. The interest rate field of the form will continue to show the interest rate on the note. The Finance Office will compute the effective interest rate charged the borrower based on the amount of interest credit granted. The computed rate, rounded to the nearest ⅛ of a percent, will be shown as a footnote on the form as "Interest Rate reduced to ——%". Subsequent transactions will be applied to the loan by the Finance Office at the reduced interest rate until such time as renewal, change, or cancellation occurs.

(B) Daily interest accural field. The daily interest accrual will be shown at the reduced interest rate and the interest will accrue at the same interest rate until such time as the interest credit is renewed, changed, or cancelled.

(C) Application of credit field. The initial transaction record form will not have an entry in the "Application of Credit" field. The Interest Credit Transaction Code for this method of processing interest credit will be 4 Z.

(D) Payment status field. The payment status field will not reflect the dollar amount of the interest credit granted. No entry will be made for monthly payment borrowers.

(E) Minimum amount due by date shown field. For annual payment borrowers, the amount of the installment, reduced by the amount of interest credit granted, will be shown. For monthly payment borrowers the word "monthly" will be entered in the space provided.

(2) *Initial and subsequent loans.* (i) County office action. The County Supervisor will:

(A) Determine the borrower's adjusted annual income and document the calculations in the case file running record.

(B) Enter on Form FmHA 440–1, the adjusted annual income, the estimated real estate taxes that will become due and payable during the first and second

years of the agreement, and the amount of the annual property insurance premium for the dwelling.

(C) For initial loans approved with interest credit and closed under the multiple advance feature of the loan disbursement system outlined in Part 1902 Subpart A, further review of the borrower's financial status is not required unless the Interest Credit Agreement will be approved more than 90 days after the last "Verification of Employment", or there is evidence which indicates the borrower's financial status has changed significantly. If prior to approval of the Interest Credit Agreement the County Supervisor finds that the adjusted income has increased, interest credit will be granted on the basis of the borrower's new circumstances. Interest credit will not be granted if the borrower's adjusted income exceeds the moderate income limit indicated in Exhibit C of this Subpart.

(D) Complete and submit a corrected Interest Credit Agreement to the Finance Office when the loan is closed, or at the amortization effective date, if the borrower's circumstances have changed so that the amount of interest credit would be increased or decreased by at least $5 monthly or $60 annually.

(ii) Finance office actions. The Finance office will:

(A) Enter the information concerning adjusted annual income, the estimated real estate taxes, and the insurance premium on Form FmHA 440–57.

(B) Calculate the amount of interest credit to be granted to the borrower. The amount of interest credit will be determined from the information initially shown on Form FmHA 440–1.

(C) Prepare and mail Form FmHA 1944–A6 to the County Office when the final loan check is issued. Upon receipt, the form will be completed and a copy returned to the Finance Office only when indicated on the form.

(D) Prepare and issue payment cards to the County Office.

(3) *Reamortization, credit sales and transfers.* Interest credit to a borrower whose loan is being reamortized or, a borrower who assumes an RH loan or purchases property from inventory will be calculated by the County Office on Form FmHA 1944–6. A copy of Form FmHA 1944–6 will be forwarded to the Finance Office along with the copy of the Reamortization Agreement, Advice of Mortgaged Real Estate Sold, or Assumption Agreement. The Finance Office will issue payment cards to the County Office.

(4) *Existing loans.* Interest credit granted in accordance with paragraph (f)(4) of this section can be processed at any time in the same manner as interest credit on initial loans, except that the County Office will complete Form FmHA 1944–6 and calculate the amount of interest credit assistance the borrower will receive. A copy of Form FmHA 1944–6 will be used to send interest credit information to the Finance Office. The daily interest accrual will be reduced as of the effective date entered on the form or as of the date the last cash credit was made to the account, whichever is later.

(h) *Interest credit modification.* (1) *Before expiration.* When approving a change in interest credit assistance before the expiration of a current Interest Credit Agreement in accordance with paragraph (i)(3) of this section, the County Supervisor will again determine the borrower's adjusted annual income and document the findings in the case file running record. A Form FmHA 1944–6 will be completed in accordance with the FMI and a copy of the form will be forwarded to the Finance Office. The Finance Office will adjust the daily interest accrual as of the date entered on the form or as of the date of the last cash credit made to the account, whichever is later.

(2) *Correction of Interest Credit Agreements.* A corrected Interest Credit Agreement will be prepared if the borrower is still eligible to receive interest credit. The corrected agreement will be submitted to the Finance Office only after the borrower's appeal right has expired or, if the borrower has filed an appeal, after a final decision has been made. In such cases, a Form FmHA 1944–6 showing the proper amount of interest credit which the borrower is entitled to receive will be submitted to the Finance Office to replace the incorrect agreement. The notation "Corrected in accordance with § 1944.34" will be entered on the face of the form. The Finance Office will cancel the incorrect Interest Credit Agreement as of its effective date. Payments made under the previous agreement will be reversed and reapplied at the adjusted interest rate of the new Interest Credit Agreement.

(3) *Interest credit renewal.* (i) *Initiation of renewal action.* At the beginning of the review period, the Finance Office will mail to the County Office a list of borrowers whose Interest Credit Agreements are expiring, together with a package to be mailed by the County Supervisor to each borrower. The package will contain the following:

(A) A letter of explanation and the instructions for completing the Interest Credit Agreement (Exhibit G of this Subpart).

(B) Form FmHA 1944–A6 (3 parts with carbon interleaved).

(C) Two Forms FmHA 410–A5, "Request for Verification of Employment". The County Office name and address will be preprinted in the space provided.

(D) Three window envelopes to be used by the borrower in mailing Interest Credit Agreements to the County Office, and for the employer to mail the Verification of Employment form to the County Office.

(ii) *Borrower responsibility.* Upon receipt of the package, the borrower will give one copy of the Verification of Employment form to the employer or employers of each member of the household who has income to be considered. A window envelope will be provided each employer to facilitate the mailing of the Verification of Employment form directly to the County Office. The borrower will also complete part II of the Interest Credit Agreement form (leaving carbon intact), sign the original form and mail the original and all copies to the County Office.

(iii) *County office actions.* The County Supervisor will:

(A) Maintain the list of borrowers as a record of Interest Credit Agreements processed and sent to the Finance Office.

(B) Review the information on Forms FmHA 1944–A6 and 410–A5 for completeness and accuracy. Interviews with borrowers should be scheduled if the borrower needs assistance in completing the form or provides incomplete or apparently inaccurate information.

(C) Determine the adjusted annual income and document the calculations in the case file running record.

(D) Complete the Interest Credit Agreement and send a copy of the agreement to the Finance Office. If the borrower is not eligible for interest credit, enter "0" in the block(s) which indicates the amount of interest credit.

(E) If the Form FmHA 1944–A6 is mutilated or unusable, transfer *all* information preprinted on the form to a new Form FmHA 1944–6 to be signed by the borrower and submit the completed form to the Finance Office.

(F) Retain the original of the Interest Credit Agreement and return the other copy to the borrower.

(G) Notify by letter borrowers not eligible for continued interest credit of the amount of their revised payments.

The letter must notify the borrower of the right to appeal as outlined in § 1944.34(1). A new Form FmHA 440–9 will be obtained when needed.

(iv) *Finance Office actions.* The Finance Office will:

(A) Upon receipt of Form FmHA 1944–A6 from the County Office, send the borrower or the County Office a new set of payment cards.

(B) Before the end of the review period, send the County Office a list of borrowers for whom a renewal Interest Credit Agreement has not been received. The County Office staff will place a checkmark in the appropriate column of the list to indicate those borrowers who are no longer eligible for interest credit or whose agreements will not be renewed. The original of the completed list will be retained in the County Office and a copy returned to the Finance Office.

(v) *Processing interest credit renewals not received during the review period.* The County Supervisor may approve interest credit renewals not completed during the review period. They will be handled as follows:

(A) The amount of interest credit assistance granted will be based on the borrower's planned annual income during the first year of the agreement. The effective date of the Interest Credit Agreement will be as indicated on the FMI for the form.

(B) Payments made by the borrower after the expiration date of the previous Interest Credit Agreement will be applied at the note interest rate until the Finance Office receives a new Form FmHA 1944–6.

(C) Upon receipt of Form FmHA 1944–6, the Finance Office will reduce the daily interest accrued in accordance with the following conditions and limitations:

(*1*) If failure to renew was due to error or oversight by FmHA, the State Director will authorize the Finance Office to reduce the interest accrual as of the effective date entered on the form and reverse and reapply payments processed after the effective date. Such authorization must be in writing.

(*2*) In all other cases the Finance Office will reduce the daily interest accrual as of the effective date entered on the form or as of the date of the last cash credit made to the account, whichever, is later.

(i) *Eligibility Review.* The eligibility of those borrowers currently receiving interest credit will be reviewed as follows:

(1) *Biennial review.* The eligibility of all borrowers will be redetermined biennially during the review period.

(i) If the borrower's net worth increases above the applicable eligibility limit, interest credit may nevertheless be renewed unless the increase is sufficient to enable the borrower to graduate to another source of credit.

(ii) Interest credit will not be renewed if:

(A) The amount of interest credit for which the borrower qualifies is less than $5 monthly or $60 annually, or

(B) The borrower's adjusted annual income exceeds the moderate-income limit set forth in Exhibit C of this Subpart.

(iii) Interest credit will not be renewed if the borrower has enlarged or improved the dwelling or added related facilities so that the housing exceeds modest standards for size, design, and cost for previously occupied homes as compared to other housing in the locality for low and moderate income families.

(2) *Renewals not completed during the review period.* When the borrower's renewal Interest Credit Agreement is not completed during the review period, it will be processed in accordance with § 1944.34(h)(3)(v).

(3) *Change in borrower's circumstances.* The County Supervisor is not responsible for monitoring whether a borrower's income, family size, real estate taxes, or insurance costs have changed after an Interest Credit Agreement is approved. If, however, it becomes known that the borrower's circumstances have changed so that the amount of interest credit assistance the borrower is eligible to receive has increased or decreased, the County Supervisor will take action in accordance with the following:

(i) *Increased adjusted income.* If the County Supervisor determines that the borrower's income exceeds the applicable moderate income limit in Exhibit C, or that the amount of interest credit for which the borrower qualifies is $5 or less per month or $60 or less per year, interest credit will be cancelled in accordance with § 1944.34(k). If the interest credit will be decreased by $15 or more per month or $180 or more per year a revised interest credit agreement will be submitted to the Finance Office. If the term of the agreement has less than five months remaining no action will be taken until the review period and the change will be effective at the expiration of the current agreement.

(ii) *Decreased adjusted income.* Changes in interest credit may be approved at any time if the amount of interest credit the borrower is eligible to receive is increased by at least $15 per month or $180 per year. Such changes noted during the review period will not be effective until the expiration of the current agreement. Cases involving marital separation must meet the requirements of paragraph (f)(4)(iii) before existing interest credit can be increased.

(j) *Improper interest credit.* (1) *When to take action.* Servicing under this section will be taken when, at the time of interest credit approval, incorrect information was provided by a borrower or any other person or an error by any FmHA employee results in the borrower receiving improper interest credit of $5 or more per month or $60 or more annually.

(2) *Determining improper interest credit.* Whenever there is a reason to believe a borrower was granted improper interest credit the County Supervisor will immediately reverify the information on which the interest credit was based. The County Supervisor will determine if improper interest credit was granted. If there is reason to believe there may be fraud or fiscal irregularities the complete case file together with all facts will be submitted to the State Director. If the State Director believes there is indication of fraud or fiscal irregularity, further investigation will be considered as provided in FmHA Instruction 2012–B (available in any FmHA office). If there is no indication of fraud or fiscal irregularity the case will be returned to the County Supervisor for appropriate corrective action.

(3) *Falsification or error by borrower.* The following actions will be taken when it is determined that excessive interest credit was granted because the borrower intentionally or otherwise provided incorrect information.

(i) The County Supervisor will inform the borrower by certified mail (return receipt requested) of the intent to cancel the Interest Credit Agreement and the effective date of such cancellation. The notice to the borrower will include the right to appeal as provided in § 1900.53 of Subpart B, Part 1900. The borrower will also be informed of the amount of monthly payment required after proper corrections are made. A corrected Interest Credit Agreement will be prepared if the borrower remains eligible for a reduced amount of interest credit. The corrected agreement or cancellation will be submitted to the Finance Office only after the borrower's appeal right has expired or if the borrower has filed an appeal, and a final decision has been made.

(ii) If the borrower does not appeal, or it is determined that the appeal is not valid, the case will be handled by one of the following methods:

(A) The State Director will request the Finance Office to cancel the Interest Credit Agreement as of the effective date of the current Form FmHA 1944–6 or earlier Form FmHA 1944–6 involved in the period of review or investigation. The Finance Office will then reapply

any payment to the account at the note rate of interest or at the rate of the corrected Interest Credit Agreement and will notify the County Supervisor and borrower of any adjustment made in the account.

(B) If the borrower's action appears to have been deliberate and a major error occurred, liquidation may be warranted. For example, such actions may be taken if the information obtained indicates that the borrower was not eligible for an RH loan. Such a borrower will be asked to repay the RH loan by refinancing or otherwise satisfying the account. In other cases, the borrower may already be in default and the fact that the borrower had not correctly reported income may justify liquidation of the loan. The State Director may authorize the account to be repaid under an acceleration agreement if the conditions of § 1872.17(g) of this Chapter (FmHA Instruction 465.1 paragraph XVII G) are met.

(C) When falsified information is provided to FmHA in order to qualify the borrower for interest credit (for example, a packager provides information for a borrower), but there is evidence that the borrower is not at fault or definitely did not intend to provide false information, the borrower will be requested to pay the loan in full, including any improper and excessive interest credit that may have been granted. If, however, the borrower is unable to satisfy the account and the State Director determines that the Government's financial interest would not be jeopardized by leaving the loan outstanding, and that it would be inequitable to call it, the loan may be continued.

(D) In cases for which immediate liquidation is not warranted and the State Director determines the loan may be continued, the County Supervisor will make a diligent effort to obtain a lump sum restitution of the improperly advanced interest credit. If the borrower is unable to pay by lump sum payment Form FmHA 451–37 will be used to establish a new repayment schedule. The borrower will be charged interest on the improperly advanced interest credit at the same rate charged on the principal indebtedness.

(4) *Error by FmHA employee.* (i) When the borrower presented correct information and an FmHA employee erroneously granted excessive credit, the following action will be taken:

(A) The County Supervisor will inform the borrower by letter of the action to be taken and of the right to appeal as provided in paragraph (1) of this section.

(B) A cancellation of interest credit or a corrected interest credit agreement will be submitted to the Finance Office only after the borrower's appeal right has expired or if the borrower has filed an appeal and a final decision has been made. The State Director will authorize the Finance Office in writing to reverse and reapply payments made since the effective date of the cancellation or the corrected agreement. The Finance Office will then reapply any payments made on the account during the period in which incorrect interest credit was granted. Interest will be charged at the note rate or at the corrected interest credit rate as provided in paragraph (h)(2) of this section. The amount of improper interest credit will be charged to the borrower's account and become immediately due and payable. The County Supervisor and borrower will be notified of adjustments made in the account.

(C) If the Interest Credit Agreement is cancelled, the County Supervisor will make a diligent effort to obtain a lump sum restitution of the improperly advanced interest credit from the borrower. If this cannot be done, the County Supervisor will take one of the following courses of action:

(*1*) If the borrower can repay the improperly advanced interest credit over a reasonable period of time, the County Supervisor will use Form FmHA 451–37 to establish a new repayment schedule. The borrower will be charged interest on the improperly advanced interest credit at the same rate charged on the principal indebtedness.

(*2*) If the County Supervisor determines that the borrower is unable to repay the improperly granted interest credit, that fact should be documented and the case forwarded to the State Director for review. If the State Director concurs with the findings of the County Supervisor, the case will be forwarded to the National Office with recommendations that the improperly advanced interest credit be forgiven.

(ii) When an error by an FmHA employee results in too little interest credit being granted a corrected agreement will be prepared effective the date of the error, if the error is $5 or more per month or $60 or more per year.

(k) *Cancellation of interest credit agreements.* (1) *Reasons for cancellation.* An existing Interest Credit Agreement will be cancelled whenever:

(i) The borrower has never occupied the dwelling and FmHA will not continue with the loan.

(ii) The borrower ceases to occupy the dwelling.

(iii) The borrower sells or conveys the title to the property.

(iv) The borrower has received improper interest credit as outlined in § 1944.34(j) and a corrected Interest Credit Agreement will not be submitted.

(v) The borrower has an increase in income as outlined in § 1944.34(i)(3)(i) and is no longer eligible for interest credit.

(vi) The borrower has enlarged or improved the dwelling or added related facilities so that the housing exceeds modest standards for size, design and cost for previously occupied homes compared to other housing in the locality for low and moderate income families.

(2) *Effective date of cancellation.* The effective date of cancellation for paragraph (k)(1)(i) of this section will be date of loan closing. The effective date of cancellation for paragraphs (k)(1) (ii), (iii), and (iv) of this section will be the date on which the earliest action occurs which causes the cancellation. If the date cannot be determined, the date on which the County Supervisor became aware of the situation will be used. The effective date of cancellation for paragraph (k)(1) (v) and (vi) of this section will be the date on which the County Supervisor became aware of the situation. When an account has been accelerated and none of the conditions outlined in paragraph (k)(1) of this section exist, the Interest Credit Agreement will remain in effect until the final foreclosure action is completed. However, if the existing agreement expires before the foreclosure action is completed an interest credit renewal agreement will not be prepared. If foreclosure action is dismissed, withdrawn or terminates without sale of the property or payment of the loan in full a renewal agreement will be prepared with an effective date as of the expiration of the previous agreement.

(3) *Notification to the Finance Office.* The County Supervisor will determine the date of cancellation and notify the Finance Office on Form FmHA 1944–15, "Interest Credit Agreement Cancellation (Section 502 RH Loans)." The Finance Office will process the cancellation and will accrue interest from the date of cancellation at the rate of interest shown on the promissory note. Prompt notification to the Finance Office, using Form 1944–15, is extremely important, as any transaction affecting the borrower's account subsequent to cancellation will be incorrect if cancellation action has not been completed by the Finance Office.

(l) *Applicant or borrower notice of right to appeal.* All applicants or borrowers who request and are denied interest credit or whose interest credits are reduced, cancelled, or not renewed, will be notified of their appeal rights as

required by § 1900.53 of Part 1900 Subpart B except when:

(1) Interest credit is denied and the borrower acknowledges income is above published limits, or

(2) Interest credit is reduced because of income increases which the borrower acknowledges.

(m) *Submission to National Office.* The State Director may submit to the National Office for determination by the Administrator or a delegate any proposed transaction in which the conditions prescribed in the foregoing paragraphs of this section cannot be met, and it is determined that interest credit is necessary to avoid extreme hardship to the family or prevent foreclosure action. This paragraph is primarily intended to be used for those cases in which the granting of interest credit is necessary for the borrower to retain a dwelling for the borrower's own use, and there are no other means to do so. The State Director will submit to the National Office the County Office files together with full facts, justification, and recommendation.

§§ 1944.35–1944.36 [Reserved]

§ 1944.37 Subsequent Section 502 loans.

Subsequent Section 502 loans may be made to present borrowers for the same purpose and under the same conditions and limitations as initial loans, except as provided in this section.

(a) The subsequent loan will be processed in the same manner as initial loans, except that a new appraisal report will be required in accordance with § 1944.24 only when real estate will be taken as security and at least one of the following conditions exists:

(1) The property was not appraised in connection with the initial loan.

(2) The latest appraisal report of the real estate is over two years old.

(3) The physical characteristics of the property have changed significantly.

(4) The County Supervisor or loan approval official is uncertain of the adequacy of the security and requests a new appraisal report.

(b) A subsequent RH loan may be made on a note-only basis, provided the amount of the subsequent loan plus the unpaid principal balance of any prior note-only RH loan or loans does not exceed $2,500. Applicants for such loans must meet the requirements of § 1944.18(b)(1).

(c) When a real estate mortgage is required in connection with a subsequent RH loan, any outstanding RH notes will be described in the mortgage unless an exception can be made in accordance with Exhibit A, paragraph II F of FmHA Instruction 427.1 (available at any FmHA office).

(d) The subsequent loan will bear interest at a rate determined in accordance with Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

(e) When necessary to settle a divorce action, a subsequent loan may be made to permit the remaining borrower, if eligible, to obtain a loan to purchase the equity of the departing spouse.

(f) When an area designation has been changed from rural to non-rural, subsequent RH loans may be made only in accordance with the provisions of § 1944.10(g)(4).

(g) The initial RH loan may be reamortized with the prior authorization of the District Director. Authority to reamortize an account will be granted in those cases in which it is determined that the borrower cannot reasonably be expected to meet installments due unless the account is reamortized. It will be processed in accordance with § 1951.20 or § 1951.40 of Part 1951 Subpart A.

§ 1944.38 Mutual self-help housing loans.

Applicants who are unable to build modest dwellings by customary methods, because of limited income and repayment ability, may build their homes by participating in a mutual self-help housing project. The County Supervisor will not approve RH loans or proceed in the development of a self-help project without prior authorization of the State Director. If an organization applies for a Technical Assistance (TA) grant, the District Director will submit Form AD–625, "Application for Federal Assistance (Short Form)", and all related information concerning the technical assistance grant to the State Director. If it is determined that the technical assistance grant has been approved for funding, the State Director may issue written authorization for the County Supervisor to approve Mutual Self-Help Housing loans. Exhibit H, "Mutual Self-Help Housing Guidelines", will be used as a guide for developing self-help projects and counseling with participating families. The County Supervisor, in counseling with families participating in self-help housing projects, will determine the anticipated time required for construction.

§ 1944.39 RH loans to FmHA employees and loan closing officials.

FmHA employees, County Committee members, and loan-closing officials, or their spouses may receive a Section 502 RH loan subject to the provisions of this Subpart and the following conditions:

(a) The application will be submitted to the County Office in the usual manner. Written evidence indicating the applicant's inability to obtain the needed credit will be included. The County Office will obtain the verification of employment and credit report and submit the application and related information to the District Director for review. The District Director will forward the applicant's docket, along with written recommendation concerning the applicant's eligibility, to the State Director for eligibility determination.

(b) The State Director will determine the eligibility of the applicant. If eligible, the docket will be returned to the District Director for processing. If the applicant is determined ineligible, the State Director will notify the applicant in writing and will provide the applicant all information required by § 1910.6(b) of Part 1910 Subpart A.

(c) The application will be retained in the County Office and will be processed in the same order as other applications. The District Director will be notified when the application is in order for processing and will be responsible for the complete loan processing.

(d) If the loan applicant works outside the county in which the application is filed, the District Director may permit authorized County Office staff to perform the appraisal function. In all other cases the District Director will appraise the property or have it appraised by a qualified FmHA appraiser from outside the County Office area in which the loan is to be made. The completed loan docket together with the District Director's written recommendation will be submitted to the State Director for consideration of approval.

(e) If the applicant is an employee in the District Office, the State director will designate another District Director to process the application.

(f) The State Director must, before approving the loan, determine that the applicant has not been and will not be given any advantage because of the FmHA relationship and the making of a loan will not result in a conflict of interest under FmHA Instruction 2045–BB (available in any FmHA office). The dwelling may not exceed the needs of the applicant or be excessive in size, design, or cost when compared to other FmHA financed dwellings in the area.

(g) If the loan is approved, the borrower's case file will not be maintained or serviced in the office where the borrower is or will be employed. If the property is in the area serviced by the office of employment the State Director will designate another

District or County Office to service the loan.

(h) If the loan involves any type of construction, the inspections for FmHA will be made by the District Director or another member of the District Director's staff as designated by the District Director. Under no circumstances will the employee receiving the loan make the inspections for FmHA.

(i) Loans, credit sales, or assumption agreements *will not* be approved under this authority for any of the following purposes:

(1) Purchase of inventory property.

(2) Purchase of a dwelling from a RH borrower.

(3) Purchase of FmHA security property being sold at foreclosure sale.

§ 1944.40 Rural housing disaster (RHD) loans.

RHD loans may be made to repair or replace dwellings which were damaged or destroyed by a natural disaster such as earthquake, flood, forest fire, severe windstorm, or lightning.

(a) *Eligibility requirements.* (1) The applicant must meet the requirements of § 1944.8 and § 1944.9 of this Subpart.

(2) Nonfarm applicants must have occupied the dwelling as their permanent residence.

(3) The loss by a nonfarm applicant was not the result of a major disaster designated by the President or a natural disaster designated by the Administrator of the Small Business Administration.

(4) The loss by a farmer was not the result of a major disaster designated by the President or a natural disaster designated by the Secretary of Agriculture.

(5) The loan application must be filed within 12 months after the date the loss occurred.

(6) The applicant must use available assets, including insurance loss payments, and other assistance, to the extent available, to repair or replace the damaged or destroyed buildings.

(b) *Repair or replacement of buildings.* Repair or replacement of any damaged or destroyed building must be consistent with the basic Section 502 loan policies. Changes may be made in the building, but in any case the repaired or replaced building should not be significantly larger or more costly than the original building except as necessary to provide a building which is adequate but modest. Any new dwelling constructed must meet the limitations established by § 1944.16 of this Subpart.

(c) *Interest rate and source of funds.* (1) RHD loans will be made at an interest rate of 5 percent. Interest credit will not be granted for RHD loans.

(2) Insured loan funds will be used for RHD loans.

(d) *Approval authorization.* The State Director, County and Assistant County Supervisors are authorized to approve RHD loans in accordance with FmHA Instruction 1901-A (available in any FmHA office) for Section 502 RH loans.

(e) *Deferred payments.* The initial payments of principal and interest, or principal only, may be deferred so as not to become due until as late as the third January 1 for annual payment notes, or the third anniversary date of the note for monthly payment notes, subject to all of the following conditions:

(1) The applicant, as a result of the loss suffered from the disaster, has had a substantial loss of income; or debts, including the proposed RHD loan, have increased substantially as a result of the disaster.

(2) The income loss or increase in debts must be sufficiently great so that the applicant will not likely be able to pay in full the installments that ordinarily would be due during the proposed deferment period and also meet other obligations.

(3) The applicant's other debts must be adjusted by reduction, reamortization, extension, or other means to the extent possible by negotiation with other creditors.

(4) The applicant's income will be sufficient after the deferment period to enable the applicant to meet the payments on the RHD loan and all other obligations.

(f) *Form FmHA 440–1.* The appropriate assistance code number will be entered in the space provided to indicate the nature of the loss.

§§ 1944.41–1944.43 [Reserved]

§ 1944.44 Borrower graduation.

Borrowers will be requested to apply for refinancing of RH loans if credit may be available from another source at rates and terms prevailing in the area for homeownership loans. The borrower must apply for and, if approved by the lender, accept the refinancing loan. Graduation reviews will be conducted in accordance with Part 1865, of this Chapter (FmHA Instruction 451.6).

§ 1944.45 Conditional commitments.

(a) *General.* A conditional commitment is assurance from FmHA to a qualified builder or seller that dwellings to be built or rehabilitated and offered for sale, will be acceptable for purchase by qualified RH loan applicants if built in accordance with FmHA approved plans and specifications and priced at not more than a specified maximum amount. The conditional commitment does not reserve funds for a loan nor does it assure that a loan applicant will be available to buy the dwelling.

(b) *Eligibility:* To be eligible for conditional commitments, the builder or seller must:

(1) Be the owner as defined in § 1944.15, before construction is started, of the site on which the dwelling is located or to be built, except as indicated in Part 1822, Subpart G (paragraph VII L of FmHA Instruction 444.8).

(2) Have the experience and ability to complete the type of proposed work in a competent and workmanlike manner.

(3) Be financially responsible and have the ability to finance or obtain financing for the proposed housing or rehabilitation.

(4) Comply with the requirements of Part 1901 Subpart E "Civil Rights Compliance Requirements" and the Equal Credit Opportunity Act as required by § 1910.2 of Part 1910 Subpart A.

(5) Plan to build or rehabilitate dwellings which will qualify for purchase by RH applicants and which will be in compliance with all applicable laws, ordinances, and codes.

(6) Have the legal capacity to enter into the required agreements and the actual capacity to carry them out.

(c) *Limitations:* (1) Conditional commitments will be issued only in cases where the commitment applicant's selling price does not exceed the commitment price, which will never be more than the appraised value minus customary closing costs.

(2) Conditional commitments will be issued by FmHA only for new homes to be constructed or existing homes to be rehabilitated.

(3) Conditional commitments will not be issued after construction has started.

(4) Number of conditional commitments.

(i) The total number of commitments issued in any locality will not exceed the number of homes for which there is an immediate and ready market in that locality.

(ii) The number of houses on which conditional commitments will be outstanding to a commitment applicant at any time will not exceed 15 in any one county unless authorized by the State Director after the State Director:

(A) Determines that a larger number of commitments must be made to meet the immediate housing needs in the area;

(B) Determines that authorizing more than 15 commitments to one

commitment applicant will not reduce the participation of small volume builders in the Rural Housing program; and

(C) Provides guidelines to the County Supervisor to assure that all builders active in the area have equal opportunity to obtain more than 15 conditional commitments.

(iii) The total number of conditional commitments outstanding in the area served by a County Office will not exceed the number on which the County Supervisor can reasonably expect to be able to approve RH loans within 3 months after the houses covered by the commitments are completed, considering the availability of loan funds and the number of applications in the County Office.

(5) The period of the conditional commitment will be for 12 months from the date of issue. The commitment may be extended for an additional 6 months if justified because of (1) unexpected delays in construction caused by such factors as bad weather or materials shortages, or (2) marketing difficulties.

(6) When five or more conditional commitments have been issued during a 12 month period an affirmative marketing plan will be submitted in accordance with § 1901.203(c) of Part 1901 of Subpart E.

(d) *Conditional commitments involving packaging of applications:* A conditional commitment may be made to a builder who packages a Rural Housing application for an applicant to buy the property. In cases when the dwelling is presold and is to be constructed for sale only to a specific applicant and the information on the house and the loan applicant is submitted at the same time, all of the following conditions must be met to avoid misunderstanding of FmHA's obligation to either the RH applicant or the conditional commitment applicant:

(1) The conditional commitment will not be approved until the RH loan has been approved.

(2) Construction will not begin until the County Office has received notice from the Finance Office that funds are obligated for the RH loan.

(3) The RH loan will be closed only after the dwelling is constructed or the rehabilitation completed and final inspection has been made.

(e) *Fees:* Each commitment applicant will pay an application fee at the time an application is submitted for a conditional commitment. The fee for each dwelling will be:

(1) For proposed construction of new dwellings—$65.

(2) For existing dwellings to be rehabilitated—$50.

(f) *Processing applications:* (1) Applications for conditional Commitments will be submitted on Form FmHA 1944–36 "Application for Conditional Commitment". Attachments as outlined on the form will be included for each individual dwelling for which a Conditional Commitment is requested.

(2) *Transmittal of fees.* The County Supervisor will transmit application fees on Form FmHA 451–2, "Schedule of Remittances". The payment will be handled with all other payments for the day in accordance with Part 1951 Subpart B and the FMI for Form FmHA 451–2.

(3) *Evaluation of applications.* The County Supervisor will take the following actions in the order specified:

(i) Determine whether the commitment applicant meets the requirements of paragraphs (b) and (c) of this section.

(ii) Determine whether the dwelling and site meet the requirements of this Subpart and Subpart A, Part 1924 and will comply with all local codes and ordinances. The property must meet the requirements of Part 1804, Subpart D (FmHA Instruction 424.5).

(iii) If the commitment applicant and the dwelling and site have qualified, an appraisal will be made in accordance with FmHA Instruction 422.3 (available in any FmHA office).

(4) *Failure of applicant or dwelling to qualify.* In case any commitment applicant or dwelling does not qualify for a conditional commitment, the documents attached to the application will be returned to the commitment applicant with a letter explaining why the application was not approved. If the application is denied for failure to meet the requirements of paragraph (b) (2) or (3) of this Section, notice of appeal rights will be given as required by § 1900.53, of Part 1900, Subpart B.

(i) The application fee will be refunded if for any reason preliminary inspection of the property or investigation of the commitment applicant indicates that a conditional commitment cannot be issued. For example, the property might be located in a nonrural area or the dwellings may not be of a type that the FmHA can appropriately finance. If a refund is required, a memorandum should be sent to the Finance Office indicating the commitment applicant's name together with the date and amount of fees paid. The memorandum should also indicate the number of commitments being denied and amount of fees to be refunded.

(ii) Application fees will not be refunded for any property on which the appraisal has been made.

(5) *Conditional commitment approval.* The State Director, District Director, County and Assistant County Supervisors are authorized to approve conditional commitments provided the commitment price does not exceed the loan approval authority for Section 502 RH loans as outlined in Subpart A, Part 1901, (available in any FmHA office). If the application is approved, the County Supervisor will complete and sign Form FmHA 444–11 "Conditional Commitment". When a qualified applicant applies for a loan to buy a dwelling on which a conditional commitment has been issued, the commitment documents will be transferred to the RH loan docket.

(g) *Inspections.* Inspections of work to be done will be performed in accordance with Part 1924 Subpart A. The original and one copy of Form FmHA 424–12, "Inspection Report", will be prepared. The County Supervisor will give the commitment applicant the original of Form FmHA 424–12 and the copy will be retained in the County Office case file. Failure to correct any deficiencies or to complete the work in accordance with plans and specifications approved by FmHA will be a basis for cancelling the conditional commitment.

(h) *Changes in plans, specifications, and/or commitment price.* The County Supervisor is authorized to approve changes in plans and specifications that are consistent with HUD MPS and Exhibit D of Part 1924 Subpart A. If the changes are requested after an option has been executed by a rural housing applicant, the change will be approved only after the applicant and the builder submit a written request for approval.

If a change will reduce or increase the appraised value of the property, the County Supervisor will revise the commitment price and inform the commitment applicant. Also, in cases when the holder of a commitment reports to the County Supervisor that costs associated with the construction or repair of a dwelling have increased, the approval official may increase the commitment price provided the property has not been optioned by an RH applicant, and the County Supervisor determines that the increase is clearly justified, the circumstances causing the price increase were beyond the commitment applicant's control, and the value of the property is adequate to permit the increased commitment price. A revised appraisal report will be prepared. The conditional commitment will be revised, initialed, and dated by the person authorizing the change.

(i) *Cancellation of outstanding conditional commitments.* (1)

Conditional commitments may be cancelled when construction of the dwelling is not begun within 60 days after the commitment is issued.

(2) Conditional commitments will be cancelled when construction is not in accordance with all FmHA requirements, approved plans, specifications, or MPS, and the builder refuses to make corrections necessary for compliance.

(j) *Folder maintenance.* Documents prescribed in this Subpart will be filed in accordance with FmHA Instruction 2033–A (available at any FmHA office).

(k) *Builder's warranty.* The builder or seller, as appropriate, will execute Form FmHA 424–19, "Builder's Warranty", or provide a 10 year insured warranty when the loan to buy the dwelling is closed.

§ 1944.46 Construction financing for builders by private credit sources.

(a) The purpose of this section is to provide a method by which a builder may be able to obtain construction credit from commercial sources of credit. It may eliminate the need to use a supervised bank account and also eliminate the need for the borrower to make payments on the loan during construction.

(b) This method may be used under the following conditions:

(1) A conditional commitment has been or will be issued, an RH loan approved, and funds obligated for the applicant in accordance with § 1944.45, or

(2) The applicant owns a building site and will contract the construction or improvement of the building or buildings. In such a case:

(i) The applicant will retain ownership of the site and not convey title to the builder, and

(ii) The lender providing the construction financing will not take a mortgage on the site owned by the applicant or otherwise require the applicant to secure the construction loan.

(c) This method may not be used if the RH loan is made in participation with an FO or an individual SW loan.

(d) Loan docket forms will be prepared in accordance with § 1944.30 of this Subpart. Applicants who own the building site will be required to obtain and submit to the County Supervisor preliminary title evidence in accordance with Part 1807 (FmHA Instruction 427.1). Satisfactory title or leasehold interest in the property must be confirmed before execution of Form FmHA 424–6, "Construction Contract" (available in all County Offices), and Form FmHA 444–16, "Notice of Loan Approval".

(e) When the processed original of Form FmHA 440–1, is received from the Finance Office, the County Supervisor will complete and sign an orginal and one copy of Form FmHA 444–16. The original of Form FmHA 444–16 will be given to the builder and a copy will be retained in the loan docket.

(f) The builder may present Form FmHA 444–16, Form FmHA 444–11, FmHA 440–34, or FmHA 424–6, as appropriate, to a commercial lender to obtain construction financing. The County Supervisor will make no commitments to the lender except as indicated on the above forms.

(g) The required inspections will be made by FmHA or a firm or company that will provide a 10 year insured warranty. In all cases the final inspection will be made by FmHA. Copies of Form FmHA 424–12, will be provided to the builder and, if requested, to the commercial lender.

(h) The lender is responsible for determining the amount that will be advanced to the builder under the construction financing arrangement, and for determining any measures necessary to protect its interest.

(i) When construction is completed, the loan will be closed in accordance with Part 1807 of Subpart A of this Chapter (FmHA Instruction 427.1), usually within 10 days after satisfactory competition of construction.

§§ 1944.47–1944.50 [Reserved]

Exhibit A—Information Required To Package Applications for Section 502 Rural Housing Loans

I. General Information

Persons or organizations that want to assist applicants in submitting applications to the Farmers Home Administration (FmHA) should first meet with the County Supervisor. If these discussions indicate that the person or organization is capable of satisfactorily delivering complete information about applicants and houses that are likely to qualify for Rural Housing (RH) loans, the County Supervisor will review in detail the information that is needed and the processing steps required in competing an RH loan. The County Supervisor will provide assistance and guidance to all packagers in obtaining the required information. The following FmHA forms and this exhibit may be provided to prospective packagers as needed:

(A) Form FmHA 1944–12, "Rural Housing Loan Application Package."

(B) Form FmHA 410–4, "Application for Rural Housing Loans (Nonfarm Tract)."

(C) Form FmHA 410–1, "Application for FmHA Services."

(D) Form FmHA 410–5, "Request for Verification of Employment."

(E) Form FmHA 424–2, "Description of Materials."

(F) Form FmHA 440–34, "Option to Purchase Real Property."

II. Information Packager or Applicant Must Provide

(A) *Information To Be Submitted For All Applicants.*

(1) The applicant should complete the appropriate application form (FmHA Form 410–1 or 410–4).

(a) All information must be complete and accurate.

(b) If the applicant has business income, the current operating statement must be attached.

(c) The applicant must date and sign the application form.

(2) Form FmHA 410–5, is used to check employment and income of applicants. The form should be mailed to the employer to be completed and returned directly to the County Office. FmHA will not provide franked envelopes to a packager for this purpose.

(3) In cases where it appears that the applicant has sufficient income or assets to qualify for housing credit from another source, a diligent effort must be made to obtain such credit from at least two lenders who customarily make long-term housing loans in the area. If such lenders are unable to provide the credit needed, their written response stating why they cannot assist the applicant should be included in the loan package.

(4) The information specified in paragraphs II B or II C of this Exhibit, whichever is applicable, will be submitted. In case FmHA has issued a conditional commitment on the property, information on the house will be on file in the County Office and need not be resubmitted.

(5) If a house to be purchased is under construction, the loan will not be closed until construction is completed. In such a case the information in paragraph II C of this Exhibit will be submitted.

(B) *Information needed for loans to purchase new homes or to build or rehabilitate homes.* The information requested on the front page of Form FmHA 1944–36 will be submitted along with the completed form. This applies regardless of whether a conditional commitment is being requested in connection with the package.

(C) *Information to be Submitted for Loans To Buy Existing Homes.*

(1) Form FmHA 1944–12 "Rural Housing Loan Application Package."

(2) A signed or certified copy of an option on the property. The option must provide that any payments made by the applicant will be refunded if the loan cannot be made. Form FmHA 440–34, may be used for this purpose.

(3) A termite certification whenever required.

(4) In case major improvements are involved, submit three sets of complete drawings and specifications of the work that must be done, and a contractor's bid or a reliable cost estimate.

(5) If the house qualifies as an existing home, is less than a year old, and an individual water or sewage system is involved, include a certification by the builder that the house and any water and waste disposal system have been or will be built or installed in accordance with the local building codes and plans and specifications.

Such plans and specifications will also be submitted. Evidence of approval by health authorities having jurisdiction in the area also wil be included. If the house is a year or more old, the County Supervisor will determine that the water and/or sewage system is functionally adequate and that the house meets FmHA requirements.

(6) Direction map to the property.

(7) Plot plan drawn to scale showing house location and related facilities.

III Review and Acceptance of Completed Package

During the initial discussions with packagers, the packager should understand the necessity for, and agree that, the loan packages will be assembled in the order shown on Form FmHA 1944–12 before they are delivered to the County Office. Form FmHA 1944–12 must be signed by the packager and be included with the materials submitted; otherwise, the packaged application will not be accepted. The County Supervisor will review each loan package when it is received and request any additional information needed. An affirmative fair hosing plan will be submitted in accordance with § 1901.203(c) of Part 1901 Subpart E. The County Supervisor will determine eligibility according to Part 1910 Subpart A but will not proceed with the processing of the loan until the applicant has been interviewed. A personal interview will be conducted by an FmHA employee with all applicants before approval of the requested loan in accordance with § 1944.26(e) of this Subpart.

(A) If the applicant appears to be qualified and all needed material is available, the County Supervisor will process the application in accordance with the regulations.

(B) If a loan can be approved, the County Supervisor will notify the applicant including any requirements that must be met prior to closing the loan. If for any reason a loan cannot be made, the County Supervisor will notify the applicant and the packager. If the loan is denied because the applicant is determined ineligible the applicant will be notified in accordance with § 1910.6 of Subpart A, Part 1910.

IV Packagers' Responsibilities

Packagers should fully understand their responsibilities in helping applicants to assemble their RH loan applications and that no fees may be charged for providing this service. Packagers must also comply with the requirements of Part 1901 Subpart E "Civil Rights Compliance Requirements" and the Equal Credit Opportunity Act as provided in § 1910.2 of Part 1910 Subpart A.

V District Directors' Review of Loans Originated by Application Packagers

District Directors are responsible for reviewing the file of a representative number of borrowers whose RH applications were submitted to the County Office by a packager. At least 5 percent of the cases packaged by each packager working in the county will be reviewed. The folders reviewed will be randomly selected and reviewed at scheduled office visits throughout the year in accordance with §§ 2006.604(c) and 2006.605(a)(1) of FmHA Instruction 2006–M (available in any FmHA office). The review will be made to determine whether: The applicant's income was properly verified; any credit report received was mailed from the Credit Reporting firm directly to the County Supervisor; the County Supervisor interviewed and counseled with the applicant prior to loan approval; the applicant was eligible for the RH assistance granted; and the loan was in accordance with FmHA procedures. Any incidence of unethical activity by a packager or the approval of improper loans by a County Supervisor will be reported promptly to the State Director for appropriate handling.

Exhibit B—Addresses for Authentication of Alien Registration Cards

This Exhibit lists the addresses of the Immigration and Naturalization Service district offices. To comply with § 1944.9(c) of this Subpart, County Supervisors will request verification of the validity of alien registration cards by writing to the nearest office. Following the list of offices is a sample letter that may be used for authenticating the Alien Registration cards.

A list of these offices follows:

Albany, New York 12207,Post Office and Courthouse, Room 220, 445 Broadway
Anchorage, Alaska 99501, U.S. Post Office and Courthouse Building, Room 401, 632 W. 6th Avenue
Atlanta, Georgia 30309, 1430 West Peachtree Street, NW.
Baltimore, Maryland 21201, E. A. Garmatz Federal Building, 100 S. Hanover St.
Boston, Massachusetts 02203, John Fitzgerald Kennedy Federal Building, Government Center
Buffalo, New York 14202, 68 Court Street
Chicago, Illinois 60604, Dirksen Federal Office Building, 219 South Dearborn Street
Cincinnati, Ohio 45201, U.S. Post Office and Courthouse, 5th and Walnut Street, Post Office Box 537
Cleveland, Ohio 44199, Anthony J. Clebrezze, Room 1917, Federal Building, 1240 East 9th Street
Dallas, Texas 75202, Room 1C13, Federal Building, 1100 Commerce Street
Denver, Colorado 80202, 17027 Federal Office Building
Detroit, Michigan 48207, Federal Building, 333 Mount Elliott Street
El Paso, Texas 79984, 343 U.S. Courthouse, Post Office Box 9398
Hammond, Indiana 46320, 102 Federal Building, 507 State Street
Hartford, Connecticut 06105, 900 Asylum Avenue
Helena, Montana 59601, Federal Building, Post Office Box 1724
Honolulu, Hawaii 96809, 595 Ala Moana Boulevard, Post Office Box 461
Houston, Texas 77208, Federal Building, U.S. Courthouse, 515 Rusk Avenue, Post Office Box 61630
Kansas City, Missouri 64106, Suite 1100, 324 E Eleventh Street
Los Angeles, California 90012, 300 North Los Angeles Street
Memphis, Tennessee 38104, 814 Federal Building, 167 North Main Street
Miami, Florida 33130, Room 1324, Federal Building, 51 Southwest First Avenue
Milwaukee, Wisconsin 53202, Room 186 Federal Building, 517 East Wisconsin Avenue
Newark, New Jersey 07102, Federal Building, 970 Broad Street
New Orleans, Louisiana 70113, Postal Services Building, 701 Loyola Avenue
New York, New York 10007, 26 Federal Plaza
Norfolk, Virginia 23502, Room 207, Bank of Virginia Building, 870 North Military Highway
Omaha, Nebraska 68102, Room 1008, Federal Office Building, 106 South 15th Street
Philadelphia, Pennsylvania-19106, Room 132, U.S. Courthouse, Independence Mall West, 601 Market Street
Phoenix, Arizona 85025, Federal Building, 230 North First Avenue
Pittsburgh, Pennsylvania 15222, 2130 Federal Building, 1000 Liberty Avenue
Port Isabel, Texas 78566, Rural Route 3, Los Fresnos, Texas
Portland, Maine 04112, 76 Pearl Street
Portland, Oregon 97209, Federal Office Building, 511 N.W. Broadway
Providence, Rhode Island 02903, Federal Building, U.S. Post Office, Exchange Terrace
Reno, Nevada 89502, Suite 150, 350 South Center Street
Saint Albans, Vermont 05478, Federal Building, Post Office Box 591
Saint Louis, Missouri 63101, Room 423, U.S. Courthouse and Customhouse, 1114 Market Street
Saint Paul, Minnesota 55111, 180 East Kellogg Blvd.
Salt Lake City, Utah 84138, Room 4103, New Federal Building, 125 South State Street
San Antonio, Texas 78206, Suite A301, U.S. Federal Building, 727 East Durango
San Diego, California 92188, 880 Front Street
San Francisco, California 94111, Appraisers Building, 630 Sansome Street
San Juan, Puerto Rico 00936, U.S. Immigration and Naturalization Service, GPO Box 5068, Hato Rey, Puerto Rico
Seattle, Washington 98134, 815 Airport Way South
Spokane, Washington 99201, 691 U.S. Courthouse Building
Washington, D.C. 20538, 1025 Vermont Avenue NW.

Sample Letter for Authenticating Alien Registration Cards

To: Immigration and Naturalization Officer

Subject: (Mr.) and (and Mrs.) ———
(Passport or Alien Registration Number) ———
(Address) ———

(Mr.) (and Mrs.) (Ms.) ——— (has) applied for a Rural Housing loan from the Farmers Home Administration (FmHA). One condition for eligibility of noncitizens is that the applicant has been admitted to the United States for permanent residency or on indefinite parole.

Please advice whether the identified alien registration card is valid and entitles the holder to remain in the United States for permanent residency or on indefinite parole by completing the last paragraph of this letter and signing in the space provided. Attached is a self-addressed franked envelope for returning the information to this office.

Sincerely,

County Supervisor, FmHA ——————
County Office Address ——————

Privacy Act Consent

I have stated to FmHA personnel that I have been admitted to the U.S. (for permanent residency) (on indefinite parole). My signature below authorizes verification of the requested information.

Applicant ——————

Alien Registration Card No. —— (is) (is not) valid and (does) (does not) entitle the holder to remain in the U.S. (for permanent residency) (on indefinite parole).

Signature ——————
Title ——————
Immigration and Naturalization Service

Exhibit C—Maximum Adjusted Income Limits for Rural Housing Programs

BILLING CODE 3410-07-M

Exhibit C - Maximum Adjusted Income Limits for Rural Housing Programs

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN ALABAMA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
NORTHWEST	6,900	9,000	11,000	15,600
COLBERT	FRANKLIN	LAUDERDALE	MARION	WINSTON
WEST	5,600	7,300	9,300	15,600
BIBB	FAYETTE	GREENE	HALE	LAMAR
PICKENS	TUSCALOOSA			
BIRMINGHAM	8,100	10,600	12,400	17,900
BLOUNT	CHILTON	JEFFERSON	SHELBY	ST CLAIR
WALKER				
EAST	6,600	8,600	10,500	15,600
CALHOUN	CHAMBERS	CHEROKEE	CLAY	CLEBURNE
COOSA	ETOWAH	RANDOLPH	TALLADEGA	TALLAPOOSA
SOUTH CENTRAL	4,900	6,400	9,300	15,600
BULLOCK	BUTLER	CRENSHAW	LOWNDES	MACON
PIKE				
TOMBIGBEE	5,300	6,900	9,300	15,600
CHOCTAW	CLARKE	CONECUH	DALLAS	MARENGO
MONROE	PERRY	SUMTER	WASHINGTON	WILCOX
SOUTHEAST	6,200	8,100	9,900	15,600
BARBOUR	COFFEE	COVINGTON	DALE	GENEVA
HENRY	HOUSTON			

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN ALABAMA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
SOUTH	7,400	9,600	11,700	16,200
BALDWIN	ESCAMBIA	MOBILE		
CENTRAL	8,300	10,800	12,400	18,300
AUTAUGA	ELMORE	MONTGOMERY		
LEE CO	7,500	9,700	11,900	16,400
LEE	RUSSELL			
NORTH CENTRAL	6,600	8,600	10,500	15,600
CULLMAN	LAWRENCE	MORGAN		
TOP OF ALA	6,900	9,000	11,000	15,600
DEKALB	JACKSON	LIMESTONE	MADISON	MARSHALL

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN ARIZONA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
MARICOPA	9,200	12,000	14,700	20,300
MESA	PEORIA	BUCKEYE	AVONDALE	
TUCSON	8,400	10,900	13,400	18,400
TUCSON				
DIST III	6,400	8,400	11,200	15,600
PRESCOTT SPRINGERVILLE	COTTONWOOD WINLOW ROCK	FLAGSTAFF	HOLBROOK	SNOWFLAKE
DIST IV	8,200	10,600	13,000	18,000
KINGMAN	LAKE HAVASU	PARKER	YUMER	
DIST V	7,400	9,700	11,800	16,300
SACATON	FLORENCE	ELOY	CASA GRANDE	GLOBE
DIST VI	7,700	10,000	12,200	16,900
WILCOX	BENSON	DOUGLAS	NOGALER	SAFFORD

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN ARKANSAS

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
WEST CENTRAL	6,000	7,800	9,600	15,600
CLARK	CONWAY	GARLAND	HOT SPRINGS	JOHNSON
MONTGOMERY	PERRY	PIKE	POPE	YELL
SOUTHWEST	6,100	7,900	9,700	15,600
CALHOUN	COLUMBIA	DALLAS	HEMSTEAD	HOWARD
LAFAYETTE	LITTLE RIVER	MILLER	NEVADA	OUACHITA
SEVIER	UNION			
SOUTHEAST	5,600	7,300	9,300	15,600
ARKANSAS	ASHLEY	BRADLEY	CHICOT	CLEVELAND
DESHA	DREW	GRANT	JEFFERSON	LINCOLN
NORTHWEST	6,000	7,800	9,500	15,600
BAXTER	BENTON	BOONE	CARROLL	MADISON
MARION	NEWTON	SEARCY	WASHINGTON	
EAST	5,600	7,300	9,300	15,600
CLAY	CRAIGHEAD	CRITTENDEN	CROSS	GREENE
LAWRENCE	LEE	MISSISSIPPI	PHILLIPS	POINSETT
RANDOLPH	ST FRANCIS			
WHITE RIVER	5,100	6,600	9,300	15,600
CLEBURNE	FULTON	INDEPENDENCE	IZARD	JACKSON
SHARP	STONE	VAN BUREN	WHITE	WOODRUFF
CENTRAL	7,500	9,700	11,900	16,400
FAULKNER	LONOKE	MONROE	PRAIRIE	PULASKI
SALINE				

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN ARKANSAS

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
WESTERN	5,800	7,500	9,300	15,600
CRAWFORD	FRANKLIN	LOGAN	POLK	SCOTT
SEBASTIAN				

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN CALIFORNIA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 1	7,600	9,900	12,100	16,700
COLUSA	DEL NORTE	GLENN	HUMBOLDT	LASSEN
MODOC	SHASTA	SISKIYOU	TEHAMA	TRINITY
DISTRICT 2	8,800	11,500	14,100	19,400
BUTTE	EL DORADO	NEVADA	PLACER	PLUMAS
SACRAMENTO	SIERRA	SUTTER	YOLO	YUBA
DISTRICT 3	8,300	10,800	13,200	18,200
ALPINE	AMADOR	CALAVARAS	MADERA	MARIPOSA
MERCED	SAN JOAQUIN	STANISLAUS	TUOLUMNE	
DISTRICT 4	8,800	11,500	14,100	19,400
ALAMEDA	CONTA COSTA	LAKE	MARIN	MENDOCINO
MONTEREY	NAPA	SAN BENITO	SAN FRANCISCO	SAN LUIS
SANTA CRUZ	SANTA BARBARA	SOLANO	SONOMA	VENTURA
SAN MATIO	STS CLARA			
DISTRICT 5	7,400	9,600	11,800	16,200
FRESNO	KINGS	TULARE		
DISTRICT 6	9,400	12,300	14,900	20,700
IMPERIAL	INYO	KERN	ORANGE	RIVERSIDE
SAN BERNARDINO	SAN DIEGO	LOS ANGELES	MONO	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN COLORADO

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
REGION 1	7,600	9,900	12,100	16,700
MORGAN	WASHINGTON	LOGAN	SEDGWICK	YUMA
PHILLIPS				
REGION 2	8,700	11,300	13,800	19,100
WILD	LARIMER			
REGION 3	10,300	13,400	14,900	22,700
BOULDER	GILPIN	CLEAR CREEK	JEFFERSON	ADAMS
ARAPAHOE	DOUGLAS			
REGION 4	8,400	10,900	13,400	18,400
PARK	TELLER	EL PASO		
REGION 5	7,200	9,400	11,500	15,900
ELBERT	LINCOLN	CHEYENNE	KIT CARSON	
REGION 6	6,300	8,200	11,200	15,600
BACA	BENT	PROWERS	KIOWA	OTERO
CROWLEY				
REGION 7	8,600	11,200	13,700	18,900
PUEBLO				
REGION 7B	5,700	7,400	11,200	15,600
LAS ANIMAS	HUERFANO			

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN COLORADO

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
REGION 8	6,600	8,600	11,200	15,600
SAGUACHE	MINERAL	RIO GRANDE	ALAMOSA	CONEJOR
COSTILLA				
REGION 9	7,400	9,600	11,800	16,200
DOLORES	MONTEZUMA	SAN JUAN	LA PLATA	ARCHULETA
REGION 10	6,700	8,800	11,200	15,600
GUNNISON	HINSDALE	OURAY	SAN MIGUEL	MONTROSE
DELTA				
REGION 11	7,800	10,200	12,500	17,200
MESA	GARFIELD	RIO BLANCO	MOFFAT	
REGION 12	9,200	11,900	14,600	20,200
ROUTT	JACKSON	GRAND	SUMMIT	EAGLE
PITKIN				
REGION 13	7,200	9,400	11,600	16,000
LAKE	CHAFFEE	FREMONT	CUSTER	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN CONNECTICUT

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
HARTFORD	10,600	13,800	14,900	23,300
LITCHFIELD	10,100	13,200	14,900	22,300
MIDDLESEX	10,600	13,800	14,900	23,300
NEW HAVEN	10,100	13,200	14,900	22,300
NEW LONDON(E)	10,500	13,600	14,900	23,000
NEW LONDON(W)	10,500	13,600	14,900	23,000
WINDHAM (E)	9,200	11,900	14,700	20,200
WINDHAM (W)	9,200	11,900	14,700	20,200
TOLLAND	11,600	15,100	14,900	25,600
FAIRFIELD	15,100	19,600	15,100	33,200

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN DELAWARE

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
KENT	8,500	11,000	12,400	18,600
NEW CASTLE	11,000	14,300	12,400	24,200
SUSSEX	8,300	10,800	12,400	18,200

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN FLORIDA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 1	7,800	10,100	12,400	17,100
ESCAMBIA	OKALOOSA	SANTA ROSA		
DISTRICT 2	6,400	8,300	10,200	15,600
BAY	CALHOUN	FRANKLIN	GADSDEN	GULF
HOLMES	JACKSON	JEFFERSON	LEON	LIBERTY
WAKULLA	WALTON	WASHINGTON		
DISTRICT 3	7,100	9,300	11,400	15,800
ALACHUA	BRADFORD	COLUMBIA	DIXIE	GILCHRIST
HAMILTON	LAFAYETTE	SUWANNEE	MADISON	TAYLOR
UNION				
DISTRICT 4	8,200	10,700	12,400	18,100
BAKER	CLAY	DUVAL	FLAGLER	NASSAU
PUTNAM	ST JOHN			
DISTRICT 5	6,100	8,000	9,800	15,600
CITRUS	HERNANDO	LEVY	MARION	SUMTER
DISTRICT 6	7,900	10,300	12,400	17,300
BREVARD	LAKE	SEMINOLE	ORANGE	OSCEOLA
VOLUSIA				
DISTRICT 7	7,600	9,900	12,200	16,800
DE SOTO	HARDEE	HIGHLANDS	OKEECHOBEE	POLK

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN FLORIDA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 8	7,500	9,800	12,000	16,500
HILLSBOROUGH	MANATEE	PASCO	PINELLAS	
DISTRICT 9	7,800	10,200	12,400	17,200
CHARLOTTE	COLLIER	GLADES	HENDRY	SARASOTA
LEE				
DISTRICT 10	8,400	11,000	12,400	18,500
INDIAN RIVER	MARTIN	PALM BEACH	ST LUCIE	
DISTRICT 11	9,500	12,300	12,400	20,800
BROWARD	DADE	MONROE		

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN GEORGIA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
COASTAL APDC	7,500	9,700	11,900	16,400
	LIBERTY	LONG	MC INTOSH	GLYNN	CAMDEN
	EFFINGHAM	BRYAN	CHATHAM		
NORTHEAST	7,600	9,900	12,100	16,700
	JACKSON	BARROW	MADISON	ELBERT	CLARKE
	OGLETHORPE	OCONEE	WALTON	MORGAN	GREENE
CEN SAVANNAH R	6,600	8,600	10,500	15,600
	LINCOLN	WILKER	TALIAFERRO	WARREN	MC DUFFIE
	GLASCOCK	JEFFERSON	EMANUEL	SCREVAN	JENKINS
	COLUMBIA	BURKE	RICHMOND		
ALTAMAHA SO.	5,900	7,700	9,500	15,600
	APPLING	CANDLER	BULLOCH	EVANS	JEFF DAVIS
	TATTNALL	TOOMBS	WAYNE		
ATLANTA REG	10,300	13,400	12,400	22,700
	COBB	DOUGLAS	FULTON	CLAYTON	DE KALB
	ROCKDALE	GWINNETT			
MIDDLE	8,000	10,400	12,400	17,500
	MONROE	JONES	CRAWFORD	BIBB	TWIGGS
	PEACH	HOUSTON			
SOUTH	6,200	8,000	9,800	15,600
	TURNER	BEN HILL	IRWIN	TIFT	COOK
	BERRIEN	BROOKS	LOWNDES	LANIER	ECHOLS

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN GEORGIA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
MIDDLE FLINT	5,800	7,500	9,300	15,600
WEBSTER	TAYLOR	MACON	MARION	SCHLEY
DOOLY	CRISP	SUMPTER		
LOWER CHATTAHO	5,600	7,300	9,300	15,600
CLAY	COLUMBUS	HARRIS	TALBOT	CHATTAHOOCHEE
STEWART	QUITMAN	RANDOLPH		
OCONEE AREA	6,400	8,400	10,300	15,600
JASPER	PUTNAM	HANCOCK	BALDWIN	WASHINGTON
WILKINSON	JOHNSON			
COOSA REGION	8,100	10,500	12,400	17,800
DADE	MARALSON	WALKER	CATOOSA	CHATTOOGA
GORDON	FLOYD	BARTOW	POLK	PAULDING
SOUTHEAST	6,000	7,800	9,600	15,600
COFFEE	BACON	ATKINSON	WARE	PIERCE
BRANTLEY	CLINCH	CHARLTON		
CHATTAHO-FLINT	7,100	9,200	11,300	15,700
CARROLL	HEARD	COWETA	TROUP	MERIWETHER
MCINTOSH TRAIL	9,000	11,700	12,400	19,800
HENRY	FAYETTE	SPALDING	NEWTON	BUTTS
PIKE	LAMAR	UPSON		

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN GEORGIA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
SOUTHWEST	5,900	7,700	9,500	15,600
TERRELL	LEE	CALHOUN	DOUGHERTY	WORTH
EARLY	BAKER	MITCHELL	COLQUITT	MILLER
SEMINOLE	DECATUR	GRADY	THOMAS	
NORTH	8,300	10,800	12,400	18,200
WHITFIELD	MURRAY	FANNIN	GILMER	PICKENS
CHEROKEE				
HEART OF GA	5,700	7,400	9,300	15,600
LAURENS	TREUTLEN	BLECKLEY	PULASKI	DODGE
WILCOX	WHEELER	TELFAIR	MONTGOMERY	
GA. MOUNTAINS	7,200	9,400	11,500	15,900
TOWNS	RABUN	UNION	LUMPKIN	WHITE
HABERSHAM	DAWSON	FORSYTH	HALL	BANKS
FRANKLIN	HART	STEPHENS		

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN IDAHO

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT I	7,500	9,800	12,000	16,500
BOUNDARY	BENEWAH	KOOTENAI	SHOSHONE	BONNER
DISRTICT II	8,100	10,600	13,000	17,900
IDAHO	LEWIS	CLEARWATER	NEZPERCE	LATAH
DISTRICT III	8,200	10,600	13,000	18,000
CANYON ADA	BOISE ELMORE	GEM PAYETT	VALLEY ADAMS	OWYHEE WASHINGTON
DISTRICT IV	7,000	9,100	11,200	15,600
CASSIA MINIDOKA	CAMAS LINCOLN	GOODING TWIN FALLS	BLAINE	JEROME
DISTRICT V	7,800	10,100	12,400	17,100
BINGHAM FRANKLIN	ONEIDA CARIBOU	BEAR LAKE	BANNOCK	POWER
DISTRICT VI	7,600	9,900	12,200	16,800
BUTTE MADISON	CUSTER TETON	BONNEVILLE JEFFERSON	CLARK LEMHI	FREMONT

MAXIMUN ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN ILLINOIS

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT I	9,000	11,700	14,300	19,700
JO DAVIES	STEPHENSON	OGLE	BUREAU	STARK
MARSHALL	PUTNAM			
NORTHWEST	9,200	12,000	14,700	20,300
CARROLL	LEE	WHITESIDE		
DISTRICT II	9,500	12,400	14,900	20,900
DE KALK	LASALLE	KENDALL	GRUNDY	KANKAKEE
IROQUOIS				
ROCK VALLEY M	10,500	13,700	14,900	23,100
WINNEBAGO	BOONE			
NORTHEASTERN	11,600	15,100	14,900	25,600
COOK	DU PAGE	KANE	MC HENRY	WILL
LAKE				
DISTRICT III(PT	9,700	12,700	14,900	21,400
KNOX	LIVINGSTON	MC LEAN		
BI-STATE METRO	10,200	13,300	14,900	22,500
MERCER	HENRY	ROCK ISLAND		
DIST IV (PART)	9,400	12,200	14,900	20,600
MACON	SANGAMON	CASS	MORGAN	SCOTT

MAXIMUN ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN ILLINOIS

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
WESTERN	7,200	9,300	11,500	15,900
FULTON	HANCOCK	HENDERSON	MC DONOUGH	WARREN
DISTRICT V	8,700	11,300	13,900	19,100
FORD	MASON	MENARD	LOGAN	DE WITT
PIATT	CHAMPAIGN	VERMILLION	SHELBY	MOULTRIE
DOUGLAS	COLES	EDGAR		
TRI-COUNTY	10,800	14,000	14,900	23,700
PEORIA	WOODFORD	TAZEWELL		
DIST VI(PART)	7,500	9,800	12,000	16,500
CLARK	CUMBERLAND			
TWO RIVER	7,500	9,800	12,000	16,500
ADAMS	SCHUYLER	BROWN	PIKE	
WEST CENTRAL V	7,800	10,100	12,400	17,100
CALHOUN	GREENE	JERSEY	MACOUPIN	MONTGOMERY
CHRISTIAN				
SOUTHWESTERN ME	9,800	12,700	14,900	21,500
MADISON	BOND	ST CLAIR	MONROE	CLINTON
WASHINGTON	RANDOLPH			
SOUTH CENTRAL	7,400	9,700	11,900	16,300
EFFINGHAM	FAYETTE	MARION		

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN ILLINOIS

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
GREATER EGYPT	7,300	9,500	11,600	16,000
JEFFERSON	FRANKLIN	PERRY	JACKSON	WILLIAMSON
SOUTHERN FIVE	6,100	8,000	11,200	15,600
UNION	JOHNSON	ALEXANDER	PULASKI	MASSAC
EMBARRAS	7,400	9,700	11,800	16,300
JASPER	CRAWFORD	CLAY	LAWRENCE	RICHLAND
GREATER WABASH	7,000	9,100	11,200	15,600
WAYNE	EDWARDS	WABASH	WHITE	
SOUTHEASTERN	6,200	8,000	11,200	15,600
HAMILTON	SALINE	GALLATIN	POPE	HARDIN

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN INDIANA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 1A	10,800	14,100	14,900	23,800
LAKE	PORTER			
DISTRICT 1B	7,900	10,300	12,600	17,300
NEWTON	JASPER	STARKE	PULASKI	
DISTRICT 2	9,500	12,300	14,900	20,800
LA PORTE	ST JOSEPH	ELKHART	MARSHALL	KOSCUISKO
DISTRICT 3A	8,500	11,000	13,500	18,600
WHITLEY	NOBLE	LA GRANGE	HUNTINGTON	STEUBEN
DISTRICT 3B	10,000	13,000	14,900	21,900
DE KALB	ALLEN	WELLS	ADAMS	
DISTRICT 4	8,800	11,400	14,000	19,300
BENTON CARROLL	WHITE MONTGOMERY	WARREN CLINTON	FOUNTAIN	TIPPECANOE
DISTRICT 5	8,900	11,600	14,200	19,500
FULTON TIPTON	CASS	MIAMI	WABASH	HOWARD
DISTRICT 6	8,800	11,400	14,000	19,300
GRANT RANDOLPH	BLACKFORD HENRY	JAY	MADISON	DELWARE

MAXIMUN ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN INDIANA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 7	8,200	10,700	13,100	18,100
PUTNAM	PARKE	VIGO	VERMILLION	CLAY
SULLIVAN				
DISTRICT 8	10,000	13,000	14,900	22,000
BOONE	HAMILTON	HENDRICKS	MARION	HANCOCK
MORGAN	JOHNSON	SHELBY		
DISTRICT 9	8,400	10,900	13,400	18,400
WAYNE	RUSH	FAYETTE	UNION	FRANKLIN
DISTRICT 10	8,000	10,400	12,800	17,500
OWEN	MONROE			
DISTRICT 11	8,400	10,900	13,400	18,400
BROWN	BARTHOLOMEW	DECATUR	JACKSON	JENNINGS
DISTRICT 12	8,100	10,500	12,900	17,800
RIPLEY	DEARBORN	OHIO	JEFFERSON	SWITZERLAND
DISTRICT 13A	7,800	10,100	12,400	17,100
GREENE	LAWRENCE	MARTIN	DAVIESS	KNOX
DISTRICT 13B	8,300	10,800	13,200	18,200
GIBSON	PIKE	VANDERBURGH	POSEY	WARRICK

MAXIMUN ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN INDIANA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 14	8,100	10,500	12,900	17,800
WASHINGTON	SCOTT	CLARK	HARRISON	FLOYD
DISTRICT 15	7,700	10,000	12,300	16,900
ORANGE	DUBOIS	CRAWFORD	SPENCER	PERRY

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN IOWA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 1	7,200	9,400	11,600	16,000
ALLAMAKEE	CLAYTON	FAYETTE	HOWARD	WINNESHIEK
DISTRICT 2	8,100	10,500	12,900	17,800
CERRO GORDO	FLOYD	FRANKLIN	HANCOCK	KOSSUTH
MITCHELL	WINNEBAGO	WORTH		
DISTRICT 3	7,700	10,100	12,300	17,000
BUENA VISTA	CLAY	DICKINSON	EMMET	LYON
O BRIEN	OSCEOLA	PALO ALTO	SIOUX	
DISTRICT 4	8,100	10,500	12,900	17,800
CHEROKEE	IDA	MONONA	PLYMOUTH	WOODBURY
DISTRICT 5	8,100	10,600	13,000	17,900
CALHOUN	HAMILTON	HUMBOLDT	POCAHOPNTAS	WEBSTER
WRIGHT				
DISTRICT 6	8,500	11,000	13,500	18,600
HARDIN	MARSHALL	POWESHIEK	TAMA	
DISTRICT 7	8,600	11,200	13,700	19,000
BLACK HAWK	BREMER	BUCHANAN	BUTLER	CHICKOSAW
GRUNDY				
DISTRICT 8	9,000	11,700	14,300	19,700
CEDAR	CLINTON	DELAWARE	DUBUQUE	JACKSON

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN IOWA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 9	10,200	13,300	14,900	22,500
MUSCATINE	SCOTT			
DISTRICT 10	9,100	11,900	14,500	20,100
BENTON	IOWA	JOHNSON	JONES	LINN
WASHINGTON				
DISTRICT 11	9,400	12,200	14,900	20,600
BOONE	DALLAS	JASPER	MADISON	MARION
POLK	STORY	WARREN		
DISTRICT 12	7,500	9,800	12,000	16,500
AUDUBON	CARROLL	CRAWFORD	GREENE	GUTHRIE
SAC				
DISTRICT 13	8,200	10,700	13,100	18,100
CASS	FREMONT	HARRISON	MILLS	MONTGOMERY
PAGE	POTTAWATTAMIE	SHELBY		
DISTRICT 14	6,600	8,600	11,200	15,600
ADAIR	ADAMS	CLARKE	DECATUR	RINGGOLD
TAYLOR	UNION			
DISTRICT 15	7,000	9,100	11,200	15,600
APPANOOSE	DAVIS	JEFFERSON	KEOKUK	LUCAS
MAHASKA	MONROE	VAN BUREN	WAPELLO	WAYNE

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN IOWA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 16	8,900	11,600	14,100	19,500
DES MOINES	HENRY	LEE	LOUISA	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN KANSAS

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
NORTHWEST	7,600	9,900	12,100	16,700
CHEYENNE	RAWLINS	DECATUR	NORTON	PHILLIPS
SMITH	SHERMAN	THOMAS	SHERIDAN	GRAHAM
ROOKS	OSBORNE	WALLACE	LOGAN	GOVE
TREGO	ELLIS	RUSSELL		
GR. SOUTHWEST	8,300	10,800	13,300	18,300
GREELEY	WICHITA	SCOTT	LANE	NESS
HAMILTON	KEARNY	FINNEY	HODGEMAN	STANTON
GRANT	HASKELL	GRAY	FORD	MORTON
STEVENS	SEWARD	MEADE	CLARK	
NORTH CENTRAL	7,000	9,100	11,200	15,600
JEWELL	REPUBLIC	MITCHELL	CLOUD	LINCOLN
OTTAWA	ELLSWORTH	SALINE		
GOLDEN BELT	8,100	10,500	12,900	17,800
RUSH	BARTON	PAWNEE	STAFFORD	EDWARDS
INDIAN HILL	8,000	10,400	12,700	17,500
KIOWA	PRATT	COMANCHE	BARBER	
MID-STATE	8,200	10,600	13,000	18,000
RICE	MC PHERSON	RENO		
CHIKASKIA	7,300	9,500	11,600	16,000
KINGMAN	HARPER	SUMNER		

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN KANSAS

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
BLUE STEM	7,000	9,100	11,200	15,600
GREENWOOD	ELK	CHAUTAUGUA	COWLEY	
CENTRAL PLAIN	9,000	11,700	14,300	19,700
HARVEY	SEDGWICK	BUTLER		
FLINT HILLS	7,100	9,300	11,400	15,800
DICKINSON	MORRIS	MARION	CHASE	LYONS
BIG LAKE	7,300	9,500	11,600	16,000
CLAY	RILEY	POTTAWATOMIE	GEARY	
MO-KAN	7,400	9,700	11,800	16,300
DONIPHAN	ATCHISON			
MARC	9,500	12,400	14,900	20,900
LEAVENWORTH	WYANDOTTE	JOHNSON		
SOUUTHEAST	6,500	8,500	11,200	15,600
WOODSEN	ALLEN	BOURBON	WILSON	NEOSHO
CRAWFORD	MONTGOMERY	LABETTE	CHEROKEE	
IN PROCESS	8,200	10,700	13,100	18,100
JEFFERSON	SHAWNEE	DOUGLAS	OSAGE	FRANKLIN
MIAMI	COFFEY	ANDERSON	LINN	

MAXIMUN ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN KANSAS

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
UNORGANIZED	6,700	8,800	11,200	15,600
WASHINGTON WABAUNSEE	MARSHALL	NEMAHA	BROWN	JACKSON

MAXIMUN ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN KENTUCKY

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
BARRON RIVER	5,800	7,600	9,300	15,600
ALLEN LOGAN	BARREN METCALFE	BUTLER MONROE	EDMONSON SIMPSON	HART WARREN
BIG SANDY	5,200	6,800	9,300	15,600
FLOYD	JOHNSON	MAGOFFIN	MARTIN	PIKE
BLUEGRASS	7,700	10,100	12,300	17,000
ANDERSON FAYETTE LINCOLN SCOTT	BOURBON FRANKLIN MADISON WOODFORD	BOYLE GARRARD MERCER	CLARK HARRISON NICHOLAS	ESTILL JESSAMINE POWELL
BUFFALO TRACE	6,000	7,800	9,600	15,600
BRACKEN	FLEMING	LEWIS	MASON	ROBERTSON
CUMBERLAND V	4,600	6,000	9,300	15,600
BELL LAUREL	CLAY ROCKCASTLE	HARLAN WHITLEY	JACKSON	KNOX
FIVCO	6,600	8,600	10,500	15,600
BOYD	CARTER	ELLIOTT	GREENUP	LAWRENCE
GATEWAY	5,700	7,400	9,300	15,600
BATH	MENIFEE	MONTGOMERY	MORGAN	ROWAN

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN KENTUCKY

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
GREEN RIVER	7,500	9,800	12,000	16,500
DAVIESS	HENDERSON	MC LEAN	OHIO	UNION
WEBSTER	HANCOCK			
KENTUCKIANA	8,400	11,000	12,400	18,500
BULLITT	HENRY	JEFFERSON	OLDHAM	SHELBY
SPENCER	TRIMBLE			
KENTUCKY R	4,100	5,300	9,300	15,600
BREATHITT	KNOTT	LEE	LESLIE	LETCHER
OWSLEY	PERRY	WOLFE		
LAKE CUMBER	5,100	6,700	9,300	15,600
ADAIR	CASEY	CLINTON	CUMBERLAND	GREEN
MC CREARY	PULASKI	RUSSELL	TAYLOR	WAYNE
LINCOLN TRAIL	6,700	8,800	10,700	15,600
BRECKINRIDGE	GRAYSON	HARDIN	LARUE	MARION
MEADE	NELSON	WASHINGTON		
NORTHERN	8,500	11,100	12,400	18,700
BOONE	CAMPBELL	CARROLL	GALLATIN	GRANT
KENTON	OWEN	PENDLETON		
PENNYRILE	6,500	8,500	10,400	15,600
CALDWELL	CHRISTIAN	CRITTENDEN	HOPKINS	LIVINGSTON
LYON	MUHLENBERG	TODD	TRIGG	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN KENTUCKY

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
PURCHASE	6,900	9,000	11,000	15,600
BALLARD	CALLOWAY	CARLISLE	FULTON	GRAVES
HICKMAN	MARSHALL	MCCRACKEN		

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN LOUISIANA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
ACADIANA	6,000	7,800	9,600	15,600
ACADIA	EVANGELINE	IBERIA	LAFAYETTE	ST LANDRY
ST MARTIN	ST MARY	VERMILLION		
CENTRAL REG	5,800	7,500	9,300	15,600
AVOYELLES	CATAHOULA	CONCORDIA	GRANT	LASALLE
RAPIDES	VERNON	WINN		
FLORIDA	7,100	9,200	11,300	15,700
ASCENSION	E BATON ROUGE	E FELICIANA	IBERVILLE	LIVINGSTON
POINTE COUPEE	ST HELENA	TANGIPAHOA	WASHINGTON	W BATON ROUGE
W FELICIANA				
NORTHEAST	5,400	7,100	9,300	15,600
CALDWELL	E CARROLL	FRANKLIN	JACKSON	MADISON
MOREHOUSE	OUACHITA	RICHLAND	TENSAS	UNION
W CARROLL				
NORHWEST	6,200	8,000	9,900	15,600
BIENVILLE	BOSSIER	CADDO	CLAIBURNE	DESOTA
LINCOLN	NATCHITOCHES	RED RIVER	SABINE	WEBSTER
IMPERIAL CAL	7,000	9,100	11,200	15,600
ALLEN	BEAUREGARD	CALCASIEU	CAMERON	JEFF DAVIS
TECHE	7,900	10,300	12,400	17,400
ASSUMPTION	LA FOURCHE	ST CHAS	ST JAMES	ST JOHN
TERREBONNE				

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN LOUISIANA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
METRO-REG	8,500	11,100	12,400	18,700
JEFFERSON	ORLEANS	PLAQUEMINES	ST BERNARD	ST TAMMANY

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN MAINE

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
ANDROSCOGGIN	7,500	9,800	12,000	16,500
AROOSTOOK	6,300	8,200	11,200	15,600
CUMBERLAND	7,700	10,000	12,300	16,900
FRANKLIN	7,300	9,500	11,700	16,100
HANCOCK	6,900	9,000	11,200	15,600
KENNEBEC	8,100	10,600	12,900	17,900
KNOX	6,700	8,700	11,200	15,600
LINCOLN	7,000	9,100	11,200	15,600
OXFORD	7,400	9,600	11,700	16,200
PENOBSCOT	7,500	9,800	12,000	16,500

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN MAINE

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
PISCATQUIS	6,600	8,600	11,200	15,600
SAGADAHOC	7,400	9,700	11,800	16,300
SOMERSET	6,800	8,900	11,200	15,600
WALDO	6,800	8,900	11,200	15,600
WASHINGTON	5,600	7,300	11,200	15,600
YORK	7,700	10,100	12,300	17,000

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN MARYLAND

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
LOWER EASTERN S	7,700	10,100	12,300	17,000
DORCHESTER	WICOMICO	WORCESTER	SOMERSET	
UPPER EAST S	7,900	10,300	12,600	17,300
KENT	QUEEN ANNES	CAROLINE	TALBOT	
WILMAPCO	11,000	14,300	14,900	24,200
CECIL				
TRI-CTY SOUTH	10,400	13,500	14,900	22,800
CHARLES	CALVERT	ST MARYS		
WASHINGTON	13,000	16,900	14,900	28,600
MONTGOMERY	PRINCE GEORGES			
BALTIMORE-NP	18,700	13,900	14,900	23,500
BALTIMORE	HARFORD	CARROLL	HOWARD	ANNE ARUNDEL
FREDERICK	9,200	12,000	14,700	20,300
FREDERICK				
TRI-COUNTY-W	7,800	10,100	12,400	17,100
GARRETT	ALLEGANY	WASHINGTON		

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN MASSACHUSETTS

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 1	9,400	12,300	14,900	20,700
BERKSHIRE	FRANKLIN	HAMPSHIRE	HAMPDEN	WORCESTER
DISTRICT 2	9,300	12,100	14,900	20,500
MIDDLESEX	ESSEX	SUFFOLK	NORFOLK	BRISTOL
PLYMOUTH	BARNSTABLE	DUKES	NANTUCKET	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN MICHIGAN

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
REGION 1	11,100	14,500	14,900	24,500
LIVINGSTON	MACOMB	MONROE	OAKLAND	ST CLAIR
WASHTENAW	WAYNE			
REGION 2	10,000	13,000	14,900	21,900
HILLSDALE	JACKSON	LENAWEE		
REGION 3	9,700	12,600	14,900	21,300
BARRY	BRANCH	CALHOUN	KALAMAZOO	ST JOSEPH
REGION 4	9,500	12,300	14,900	20,800
BERRIEN	CASS	VAN BUREN		
REGION 5	10,000	13,000	14,900	22,000
GENESEE	LAPEER	SHIAWASSEE		
REGION 6	9,800	12,700	14,900	21,500
CLINTON	EATON	INGHAM		
REGION 7	8,800	11,500	14,100	19,400
ARENAC	BAY	CLARE	GLADWIN	GRATIOT
HURON	IOSCO	ISABELLA	MIDLAND	OGEMAW
ROSECOMMON	SAGINAW	SANILAC	TUSCOLA	
REGION 8	9,100	11,900	14,500	20,100
ALLEGAN	IONIA	KENT	LAKE	MASON
MECOSTA	MONTCALM	NEWAYGO	OSCEOLA	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN MICHIGAN

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
REGION 9	7,500	9,800	12,000	16,500
ALCONA	ALPENA	CHEBOYGAN	CRAWFORD	MONTMORENCY
OSCODA	OTSEGO	PRESQUE ISLE		
REGION 10	7,900	10,300	12,700	17,400
ANTRIM	BENZIE	CHARLEVOIX	EMMET	GRAND TRAVERSE
KALKASKA	LEELANAU	MANISTEE	MISSAUKEE	WEXFORD
REGION 11	6,900	9,000	11,200	15,600
CHIPPEWA	LUCE	MACHINAC		
REGION 12	8,000	10,400	12,800	17,500
ALGER	DELTA	DICKINSON	MARQUETTE	MENOMINEE
SCHOOLCRAFT				
REGION 13	6,600	8,600	11,200	15,600
BARAGA	GOGEBIC	HOUGHTON	IRON	KEEWEENAW
ONTONAGON				
REGION 14	9,400	12,300	14,900	20,700
MUSKEGON	OCEANA	OTTAWA		

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN MINNESOTA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
RDC 1	7,200	9,400	11,500	15,900
KITTSON	MARSHALL	NORMAN	PENNINGTON	POLK
REDLAKE	ROSEAU			
RDC2	6,200	8,000	11,200	15,600
BELTRAMI	CLEARWATER	HUBBARD	LK OF WOODS	MAHNOMEN
RDC-3	8,200	10,600	13,100	18,000
AITKIN	CARLTON	COOK	ITASCA	KOOCHICHING
LAKE	ST LOUIS			
RDC 4	6,900	9,000	11,200	15,600
BECKER	CLAY	DOUGLAS	GRANT	OTTER TAIL
POPE	STEVENS	TRAVERSE	WILKIN	
RDC 5	6,500	8,400	11,200	15,600
CASS	CROW WING	MORRISON	TODD	WADENA
RDC VI-E	7,500	9,700	12,000	16,400
KANDIYOHI	MC LEOD	MEEKER	RENVILLE	
RDC VI-W	6,500	8,400	11,200	15,600
BIG STONE	CHIPPEWA	LAC QUI PARLE	SWIFT	YELLOW MEDICINE
RDC VII-E	8,800	11,500	14,100	19,400
CHISASO	ISANTI	KANABEC	MILLE LACS	PINE

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN MINNESOTA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
RDC VII-W	9,200	12,000	14,700	20,300
BENTON	SHERBURNE	STEARNS	WRIGHT	
RDC VIII	7,200	9,400	11,500	15,900
COTTONWOOD	JACKSON	LINCOLN	LYON	MURRAY
NOBLES	PIPESTONE	REDWOOD	ROCK	
RDC IX	8,000	10,400	12,800	17,600
BLUE EARTH	BROWN	FARIBAULT	LESUEUR	MARTIN
NICOLL	SIBLEY	WASECA	WATONWAN	
RDC X	8,900	11,600	14,200	19,500
DODGE	FILMORE	FREEBORN	GOODHUE	HOUSTON
MOWER	OLMSTED	RICE	STEELE	WABASHA
WINONA				
RDC XI	11,300	14,700	14,900	24,900
ANOKA	CARVER	DAKOTA	HENNEPIN	RAMSEY
SCOTT	WASHINGTON			

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN MISSISSIPPI

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
SOUTHWEST	4,900	6,400	9,300	15,600
CLAIBORNE	JEFFERSON	ADAMS	FRANKLIN	WILKINSON
AMITE	PIKE	WALTHALL	LINCOLN	LAWRENCE
CENTRAL	6,400	8,300	10,200	15,600
YAZOO	MADISON	WARREN	HINDS	COPIAH
RANKIN	SIMPSON			
NORTH CENTRAL	4,700	6,200	9,300	15,600
YALOBUSHA	GRENADA	LEFLORE	CARROLL	MONTGOMERY
HOLMES	ATTALA			
SOUTH DELTA	4,400	5,700	9,300	15,600
BOLIVAR	HUMPHREYS	SHARKEY	ISSAQUENA	WASHINGTON
SUNFLOWER				
NORTH DELTA	5,000	6,500	9,300	15,600
COAHOMA	DE SOTO	QUITMAN	PANOLA	TALLAHATCHIE
TATE	TUNICA			
NORTH EAST	5,500	7,200	9,300	15,600
ALCORN	BENTON	MARSHALL	PRENTISS	TIPPAH
TISHOMINGO				
THREE RIVER	5,800	7,500	9,300	15,600
CALHOUN	CHICKASAW	ITAWAMBA	LAFAYETTE	LEE
PONTOTOC	MONROE	UNION		

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN MISSISSIPPI

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
GOLDEN TRI	5,600	7,300	9,300	15,600
CLAY	LOWNDES	CHOCTAW	OKTIBBEHA	NOXUBEE
WEBSTER	WINSTON			
EAST CENTRAL	5,200	6,700	9,300	15,600
CLARKE	JASPER	LEAKE	KEMPER	LAUDERDALE
NEWTON	NESHOBA	SMITH	SCOTT	
SOUTHERN	6,100	8,000	9,800	15,600
COVINGTON	JONES	WAYNE	JEFF DAVIS	MARION
LAMAR	FORREST	PERRY	GREENE	GEORGE
STONE	PEARL RIVER	JACKSON	HARRISON	HANCOCK

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN MISSOURI

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
LAKE OF OZARKS	5,800	7,500	9,300	15,600
CAMDEN	LACLEDE	MILLER	MORGAN	PULASKI
MARK TWAIN	6,900	9,000	11,000	15,600
LEWIS	MACON	MARION	MONROE	PIKE
RALLS	RANDOLPH	SHELBY		
OZARK FOOTHILLS	4,900	6,400	9,300	15,600
BUTLER	CARTER	REYNOLDS	RIPLEY	WAYNE
OZARK GATEWAY	6,100	7,900	9,700	15,600
BARTON	JASPER	MC DONALD	NEWTON	
SHOW-ME	7,000	9,100	11,200	15,600
JOHNSON	LAFAYETTE	PETTIS		
SO. CENT. OZARK	4,800	6,200	9,300	15,600
DOUGLAS	HOWELL	OREGON	OZARK	SHANNON
TEXAS	WRIGHT			
SOUTHEAST	6,800	8,900	10,900	15,600
BOLLINGER	CAPE GIRARDEAU	IRON	MADISON	PERRY
ST FRANCOIS	ST GENEVIEVE			
SOUTHWEST	6,000	7,800	9,600	15,600
BARRY	CHRISTIAN	DADE	DALLAS	GREENE
LAWRENCE	POLK	STONE	TANEY	WEBSTER

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN MISSOURI

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
KAYSINGER B	5,300	6,900	9,300	15,600
BATES	BENTON	CEDAR	HENRY	HICKORY
ST CLAIR	VERNON			
GREEN HILLS	5,600	7,300	9,300	15,600
CALDWELL	DAVIESS	GRUNDY	HARRISON	LINN
LIVINGSTON	MERCER	PUTNAM	SULLIVAN	
BOOTHEEL	5,400	7,000	9,300	15,600
DUNKLIN	MISSISSIPPI	NEW MADRID	PEMISCOT	SCOTT
STODDARD				
NORTHWEST	6,100	7,900	9,700	15,600
ATCHISON	GENTRY	HOLT	NODAWAY	WORTH
NORTHEAST	6,000	7,800	9,600	15,600
ADAIR	CLARK	KNOX	SCHUYLER	SCOTLAND
MO-KAN	7,100	9,200	11,300	15,700
ANDREW	BUCHANAN	CLINTON	DE KALB	
VALLEY-REGION	6,400	8,400	10,200	15,600
CARROLL	CHARITON	SALINE		
MID-MISSOURI	8,000	10,400	12,400	17,500
AUDRAIN	BOONE	CALLAWAY	COLE	COOPER
HOWARD	MONITEAU	OSAGE		

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN MISSOURI

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
MERAMEC	6,500	8,400	10,400	15,600
CRAWFORD	DENT	GASCONADE	MARIES	PHELPS
WASHINGTON				
E-W GATEWAY	10,000	13,000	12,400	22,000
ST LOUIS CITY	JEFFERSON	ST CHARLES	ST LOUIS	FRANKLIN
MID-AMERICA	9,900	12,900	12,400	21,700
CASS	CLAY	JACKSON	PLATTE	RAY
BOONSLICK	7,500	9,700	11,900	16,400
MONTGOMERY	LINCOLN	WARREN		

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN MONTANA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 1	7,500	9,800	12,000	16,500
DANIELS	PHILLIPS	ROOSEVELT	SHERIDAN	VALLEY
DISTRICT 2	7,700	10,000	12,200	16,900
DAWSON WIBAUX	GARFIELD	MC CONE	PRAIRIE	RICHLAND
DISTRICT 3	7,100	9,300	11,400	15,800
CARTER TREASURE	CUSTER	FALLON	POWDER RIVER	ROSEBUD
DISTRICT 4	7,600	9,900	12,200	16,800
BLAINE	HILL	LIBERTY		
DISTRICT 5	7,600	9,900	12,100	16,700
CASCADE TOOLE	CHOUTEAU	GLACIER	PONDERA	TETON
DISTRICT 6	7,100	9,300	11,300	15,700
FERGUS	GOLDEN VALLEY	JUDITH BASIN	PETROLEUM	WHEATLAND
DISTRICT 7	7,000	9,100	11,200	15,600
BIG HORN	CARBON	STILLWATER	SWEET GRASS	YELLOWSTONE
DISTRICT 8	8,500	11,100	13,600	18,700
BROADWATER	JEFFERSON	LEWIS&CLARK		

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN MONTANA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 9	7,500	9,700	11,900	16,400
GALLATIN	MEAGHER	PARK		
DISTRICT 10	7,600	9,900	12,100	16,700
FLATHEAD	LAKE	LINCOLN	SANDERS	
DISTRICT 11	7,700	10,000	12,200	16,900
MINERAL	MISSOULA	RAVALLI		
DISTRICT 12	7,500	9,800	12,000	16,500
BEAVERHEAD	DEER LODGE	GRANITE	MADISON	POWELL
SILVER BOW				

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN NEBRASKA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
SCOTTSBLUFF	7,400	9,700	11,800	16,300
SIOUX	DAWES	SHERIDAN	BOX BUTTE	SCOTTS BLUFF
MORRILL	GARDEN	BANNER	CHEYENNE	DEUEL
KIMBALL				
AINSWORTH	6,100	7,900	11,200	15,600
CHERRY	KEYA PAHA	BOYD	BROWN	ROCK
HOLT	BLAINE	LOUP	GARFIELD	WHEELER
CUSTER	VALLEY	GREELEY	SHERMAN	
NORTH PLATTE	7,400	9,600	11,700	16,200
GRANT	HOOKER	THOMAS	ARTHUR	MC PHERSON
LOGAN	KEITH	LINCOLN	PERKINS	CHASE
HAYES	FRONTIER	GOSPER	DUNDY	HITCHCOCK
RED WILLOW	DAWSON			
KEARNEY	7,400	9,700	11,900	16,300
HOWARD	HARRICK	BUFFALO	HALL	HAMILTON
PHELPS	KEARNEY	ADAMS	CLAY	FURNAS
HARLAN	FRANKLIN	WEBSTER	NUCKOLLS	
NORFOLK	7,100	9,200	11,300	15,700
KNOX	CEDAR	DIXON	DAKOTA	THURSTON
CUMING	BURT	ANTELOPE	PIERCE	WAYNE
BOONE	MADISON	PLATTE	COLFAX	NANCE
STANTON				
OMAHA	8,900	11,600	14,200	19,600
DODGE	WASHINGTON	DOUGLAS	SAUNDERS	SARPY
CASS	OTOE			

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN NEBRASKA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
LINCOLN	7,600	9,900	12,100	16,700
BUTLER	POLK	YORK	SEWARD	FILLMORE
LANCASTER	SALINE	THAYER	JEFFERSON	GAGE
JOHNSON	PAWNEE	RICHARDSON	NEMAHA	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN NEVADA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 6	8,100	10,500	12,900	17,800
HUMBOLDT	PERSHING	LANDER	ELKO	EUREKA
WHITE PINE	NYE			
DISTRICT 7	9,400	12,200	14,900	20,600
WASHOE	STOREY	CARSON CITY	DOUGLAS	LYON
CHURCHILL	MINERAL	ESMERALDA	CLARK	LINCOLN

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN NEW HAMPSHIRE

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT III VE	7,800	10,200	12,500	17,200
COOS	CARROLL	GRAFTON	BELKNAP	SULLIVAN
DISTRICT IV VER	8,700	11,400	13,900	19,200
CHESHIRE	HILLSBORO	MERRIMACK	ROCKINGHAM	STRAFFORD

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN NEW JERESY

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 1	10,900	14,200	14,900	23,900
BERGEN	ESSEX	HUDSON	HUNTERDON	MERCER
MIDDLESEX	MORRIS	PASSAIC	SOMMERSET	SUSSEX
UNION	WARREN			
DISTRICT 11	9,700	12,600	14,900	21,300
ATLANTIC	BURLINGTON	CAPE MAY	MONMOUTH	OCEAN
DISTRICT 111	10,100	13,200	14,900	22,300
CAMDEN	CUMBERLAND	GLOUCESTER	SALEM	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN NEW MEXICO

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
SAN JUAN	6,800	8,900	11,200	15,600
SAN JUAN	MC KINLEY			
NORTH CENTRAL	5,100	6,700	11,200	15,600
COLFAX	MORA	RIO ARRIBA	SAN MIGUEL	SANTA FE
TAOS				
MID RIO GRANDE	8,000	10,400	12,800	17,600
BERNALILLO	LOS ALMOS	SANDOVAL	TORRANCE	VALENCIA
EASTERN PLS	5,800	7,600	11,200	15,600
CURRY	DE BACA	GUADALUPE	HARDING	QUAY
ROOSEVELT	UNION			
SOUTH WEST	6,500	8,400	11,200	15,600
CATRON	GRANT	HIDALGO	LUNA	
SOUTHEASTERN	7,100	9,200	11,300	15,700
CHAVES	EDDY	LEA	LINCOLN	OTERO
SOUTH RIO GRAND	6,100	8,000	11,200	15,600
DONA ANA	SIERRA	SOCORRO		

MAXIMUN ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN NEW YORK

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 1	10,600	13,800	14,900	23,400
ALLEGANY	CATTARAUGUS	CHAUTAUQUA	ERIE	NIAGARA
DISTRICT 2	9,200	11,900	14,700	20,200
GENESEE SENECA	LIVINGSTON WAYNE	MONROE WYOMING	ONTARIO YATES	ORLEANS
DISTRICT 3	7,700	10,100	12,300	17,000
BROOME SCHUYLER	CHEMUNG STEUBEN	CHENANGO TIOGA	DELAWARE TOMPKINS	OTSEGO
DISTRICT 4	7,800	10,200	12,500	17,200
CAYUGA OSWEGO	CORTLAND HERKIMER	MADISON	ONEIDA	ONONDAGA
DISTRICT 5	10,000	13,000	14,900	22,000
FRANKLIN	JEFFERSON	LEWIS	ST LAWRENCE	
DISTRICT 6	8,400	10,900	13,400	18,400
CLINTON	ESSEX	HAMILTON	WARREN	WASHINGTON
DISTRICT 7	10,400	13,600	14,900	22,900
ALBANY RENSSELAER	COLUMBIA SARATOGA	FULTON SCHENECTADY	GREENE SCHOHARIE	MONTGOMERY
DISTRICT 8	8,800	11,500	14,100	19,400
DUTCHESS SUFFOLK	NASSAU SULLIVAN	ORANGE ULSTER	PUTNAM WESTCHESTER	ROCKLAND

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN NORTH CAROLINA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT A	6,100	8,000	9,800	15,600
	MACON	SWAIN	CLAY	CHEROKEE	GRAHAM
	JACKSON	HAYWOOD			
DISTRICT B	7,400	9,700	11,800	16,300
	BUNCOMBE	TRANSYLVANIA	HENDERSON	MADISON	
DISTRICT C	7,300	9,500	11,600	16,000
	MC DOWELL	POLK	RUTHERFORD	CLEVELAND	
DISTRICT D	5,700	7,500	9,300	15,600
	YANCEY	ASHE	ALLEGHANY	AVERY	MITCHELL
	WATAUGA	WILKES			
DISTRICT E	8,000	10,400	12,400	17,500
	ALEXANDER	CALDWELL	BURKE	CATAWBA	
DISTRICT F	8,900	11,600	12,400	19,600
	STANLY	MECKLENBURG	CABARRUS	GASTON	LINCOLN
	UNION	ROWAN	TREDELL		
DISTRICT G	8,700	11,300	12,400	19,100
	ALAMANCE	GUILFORD	RANDOLPH	DAVIDSON	ROCHINGHAM
	CASWELL				
DISTRICT H	6,500	8,500	10,400	15,600
	MOORE	RICHMOND	MONTGOMERY	ANSON	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN NORTH CAROLINA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT I	8,400	11,000	12,400	18,500
STOKES	SURRY	FORSYTH	DAVIE	YADKIN
DISTRICT J	8,200	10,700	12,400	18,100
DURHAM	ORANGE	CHATHAM	WAKE	LEE
JOHNSTON				
DISTRICT K	6,300	8,200	10,000	15,600
VANCE	FRANKLIN	GRANVILLE	PERSON	WARREN
DISTRICT L	6,100	7,900	9,700	15,600
HALIFAX	NORTHAMPTON	NASH	EDGECOMBE	WILSON
DISTRICT M	6,800	8,900	10,900	15,600
SAMPSON	CUMBERLAND	HARNETT		
DISTRICT N	6,000	7,800	9,600	15,600
BLADEN	SCOTLAND	ROBESON	HOKE	
DISTRICT O	7,100	9,200	11,300	15,700
BRUNSWICK	PENDER	NEW HANOVER	COLUMBUS	
DISTRICT P	6,700	8,700	10,700	15,600
CARTERET	WAYNE	ONSLOW	DUPLIN	LENOIR
CRAVEN	PAMLICO	GREENE	JONES	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN NORTH CAROLINA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT Q	6,000	7,800	9,600	15,600
PITT	BEAUFORT	MARTIN	BERTIE	HERTFORD
DISTRICT R	6,500	8,400	10,400	15,600
TYRRELL	CAMDEN	CURRITUCK	PASQUOTANK	CHOWAN
GATES	PERQUIMANS	WASHINGTON	HYDE	DARE

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN NORTH DAKOTA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 1	7,900	10,300	12,600	17,300
DIVIDE	MC KENZIE	WILLIAMS		
DISTRICT 2	7,400	9,600	11,800	16,200
BURKE	MOUNTRAIL	RENVILLE	BOTTINEAU	WARD
MC HENRY	PIERCE			
DISTRICT 3	6,800	8,800	11,200	15,600
ROLETTE	TOWNER	CAVALIER	BENSON	RAMSEY
EDDY				
DISTRICT 4	7,600	9,900	12,200	16,800
PEMBINA	WALSH	NELSON	GRAND FORKS	
DISTRICT 5	7,700	10,000	12,200	16,900
STEELE	TRAILL	CASS	RANSOM	SARGENT
RICHLAND				
DISTRICT 6	7,300	9,500	11,700	16,100
WELLS	FOSTER	GRIGGS	STUTSMAN	BARNES
LOGAN	LA MOURE	MC INTOSH	DICKEY	
DISTRICT 7	7,100	9,300	11,300	15,700
MC LEAN	SHERIDAN	MERCER	OLIVER	BURLEIGH
MORTON	GRANT	EMMONS	SIOUX	KIDDER

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN NORTH DAKOTA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 8	7,000	9,100	11,200	15,600
ADAMS	BILLINGS	GOLDEN VALLEY	BOWMAN	SLOPE
DUNN	HETTINGER	STARK		

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN OHIO

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 1	9,300	12,100	14,800	20,400
WILLIAMS	FULTON	LUCAS	OTTAWA	SANDUSKY
SENECA	HANCOCK	WYANDOT	HARDIN	PUTNAM
HENRY	DEFIANCE	PAULDING	VAN WERT	ALLEN
AUGLAIZE	MERCER	SHELBY	DARKE	MIAMI
WOOD				
DISTRICT 11	9,200	12,000	14,700	20,300
PREBLE	MONTGOMERY	GREENE	FAYETTE	BUTLER
WARREN	CLINTON	HAMILTON	CLERMONT	BROWN
HIGHLAND	PIKE	ADAMS	SCIOTO	
DISTRICT III	9,700	12,600	14,900	21,300
ASHTABULA	LAKE	GEAUGA	CUYAHOGA	LORAINE
ERIE	HURON	MEDINA	SUMMIT	PORTAGE
TRUMBULL	MAHONING	COLUMBIANA	CARROLL	JEFFERSON
STARK	WAYNE	HOLMES	ASHLAND	RICHLAND
CRAWFORD				
DISTRICT 4	7,500	9,800	12,000	16,500
TUSCARAWAS	HARRISON	GUERNSEY	BELMONT	MUSKINGUM
NOBLE	MONROE	MORGAN	WASHINGTON	ATHENS
VINTON	JACKSON	MEIGS	GALLIA	LAWRENCE
DISTRICT 5	8,600	11,200	13,700	18,900
LOGAN	UNION	MARION	MORROW	KNOX
COSHOCTON	LICKING	DELAWARE	CHAMPAIGN	CLARK
MADISON	FRANKLIN	PICKAWAY	FAIRFIELD	PERRY
HOCKING	ROSS			

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN OKLAHOMA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
KEDDO	5,500	7,100	9,300	15,600
PITTSBURG CHOCTAW	HASKELL MC CURTAIN	LE FLORE	LATIMER	PUSHMATAHA
SODA	6,000	7,800	9,500	15,600
GARVIN JOHNSTON	PONTOTOC ATOKA	COAL LOVE	CARTER MARSHALL	MURRAY BRYAN
OEDA	7,400	9,600	11,800	16,200
CIMARRON WOODS	TEXAS WOODWARD	BEAVER DEWEY	HARPER	ELLIS
NODA	7,500	9,700	12,000	16,400
ALFALFA NOBLE	GRANT BLAINE	KAY KINGFISHER	MAJOR	GARFIELD
AGOC	9,100	11,900	12,400	20,100
CANADIAN	LOGAN	OKLAHOMA	CLEVELAND	
ASCOG	6,300	8,200	10,100	15,600
CADDO TILLMAN	GRADY COTTON	MC CLAIN JEFFERSON	COMANCHE	STEPHENS
EODD	5,800	7,600	9,300	15,600
OKMULGEE ADAIR	MC INTOSH SEQUOYAH	WAGONER	MUSKOGEE	CHEROKEE

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN OKLAHOMA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
COEDD	6,600	8,600	10,500	15,600
PAWNEE	PAYNE	LINCOLN	POTTAWATOMIE	SEMINOLE
OKFUSKEE	HUGHES			
SWODA	6,400	8,300	10,200	15,600
ROGER MILLS	CUSTER	BECKHAM	WASHITA	HARMON
GREER	KIOWA	JACKSON		
INCOG	9,000	11,700	12,400	19,800
CREEK	TULSA	OSAGE		
NECO	5,500	7,200	9,300	15,600
WASHINGTON	NEWATTA	CRAIG	OTTAWA	ROGERS
MAYES	DELAWARE			

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN OREGON

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 1	8,200	10,700	13,100	18,100
CLATSOP	TILLAMOOK			
DISTRICT 2	9,600	12,500	14,900	21,100
CLACKAMAS	COLUMBIA	MULTNOMAH	WASHINGTON	
DISTRICT 3	8,200	10,700	13,100	18,100
MARION	POLK	YAMHILL		
DISTRICT 4	8,200	10,600	13,000	18,000
BENTON	LINCOLN	LINN		
DISTRICT 5	8,600	11,200	13,700	18,900
LANE				
DISTRICT 6	7,800	10,200	12,500	17,200
DOUGLAS				
DISTRICT 7	8,000	10,400	12,800	17,600
COOS	CURRY			
DISTRICT 8	7,300	9,500	11,700	16,100
JACKSON	JOSEPHINE			

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN OREGON

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 9	8,000	10,400	12,800	17,600
HOOD RIVER	SHERMAN	WASCO		
DISTRICT 10	8,100	10,600	12,900	17,900
CROOK	DESCHUTES	JEFFERSON		
DISTRICT 11	7,800	10,200	12,500	17,200
KLAMATH	LAKE			
DISTRICT 12	7,700	10,100	12,300	17,000
GILLIAM	GRANT	MORROW	UMATILLA	WHEELER
DISTRICT 13	7,600	9,900	12,100	16,800
BAKER	UNION	WALLOWA		
DISTRICT 14	7,800	10,200	12,500	17,200
HARNEY	MALHEUR			

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN PENNSYLVANIA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
NORTHWESTERN	8,000	10,400	12,800	17,600
CLARION	CRAWFORD	ERIE	FOREST	LAWRENCE
MERCER	VENANGO	WARREN		
SOUTHWESTERN	8,500	11,100	13,600	18,700
ALLEGHENY	ARMSTRONG	BEAVER	BUTLER	FAYETTE
GREENE	INDIANA	WASHINGTON	WESTMORELAND	
NORTH CENTRAL	7,200	9,300	11,500	15,900
CAMERON	CLEARFIELD	ELK	JEFFERSON	MC KEAN
POTTER				
SO. ALLEGHENIES	7,900	10,300	12,700	17,400
BEDFORD	BLAIR	CAMBRIA	FULTON	HUNTINGDON
SOMERSET				
SED-COG	7,600	9,900	12,100	16,800
CENTRE	CLINTON	COLUMBIA	JUNIATA	LYCOMING
MIFFLIN	NORTHUMBERLAND	MONTOUR	SNYDER	UNION
NORTHERN TIER	7,600	9,900	12,100	16,800
BRADFORD	SULLIVAN	SUSQUEHANNA	TIOGA	WYOMING
NORTHEASTERN	7,600	9,900	12,100	16,800
CARBON	LACKAWANNA	LUZERNE	MONROE	PIKE
SCHUYLKILL	WAYNE			

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN PENNSYLVANIA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DEL VALLEY	10,100	13,200	14,900	22,300
BUCKS	CHESTER	DELAWARE	MONGOMERY	PHILADELPHIA
BERKS	LEHIGH	NORTHAMPTON		
CAPITAL REG	9,500	12,300	14,900	20,800
ADAMS	CUMBERLAND	DAUPHIN	LANCASTER	LEBANON
PERRY	YORK	FRANKLIN		

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN RHODE ISLAND

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
ENTIRE STATE	8,900	11,600	14,200	19,500
BRISTOL	KENT	NEWPORT	PROVIDENCE	WASHINGTON

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN SOUTH CAROLINA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
APPALACHIAN	8,400	11,000	12,400	18,600
ANDERSON	CHEROKEE	GREENVILLE	OCONEE	PICKENS
SPARTANBURG				
BER-CHA-DOR	7,700	10,000	12,200	16,900
BERKELEY	CHARLESTON	DORCHESTER		
LOW COUNTRY	6,100	8,000	9,800	15,600
BEAUFORT	COLLETON	HAMTON	JASPER	
LOWER SAVANNAH	6,600	8,600	10,500	15,600
AIKEN	ALLENDALE	BAMBERG	BARNWELL	CALHOUN
ORANGEBURG				
WACCAMAW	6,300	8,200	10,000	15,600
GEORGETOWN	HORRY	WILLIAMSBURG		
PEE DEE	6,500	8,500	10,400	15,600
CHESTERFIELD	DARLINGTON	DILLON	FLORENCE	MARION
MARLBORO				
SANTEE WATEREE	6,000	7,800	9,600	15,600
CLARENDON	KERSHAW	LEE	SUMTER	
CENTRAL MIDLAND	7,500	9,800	12,000	16,500
FAIRFIELD	LEXINGTON	RICHLAND	NEWBERRY	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN SOUTH CAROLINA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
CATAWBA	7,600	9,900	12,200	16,800
CHESTER	LANCASTER	UNION	YORK	
UPPER SAVANNAH	5,700	7,400	9,300	15,600
ABBEVILLE	EDGEFIELD	GREENWOOD	LAURENS	MC CORMICK
SALUDA				

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN SOUTH DAKOTA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 1	6,800	8,900	11,200	15,600
GRANT	CLARK	CODINGTON	DEUEL	HAMLIN
KINGSBURY	BROOKINGS	MINER	LAKE	MOODY
DISTRICT 2	7,400	9,700	11,800	16,300
MC COOK	MINNEHAHA	TURNER	LINCOLN	CLAY
UNION				
DISTRICT 3	6,500	8,500	11,200	15,600
JERAULD	SANBORN	BRULE	AURORA	DAVISON
HANSON	GREGORY	CHARLES MIX	DOUGLAS	HUTCHINSON
BON HOMME	YANKTON			
DISTRICT 4	6,700	8,800	11,200	15,600
HAND	FAULK	EDMUNDS	MC PHERSON	BROWN
SPINK	BEADLE	MARSHALL	DAY	ROBERTS
DISTRICT 5	7,000	9,100	11,200	15,600
PERKINS	CORSON	CAMPBELL	ZIEBACH	DEWEY
WALWORTH	HAAKON	STANLEY	POTTER	SULLY
HYDE	HUGHES	JONES	LYMAN	BUFFALO
MELLETTE	TODD	TRIPP		
DISTRICT 6	7,400	9,600	11,800	16,200
HARDING	BUTTE	MEADE	LAWRENCE	PENNINGTON
JACKSON	CUSTER	SHANNON	WASHABAUGH	FALL RIVER
BENNETT				

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN TENNESSEE

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
FIRST TENNESSEE	6,600	8,600	10,600	15,600
CARTER	GREENE	HANCOCK	HAWKINS	JOHNSON
SULLIVAN	WASHINGTON	UNICOI		
EAST	6,900	9,000	11,000	15,600
ANDERSON	CAMPBELL	CLAIBORNE	COCKE	HAMBLEN
GRAINGER	UNION	JEFFERSON	BLOUNT	KNOX
SEVIER	LOUDON	MONROE	MORGAN	ROANE
SCOTT				
SOUTHEAST	6,700	8,700	10,700	15,600
BRADLEY	POLK	GRUNDY	MCMINN	MEIGS
MARION	RHEA	HAMILTON	SEQUATCHIE	BLEDSOE
UPPER CUMBERLAN	5,500	7,200	9,300	15,600
CANNON	CUMBERLAND	DEKALB	VAN BUREN	WARREN
WHITE	CLAY	FENTRESS	JACKSON	MACON
OVERTON	PICKETT	PUTNAM	SMITH	
MID-CUMBERLAND	8,600	11,200	12,400	18,900
CHEATHAM	MONTGOMERY	ROBERTSON	DAVIDSON	STEWART
HOUSTON	SUMNER	DICKSON	HUMPHREYS	RUTHERFORD
TROUSDALE	WILLIAMSON	WILSON		
SOUTH CENTRAL	6,100	8,000	9,800	15,600
BEDFORD	COFFEE	FRANKLIN	MOORE	LINCOLN
MARSHALL	GILES	HICKMAN	LEWIS	LAWRENCE
MAURY	WAYNE	PERRY		

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN TENNESSEE

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
NORTHWEST	6,400	8,300	10,200	15,600
BENTON	CARROLL	CROCKETT	DYER	GIBSON
HENRY	OBION	LAKE	WEAKLEY	
SOUTHWEST	5,700	7,500	9,300	15,600
CHESTER	DECATUR	HARDEMAN	HARDIN	HAYWOOD
HENDERSON	MCNAIRY	MADISON		
MEMPHIS-DELTA	7,100	9,200	11,300	15,700
FAYETTE	LAUDERDALE	SHELBY	TIPTON	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN TEXAS

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
PANHANDLE	8,000	10,400	12,400	17,500
DALLAM	SHERMAN	HANSFORD	OCHILTREE	LIPSCOMB
HARTLEY	MOORE	HUTCHISON	ROBERTS	HEMPHILL
OLDHAM	POTTER	CARSON	GRAY	WHEELER
DEAF SMITH	RANDALL	ARMSTRONG	DONLEY	COLLINGSWORTH
PARMER	CASTRO	SWISHER	BRISCOE	HALL
SOUTH PLAINS	7,000	9,100	11,100	15,600
BAILEY	LAMB	HALE	FLOYD	MOTLEY
COCHRAN	HOCKLEY	LUBBOCK	CROSBY	DICKENS
KING	YOAKUM	TERRY	LYNN	GARZA
NORTEX	6,900	9,000	11,000	15,600
CHILDRESS	HARDEMAN	COTTLE	FOARD	WILBARGER
BAYLOR	WICHITA	ARCHER	YOUNG	CLAY
JACK	MONTAGUE			
NORTH CENTRAL	8,900	11,600	12,400	19,500
WISE	DENTON	COLLIN	HUNT	PALOPINTO
PARKER	TARRANT	DALLAS	ROCKWALL	ERATA
HOOD	JOHNSON	ELLIS	SOMERVELL	NAVARRO
KAUFMAN				
TEXOMA	7,200	9,400	11,600	16,000
COOKE	GRAYSON	FANNIN		
ARK-TEX	6,500	8,500	10,400	15,600
LAMAR	RED RIVER	BOWIE	DELTA	HOPKINS
FRANKLIN	TITUS	MORRIS	CASS	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN TEXAS

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
WEST TEXAS	6,900	9,000	10,900	15,600
ELPASO	HUDSPETH	CULBERSON	JEFF DAVIS	PRESIDIO
BREWSTER				
PERMIAN	8,400	10,900	12,400	18,400
GAINES	DAWSON	BORDEN	ANDREWS	MARTIN
HOWARD	LOVING	WINKLER	ECTOR	MIDLAND
GLASSCOCK	REEVES	WARD	CRANE	UPTON
PECOS	TERRELL			
WEST CENTRAL	6,500	8,400	10,300	15,600
KNOX	KENT	STONEWALL	HASKELL	THROCKMORTON
SCURRY	FISHER	JONES	SHACKELFORD	STEPHENS
MITCHELL	NOLAN	TAYLOR	CALLAHAN	EASTLAND
RUNNELS	COLEMAN	BROWN	COMANCHE	
CONCHO VALLEY	5,900	7,700	9,400	15,600
STERLING	COKE	REAGAN	IRION	TOM GREEN
CONCHO	CROCKETT	SCHLEICHER	MENARD	MC CULLOCH
MASON	SUTTON	KIMBLE		
MID RIO GRANDE	4,900	6,400	9,300	15,600
VALVERDE	EDWARDS	REAL	KINNEY	UVALDE
MAVERICK	ZAVALA	DIMMIT	LASALLE	
CENTRAL TEXAS	6,200	8,000	9,800	15,600
MILLS	HAMILTON	SAN SABA	LAMPASAS	CORYELL
BELL	MILAM			

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN TEXAS

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
HEART OF TEXAS	6,100	8,000	9,800	15,600
BOSQUE	HILL	MC LENNAN	LIMESTONE	FREESTONE
FALLS				
EAST TEXAS	6,600	8,600	10,500	15,600
RAINS	WOOD	CAMP	UPSHUR	MARION
VANZANDT	SMITH	GREGG	HARRISON	HENDERSON
RUSK	PANOLA	ANDERSON	CHEROKEE	
ALAMO	7,100	9,300	11,400	15,800
GILLESPIE	KERR	KENDALL	BANDERA	COMAL
BEXAR	MEDINA	GUADALUPE	FRIO	ATASCOSA
KARNES				
CAPITAL AREA	6,700	8,800	10,700	15,600
LLANO	BURNET	WILLIAMSON	BLANCO	TRAVIS
LEE	BASTROP	HAYES	CALDWELL	FAYETTE
BRAZOS	5,600	7,300	9,300	15,600
LEON	ROBERTSON	BRAZOS	MADISON	BURLESON
GRIMES	WASHINGTON			
DEEP EAST TEXAS	5,700	7,500	9,300	15,600
SHELBY	NACOGDOCHES	HOUSTON	TRINITY	POLK
SAN JACINTO	TYLER	JASPER	NEWTON	SAN AUGUSTINE
SABINE	ANGELINA			
SOUTHEAST TEX	8,800	11,500	12,400	19,400
HARDIN	ORANGE	JEFFERSON		

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN TEXAS

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
LOWER RIO GRAND	5,000	6,500	9,300	15,600
HIDALGO	WILLACY	CAMERON		
SOUTH TEXAS	3,800	5,000	9,300	15,600
WEBB	ZAPATA	JIM HOGG	STARR	
COASTAL BEND	6,900	9,000	11,000	15,600
MC MULLEN	LIVE OAK	BEE	REFUGIO	DUVAL
JIM WELLS	NUECES	SAN PATRICIO	ARANSAS	KLEBERG
BROOKS	KENEDY			
GOLDEN CRESCENT	6,400	8,400	10,200	15,600
GONZALES	LAVACA	DEWITT	JACKSON	VICTORIA
GOLIAD	CALHOUN			
HOUSTON GALVEST	10,000	13,000	12,400	22,000
WALKER	MONTGOMERY	AUSTIN	WALLER	HARRIS
LIBERTY	COLORADO	FT BEND	CHAMBERS	MATAGORDA
BRAZORIA	GALVESTON	WHARTON		

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN UTAH

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT I	8,200	10,700	13,100	18,100
BOX ELDER	CACHE	RICH		
DISTRICT II	9,200	12,000	14,700	20,300
TOOELE	WEBER	DAVIS	MORGAN	SALT LAKE
DISTRICT III	8,100	10,500	12,900	17,800
UTAH	WASATCH	SUMMIT		
DISTRICT IV	6,700	8,700	11,200	15,600
JUAB	MILLARD	SANPETE	SEVIER	PIUTE
WAYNE				
DISTRICT V	6,500	8,400	11,200	15,600
BEAVER	IRON	WASHINGTON	GARFIELD	KANE
DISTRICT VI	7,700	10,100	12,300	17,000
DUCHESNE	UINTAH	DAGGETT		
DISTRICT VII	7,300	9,500	11,700	16,100
CARBON	EMERY	GRAND	SAN JUAN	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN VERMONT

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT I	7,800	10,200	12,500	17,200
CALEDONIA	ESSEX	ORLEANS	CHITTENDEN	FRANKLIN
GRAND ISLE	LAMOILLE	WASHINGTON	ORANGE	
DISTRICT II	7,900	10,300	12,600	17,300
ADDISON	BENNINGTON	RUTLAND	WINDHAM	WINDSOR

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN VIRGINIA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 1	6,000	7,800	9,600	15,600
LEE	WISE	SCOTT		
DISTRICT 2	6,600	8,600	10,500	15,600
DICKENSON	RUSSELL	BUCHANAN	TAZEWELL	
DISTRICT 3	6,700	8,800	10,700	15,600
WASHINGTON	SMYTH	BLAND	WYTHE	GRAYSON
CARROLL				
DISTRICT 4	8,300	10,800	12,400	18,300
GILES	PULASKI	MONTGOMERY	FLOYD	
DISTRICT 5	8,800	11,400	12,400	19,300
CRAIG	ALLEGHANY	BOTETOURT	ROANOKE	
DISTRICT 6	8,100	10,600	12,400	17,900
BATH	ROCKBRIDGE	HIGHLAND	AUGUSTA	ROCKINGHAM
DISTRICT 7	7,700	10,000	12,300	16,900
SHENANDOAH	PAGE	WARREN	FREDERICK	CLARKE
DISTRICT 8	13,000	16,900	13,000	28,600
LOUDOUN	PRINCE WILLIAM	FAIRFAX	ARLINGTON	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN VIRGINIA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 9	7,100	9,300	11,400	15,800
MADISON	ORANGE	CULPEPPER	RAPPAHANNOCK	FAUQUIER
DISTRICT 10	7,900	10,300	12,400	17,300
NELSON	ALBEMARLE	FLUVANNA	LOUISA	GREENE
DISTRICT 11	8,500	11,000	12,400	18,600
BEDFORD	AMHERST	CAMPBELL	APPOMATTOX	
DISTRICT 12	7,400	9,600	11,800	16,200
PATRICK	FRANKLIN	HENRY	PITTSYLVANIA	
DISTRICT 13	6,200	8,100	10,000	15,600
HALIFAX	MECKLENBURG	BRUNSWICK		
DISTRICT 14	6,200	8,100	9,900	15,600
BUCKINGHAM	CUMBERLAND	AMELIA	PRINCE EDWARD	NOTTOWAY
CHARLOTTE	LUNENBURG			
DISTRICT 15	10,100	13,100	12,400	22,200
HANOVER	GOOCHLAND	HENRICO	CHESTERFIELD	NEW KENT
CHARLES CITY	POWHATAN			
DISTRICT 16	8,100	10,600	12,400	17,900
STAFFORD	SPOTSYLVANIA	KING GEORGE	CAROLINE	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN VIRGINIA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 17	6,000	7,800	9,600	15,600
WESTMORELAND	NORTHUMBERLAND	RICHMOND	LANCASTER	
DISTRICT 18	7,500	9,700	11,900	16,400
ESSEX	KING&QUEEN	KING WILLIAM	MIDDLESEX	MATHEWS
GLOUCESTER				
DISTRICT 19	8,000	10,400	12,400	17,500
DINWIDDIE	PRINCE GEORGE	SURRY	SUSSEX	GREENSVILLE
DISTRICT 20	8,100	10,500	12,400	17,800
SOUTHAMPTON	ISLE OF WIGHT	CITY OF SUFFOLK	CITY VA BEACH	
DISTRICT 21	8,700	11,400	12,400	19,200
JAMES CITY	YORK			
DISTRICT 22	5,400	7,100	9,300	15,600
NORTHAMPTON	ACCOMACK			

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN WASHINGTON

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT I	10,100	13,200	14,900	22,300
KING	KITSAP	PIERCE	SNOHOMISH	
DISTRICT II	8,500	11,100	13,600	18,700
CLALLAM	ISLAND	JEFFERSON	SKAGIT	WHATCOM
SAN JUAN				
DISTRICT III	8,800	11,500	14,100	19,400
CLARK	COWLITZ	GRAYS HARBOR	KLICKITAT	LEWIS
MASON	PACIFIC	SKAMANIA	THURSTON	WAHKIAKUM
DISTRICT IV	7,700	10,000	12,200	16,900
CHELAN	DOUGLAS	KITTITAS	OKANOGAN	YAKIMA
DISTRICT V	8,300	10,800	13,200	18,200
ADAMS	ASOTIN	BENTON	COLUMBIA	FERRY
FRANKLIN	GARFIELD	GRANT	LINCOLN	PEND OREILLE
SPOKANE	STEVENS	WALLA WALLA	WHITMAN	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN WEST VIRGINIA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
REGION I	7,000	9,100	11,100	15,600
MC DOWELL WYOMING	MERCER	MONROE	RALEIGH	SUMMERS
REGION II	7,000	9,100	11,200	15,600
CABELL	LINCOLN	LOGAN	MINGO	WAYNE
REGION III	8,100	10,600	12,400	17,900
BOONE	CLAY	KANAWHA	PUTNAM	
REGION IV	6,400	8,300	10,200	15,600
FAYETTE	GREENBRIER	NICHOLAS	POCAHANTAS	WEBSTER
REGION V	7,400	9,700	11,800	16,300
CALHOUN TYLER	JACKSON WIRT	PLEASANTS WOOD	RICHIE	ROANE
REGION VI	7,400	9,600	11,800	16,200
DODDRIDGE PRESTON	HARRISON	MARION	MONONGALIA	TAYLOR
REGION VII	5,700	7,400	9,300	15,600
BARBOUR TUCKER	BRAXTON UPSHUR	GILMER	LEWIS	RANDOLPH
REGION VIII	6,300	8,200	10,100	15,600
GRANT	HAMPSHIRE	HARDY	MINERAL	PENDLETON

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN WEST VIRGINIA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
REGION IX	7,800	10,200	12,400	17,200
BERKELEY	JEFFERSON	MORGAN		
REGION X	8,200	10,600	12,400	18,000
MARSHALL	OHIO	WETZEL		
REGION XI	8,300	10,800	12,400	18,300
BROOKE	HANCOCK			

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN WISCONSIN

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
SOUTHWEST	8,700	11,300	13,800	19,100
GRANT	IOWA	LAFAYETTE	GREEN	RICHLAND
SAUK	COLUMBIA	DODGE	JEFFERSON	
DANE	10,700	14,000	14,900	23,600
DANE				
ROCK VALLEY	9,600	12,500	14,900	21,200
ROCK				
SOUTHEASTERN	10,200	13,300	14,900	22,500
KENOSHA	RACINE	WALWORTH	WAUKESHA	MILWAUKEE
OZAUKEE	WASHINGTON			
BAY LAKE	8,700	11,300	13,800	19,100
SHEBOYGAN	MANITOWOC	BROWN	KEWAUNEE	DOOR
OCONTO	MARINETTE	FLORENCE		
EAST CENTRAL	8,500	11,100	13,600	18,700
FOND DU LAC	GREEN LAKE	MARQUETTE	WAUSHARA	WINNEBAGO
CALUMET	OUTAGAMIE	WAUPACA	SHAWANO	MENOMINEE
NORTH CENTRAL	7,900	10,300	12,600	17,300
VILAS	FOREST	ONEIDA	LINCOLN	LANGLADE
MARATHON	WOOD	PORTAGE	JUNEAU	ADAMS

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN WISCONSIN

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
NORTHWESTERN	6,600	8,600	11,200	15,600
	DOUGLAS	BAYFIELD	ASHLAND	IRON
	BURNETT	WASHBURN	SAWYER	PRICE
	RUSK	TAYLOR		
WEST CENTRAL	8,300	10,800	13,300	18,300
	POLK	BARRON	ST CROIX	DUNN
	CHIPPEWA	EAU CLAIRE	CLARK	
MISSISSIPPI	7,700	10,000	12,200	16,900
	PIERCE	PEPIN	BUFFALO	TREMPEALEAU
	JACKSON	MONROE	LA CROSSE	VERNON
	CRAWFORD			

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN WYOMING

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
DISTRICT 1	8,000	10,400	12,800	17,600
	PARK	BIGHORN	SHERIDAN	JOHNSON
	WASHAKIE	HOT SPRINGS	FREMONT	
DISTRICT 2	8,800	11,500	14,100	19,400
	CAMPBELL	CROOK	WESTON	CONVERSE
	NIOBRARA	ALBANY	NATRONA	PLATTE
	GOSHEN	LARAMIE		
DISTRICT 3	8,500	11,100	13,600	18,700
	TETON	SUBLETTE	LINCOLN	SWEETWATER
	UINTA	CARBON		

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN ALASKA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
SOLDOTNA	11,200	14,500	17,840	24,600
PALMER	10,900	14,200	17,440	24,000
FAIRBANKS	10,200	13,200	16,240	22,400
JUNEAU	13,000	16,900	19,700	28,500

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN HAWAII

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
HONOLULU	11,200	14,500	14,900	24,600
KAUAI	9,800	12,800	14,900	21,600
MAUI	9,600	12,500	14,900	21,100
HAWAII	9,600	12,500	14,900	21,200

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN GUAM

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
ENTIRE	6,200	8,000	13,600	18,000

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN PUERTO RICO

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
AGUADILLA	1,800	2,400	8,000	15,600
AQUADA	AQUADILLA	ISABELA	MOCA	RINCON
SAN SEBASTIAN				
ARECIBO	1,900	2,500	8,400	15,600
ARECIBO	BARCELONETA	CAMUY	FLORIDA	CIALES
HATILLO	LARES	MANATI	QUEBRADILLARS	UTUADO
BAYAMON	2,200	2,900	7,700	15,600
BOYAMON	BARRANQUITAS	CATANO	COMERIO	COROZAL
DORADO	NARANJITO	TOA BAJA	TOA ALTA	VEGA ALTA
VEGA BAJA				
CAGUAS	2,700	3,500	8,500	15,600
AIBONITO	AGUAS BUENAS	CAYEY	CIDRA	GURABO
JUNCOS	SAN LORENZO	CAGUAS		
GUAYAMA	2,400	3,200	7,400	15,600
GUAYAMA	ARROYO	MAUNABO	PATILLAS	SALINAS
HUMACAO	2,300	3,000	7,900	15,600
HUMACAO	CEIBA	LAR PIEDRAS	NAGUABO	YABUCOA
MAYAGUEZ	2,300	3,000	8,000	15,600
MAYAGUEZ	ANASCO	CABO	HORMIGNEROS	LAJAS
LAR MARIAS	MARICAO	SABANA GRANDE	SAN GERMAN	

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN PUERTO RICO

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
PONCE	1,900	2,500	8,000	15,600
PONCE	ADJUNTAS	COAMO	GUANICA	JOYUYA
JUANA DIAZ	OROCOVIS	PENUELAS	SANTA ISABEL	VILLALBA
YAUCO	GUAYANILLA			
SAN JUAN	3,100	4,100	8,000	15,600
SAN JUAN	CAROLINA	CANOVANAS	CULEBRAS	FAJARDO
GUAYNABO	LOIZA	LUQUILLO	RIO GRANDE	TRUJILLO ALTO
VIEQUES				

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN VIRGIN ISLANDS

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
ENTIRE AREA	7,300	9,500	11,600	16,000
ST CROIX	ST THOMAS	ST JOHN		

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN NO. MARIANAS

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
ENTIRE AREA	1,700	2,300	11,200	15,600

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN TRUST TERRITORY

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
ENTIRE	1,300	1,700	11,200	15,600
PALAU				
PONAPE				
TRUK				
YAP				

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN AM. SAMOA

AREA/COUNTY	VERY LOW 50% MEDIAN	65% MEDIAN	LOW INCOME	MODERATE INCOME
ENTIRE	2,000	2,600	11,200	15,600

Exhibit D - Minimum Interest Rates for Calculating Interest Credit for Moderate-Income Borrowers

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN ALABAMA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
NORTHWEST	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600						
WEST	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
BIRMINGHAM	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	17900				
EAST	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600					
SOUTH CENTRAL	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
TOMBIGBEE	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
SOUTHEAST	10300	10700	11100	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15600			
SOUTH	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100	16200						
CENTRAL	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18300			
LEE CO	12300	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16400						
NORTH CENTRAL	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600					
TOP OF ALA	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600						

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN ARIZONA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
MARICOPA	15100	15500	15900	16300	16700	17100	17500	17900	18300	18700	19100	19500	19900	20300				
TUCSON	13800	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	18200	18400					
DIST III	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
DIST IV	13400	13800	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	18000					
DIST V	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16300						
DIST VI	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	16900						

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN ARKANSAS

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
WEST CENTRAL	10000	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600			
SOUTHWEST	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600			
SOUTHEAST	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
NORTHWEST	09900	10300	10700	11100	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15600		
EAST	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
WHITE RIVER	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
CENTRAL	12300	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16400						
WESTERN	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN CALIFORNIA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 1	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16700						
DISTRICT 2	14500	14900	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19400				
DISTRICT 3	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18200					
DISTRICT 4	14500	14900	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19400				
DISTRICT 5	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200							
DISTRICT 6	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20700			

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN COLORADO

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
REGION 1	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16700						
REGION 2	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	18200	18600	19000	19100				
REGION 3	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
REGION 4	13800	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	18200	18400					
REGION 5	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15900							
REGION 6	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
REGION 7	14100	14500	14900	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900					
REGION 7B	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
REGION 8	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
REGION 9	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200							
REGION 10	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
REGION 11	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17200						
REGION 12	15000	15400	15800	16200	16600	17000	17400	17800	18200	18600	19000	19400	19800	20200				
REGION 13	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000							

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN CONNECTICUT

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
HARTFORD	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
LITCHFIELD	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
MIDDLESEX	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
NEW HAVEN	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
NEW LONDON(E)	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
NEW LONDON(W)	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
WINDHAM (E)	15100	15500	15900	16300	16700	17100	17500	17900	18300	18700	19100	19500	19900	20200				
WINDHAM (W)	15100	15500	15900	16300	16700	17100	17500	17900	18300	18700	19100	19500	19900	20200				
TOLLAND	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
FAIRFIELD	15500	15900	16300	16700	17100	17500	17900	18300	18700	19100	19500	19900	20300	20700	21100	21500	21900	22300*

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN DELAWARE

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
KENT	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18600		
NEW CASTLE	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19600*
SUSSEX	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18200			

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN FLORIDA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 1	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17100						
DISTRICT 2	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600				
DISTRICT 3	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800							
DISTRICT 4	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18100			
DISTRICT 5	10200	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600			
DISTRICT 6	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17300					
DISTRICT 7	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	16800						
DISTRICT 8	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16500						
DISTRICT 9	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200						
DISTRICT 10	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18500		
DISTRICT 11	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19600*

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN GEORGIA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
COASTAL APDC	12300	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16400						
NORTHEAST	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16700						
CEN SAVANNAH R	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600					
ALTAMAHA SO.	09900	10300	10700	11100	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15600		
ATLANTA REG	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19600*
MIDDLE	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17500					
SOUTH	10200	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600			
MIDDLE FLINT	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
LOWER CHATTAHO	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
OCONEE AREA	10700	11100	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15600				
COOSA REGION	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	17800				
SOUTHEAST	10000	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600			
CHATTAHO-FLINT	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700							
MCINTOSH TRAIL	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19600*
SOUTHWEST	09900	10300	10700	11100	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15600		
NORTH	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18200			

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN GEORGIA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
HEART OF GA	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
GA. MOUNTAINS	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15900							

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN IDAHO

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT I	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16500						
DISRTICT II	13400	13800	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	17900					
DISTRICT III	13400	13800	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	18000					
DISTRICT IV	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
DISTRICT V	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17100						
DISTRICT VI	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	16800						

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN ILLINOIS

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT I	14700	15100	15500	15900	16300	16700	17100	17500	17900	18300	18700	19100	19500	19700				
NORTHWEST	15100	15500	15900	16300	16700	17100	17500	17900	18300	18700	19100	19500	19900	20300				
DISTRICT II	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900			
ROCK VALLEY M	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
NORTHEASTERN	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
DISTRICT III(PT	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21400	
BI-STATE METRO	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
DIST IV (PART)	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20600			
WESTERN	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15900							
DISTRICT V	14300	14700	15100	15500	15900	16300	16700	17100	17500	17900	18300	18700	19100					
TRI-COUNTY	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
DIST VI(PART)	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16500						
TWO RIVER	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16500						
WEST CENTRAL V	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17100						
SOUTHWESTERN ME	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21500	
SOUTH CENTRAL	12300	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300							

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN ILLINOIS

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
GREATER EGYPT	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000							
SOUTHERN FIVE	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
EMBARRAS	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16300						
GREATER WABASH	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
SOUTHEASTERN	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN INDIANA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 1A	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
DISTRICT 1B	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	17000	17300						
DISTRICT 2	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20800			
DISTRICT 3A	13900	14300	14700	15100	15500	15900	16300	16700	17100	17500	17900	18300	18600					
DISTRICT 3B	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	21900
DISTRICT 4	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19300				
DISTRICT 5	14600	15000	15400	15800	16200	16600	17000	17400	17800	18200	18600	19000	19400	19500				
DISTRICT 6	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19300				
DISTRICT 7	13500	13900	14300	14700	15100	15500	15900	16300	16700	17100	17500	17900	18100					
DISTRICT 8	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22000
DISTRICT 9	13800	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	18200	18400					
DISTRICT 10	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17500						
DISTRICT 11	13800	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	18200	18400					
DISTRICT 12	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17300	17700	17800					
DISTRICT 13A	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17100						
DISTRICT 13B	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18200					

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN INDIANA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 14	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17300	17700	17800					
DISTRICT 15	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16700	16900						

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN IOWA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 1	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000							
DISTRICT 2	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17300	17700	17800					
DISTRICT 3	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16700	17000						
DISTRICT 4	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17300	17700	17800					
DISTRICT 5	13400	13800	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	17900					
DISTRICT 6	13900	14300	14700	15100	15500	15900	16300	16700	17100	17500	17900	18300	18600					
DISTRICT 7	14100	14500	14900	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19000				
DISTRICT 8	14700	15100	15500	15900	16300	16700	17100	17500	17900	18300	18700	19100	19500	19700				
DISTRICT 9	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
DISTRICT 10	14900	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100				
DISTRICT 11	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20600			
DISTRICT 12	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16500						
DISTRICT 13	13500	13900	14300	14700	15100	15500	15900	16300	16700	17100	17500	17900	18100					
DISTRICT 14	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
DISTRICT 15	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
DISTRICT 16	14500	14900	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19500				

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN KANSAS

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
NORTHWEST	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16700						
GR. SOUTHWEST	13700	14100	14500	14900	15300	15700	16100	16500	16900	17300	17700	18100	18300					
NORTH CENTRAL	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
GOLDEN BELT	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17300	17700	17800					
INDIAN HILL	13100	13500	13900	14300	14700	15100	15500	15900	16300	16700	17100	17500						
MID-STATE	13400	13800	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	18000					
CHIKASKIA	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000							
BLUE STEM	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
CENTRAL PLAIN	14700	15100	15500	15900	16300	16700	17100	17500	17900	18300	18700	19100	19500	19700				
FLINT HILLS	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800							
BIG LAKE	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000							
MO-KAN	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16300						
MARC	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900			
SOUUTHEAST	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
IN PROCESS	13500	13900	14300	14700	15100	15500	15900	16300	16700	17100	17500	17900	18100					
UNORGANIZED	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN KENTUCKY

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
BARRON RIVER	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
BIG SANDY	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
BLUEGRASS	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16700	17000						
BUFFALO TRACE	10000	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600			
CUMBERLAND V	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
FIVCO	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600					
GATEWAY	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
GREEN RIVER	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16500						
KENTUCKIANA	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18500		
KENTUCKY R	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
LAKE CUMBER	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
LINCOLN TRAIL	11100	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15600					
NORTHERN	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18700		
PENNYRILE	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600					
PURCHASE	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600						

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN LOUISIANA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
ACADIANA	10000	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600			
CENTRAL REG	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
FLORIDA	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700							
NORTHEAST	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
NORHWEST	10300	10700	11100	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15600			
IMPERIAL CAL	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
TECHE	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17400					
METRO-REG	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18700		

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN MAINE

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
ANDROSCOGGIN	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16500						
AROOSTOOK	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
CUMBERLAND	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16700	16900						
FRANKLIN	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100							
HANCOCK	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
KENNEBEC	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17300	17700	17900					
KNOX	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
LINCOLN	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
OXFORD	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100	16200						
PENOBSCOT	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16500						
PISCATQUIS	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
SAGADAHOC	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16300						
SOMERSET	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
WALDO	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
WASHINGTON	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
YORK	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16700	17000						

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN MARYLAND

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
LOWER EASTERN S	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16700	17000						
UPPER EAST S	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	17000	17300						
WILMAPCO	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
TRI-CTY SOUTH	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
WASHINGTON	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
BALTIMORE-NP	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
FREDERICK	15100	15500	15900	16300	16700	17100	17500	17900	18300	18700	19100	19500	19900	20300				
TRI-COUNTY-W	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17100						

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN MASSACHUSETTS

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 1	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20700			
DISTRICT 2	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500				

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN MICHIGAN

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
REGION 1	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
REGION 2	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	21900
REGION 3	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300		
REGION 4	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20800			
REGION 5	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22000
REGION 6	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21500	
REGION 7	14500	14900	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19400				
REGION 8	14900	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100				
REGION 9	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16500						
REGION 10	13100	13500	13900	14300	14700	15100	15500	15900	16300	16700	17100	17400						
REGION 11	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
REGION 12	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17500						
REGION 13	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
REGION 14	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20700			

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN MINNESOTA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
RDC 1	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15900							
RDC2	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
RDC-3	13500	13900	14300	14700	15100	15500	15900	16300	16700	17100	17500	17900	18000					
RDC 4	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
RDC 5	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
RDC VI-E	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400							
RDC VI-W	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
RDC VII-E	14500	14900	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19400				
RDC VII-W	15100	15500	15900	16300	16700	17100	17500	17900	18300	18700	19100	19500	19900	20300				
RDC VIII	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15900							
RDC IX	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600						
RDC X	14600	15000	15400	15800	16200	16600	17000	17400	17800	18200	18600	19000	19400	19500				
RDC XI	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN MISSISSIPPI

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
SOUTHWEST	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
CENTRAL	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600				
NORTH CENTRAL	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
SOUTH DELTA	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
NORTH DELTA	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
NORTH EAST	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
THREE RIVER	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
GOLDEN TRI	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
EAST CENTRAL	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
SOUTHERN	10200	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600			

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN MISSOURI

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
LAKE OF OZARKS	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
MARK TWAIN	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600						
OZARK FOOTHILLS	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
OZARK GATEWAY	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600			
SHOW-ME	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
SO. CENT. OZARK	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
SOUTHEAST	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600						
SOUTHWEST	10000	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600			
KAYSINGER B	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
GREEN HILLS	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
BOOTHEEL	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
NORTHWEST	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600			
NORTHEAST	10000	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600			
MO-KAN	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700							
VALLEY-REGION	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600				
MID-MISSOURI	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17500					

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN MISSOURI

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
MERAMEC	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600					
E-W GATEWAY	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19600*
MID-AMERICA	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19600*
BOONSLICK	12300	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16400						

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN MONTANA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 1	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16500						
DISTRICT 2	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	16900						
DISTRICT 3	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800							
DISTRICT 4	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	16800						
DISTRICT 5	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16700						
DISTRICT 6	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700							
DISTRICT 7	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
DISTRICT 8	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18700					
DISTRICT 9	12300	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16400						
DISTRICT 10	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16700						
DISTRICT 11	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	16900						
DISTRICT 12	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16500						

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN NEBRASKA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
SCOTTSBLUFF	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16300						
AINSWORTH	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
NORTH PLATTE	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100	16200						
KEARNEY	12300	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300							
NORFOLK	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700							
OMAHA	14600	15000	15400	15800	16200	16600	17000	17400	17800	18200	18600	19000	19400	19600				
LINCOLN	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16700						

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN NEVADA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 6	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17300	17700	17800					
DISTRICT 7	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20600			

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN NEW HAMPSHIRE

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT III VE	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17200						
DISTRICT IV VER	14300	14700	15100	15500	15900	16300	16700	17100	17500	17900	18300	18700	19100	19200				

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN NEW JERESY

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 1	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
DISTRICT 11	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300		
DISTRICT 111	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN NEW MEXICO

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
SAN JUAN	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
NORTH CENTRAL	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
MID RIO GRANDE	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600						
EASTERN PLS	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
SOUTH WEST	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
SOUTHEASTERN	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700							
SOUTH RIO GRAND	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN NEW YORK

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 1	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
DISTRICT 2	15100	15500	15900	16300	16700	17100	17500	17900	18300	18700	19100	19500	19900	20200				
DISTRICT 3	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16700	17000						
DISTRICT 4	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17200						
DISTRICT 5	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22000
DISTRICT 6	13800	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	18200	18400					
DISTRICT 7	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
DISTRICT 8	14500	14900	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19400				

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN NORTH CAROLINA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT A	10200	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600			
DISTRICT B	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16300						
DISTRICT C	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000							
DISTRICT D	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
DISTRICT E	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17500					
DISTRICT F	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19600
DISTRICT G	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19100	
DISTRICT H	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600					
DISTRICT I	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18500		
DISTRICT J	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18100			
DISTRICT K	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600				
DISTRICT L	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600			
DISTRICT M	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600						
DISTRICT N	10000	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600			
DISTRICT O	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700							
DISTRICT P	11100	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15600					

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN NORTH CAROLINA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT Q	10000	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600			
DISTRICT R	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600					

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN NORTH DAKOTA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 1	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	17000	17300						
DISTRICT 2	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200							
DISTRICT 3	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
DISTRICT 4	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	16800						
DISTRICT 5	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	16900						
DISTRICT 6	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100							
DISTRICT 7	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700							
DISTRICT 8	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN OHIO

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 1	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19600	20000	20400				
DISTRICT 11	15100	15500	15900	16300	16700	17100	17500	17900	18300	18700	19100	19500	19900	20300				
DISTRICT III	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300		
DISTRICT 4	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16500						
DISTRICT 5	14100	14500	14900	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900					

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN OKLAHOMA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
KEDDO	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
SODA	09900	10300	10700	11100	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15600		
OEDA	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200							
NODA	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400							
AGOC	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19600*
ASCOG	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600				
EODD	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
COEDD	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600					
SWODA	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600				
INCOG	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19600*
NECO	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN OREGON

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 1	13500	13900	14300	14700	15100	15500	15900	16300	16700	17100	17500	17900	18100					
DISTRICT 2	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21100		
DISTRICT 3	13500	13900	14300	14700	15100	15500	15900	16300	16700	17100	17500	17900	18100					
DISTRICT 4	13400	13800	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	18000					
DISTRICT 5	14100	14500	14900	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900					
DISTRICT 6	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17200						
DISTRICT 7	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600						
DISTRICT 8	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100							
DISTRICT 9	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600						
DISTRICT 10	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17300	17700	17900					
DISTRICT 11	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17200						
DISTRICT 12	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16700	17000						
DISTRICT 13	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16800						
DISTRICT 14	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17200						

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN PENNSYLVANIA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
NORTHWESTERN	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600						
SOUTHWESTERN	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18700					
NORTH CENTRAL	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15900							
SO. ALLEGHENIES	13100	13500	13900	14300	14700	15100	15500	15900	16300	16700	17100	17400						
SED-COG	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16800						
NORTHERN TIER	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16800						
NORTHEASTERN	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16800						
DEL VALLEY	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
CAPITAL REG	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20800			

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN RHODE ISLAND

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
ENTIRE STATE	14600	15000	15400	15800	16200	16600	17000	17400	17800	18200	18600	19000	19400	19500				

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN SOUTH CAROLINA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
APPALACHIAN	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18600		
BER-CHA-DOR	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	16900						
LOW COUNTRY	10200	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600			
LOWER SAVANNAH	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600					
WACCAMAW	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600				
PEE DEE	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600					
SANTEE WATEREE	10000	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600			
CENTRAL MIDLAND	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16500						
CATAWBA	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	16800						
UPPER SAVANNAH	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN SOUTH DAKOTA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 1	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
DISTRICT 2	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16300						
DISTRICT 3	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
DISTRICT 4	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
DISTRICT 5	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
DISTRICT 6	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200							

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN TENNESSEE

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
FIRST TENNESSEE	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600					
EAST	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600						
SOUTHEAST	11100	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15600					
UPPER CUMBERLAN	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
MID-CUMBERLAND	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	18900	
SOUTH CENTRAL	10200	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600			
NORTHWEST	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600				
SOUTHWEST	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
MEMPHIS-DELTA	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700							

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN TEXAS

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
PANHANDLE	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17500					
SOUTH PLAINS	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15600						
NORTEX	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600						
NORTH CENTRAL	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19500
TEXOMA	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000							
ARK-TEX	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600					
WEST TEXAS	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600						
PERMIAN	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400			
WEST CENTRAL	10700	11100	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15600				
CONCHO VALLEY	09800	10200	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600		
MID RIO GRANDE	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
CENTRAL TEXAS	10200	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600			
HEART OF TEXAS	10200	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600			
EAST TEXAS	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600					
ALAMO	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800							
CAPITAL AREA	11100	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15600					

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN TEXAS

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
BRAZOS	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
DEEP EAST TEXAS	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
SOUTHEAST TEX	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19400
LOWER RIO GRAND	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
SOUTH TEXAS	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
COASTAL BEND	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600						
GOLDEN CRESCENT	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600				
HOUSTON GALVEST	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19600*

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN UTAH

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT I	13500	13900	14300	14700	15100	15500	15900	16300	16700	17100	17500	17900	18100					
DISTRICT II	15100	15500	15900	16300	16700	17100	17500	17900	18300	18700	19100	19500	19900	20300				
DISTRICT III	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17300	17700	17800					
DISTRICT IV	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
DISTRICT V	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
DISTRICT VI	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16700	17000						
DISTRICT VII	12100	12500	12900	13300	13700	14100	14500	14900	15300	15700	16100							

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN VERMONT

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT I	12900	13300	13700	14100	14500	14900	15300	15700	16100	16500	16900	17200						
DISTRICT II	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	17000	17300						

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN VIRGINIA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 1	10000	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600			
DISTRICT 2	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600					
DISTRICT 3	11100	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15600					
DISTRICT 4	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18300			
DISTRICT 5	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19300
DISTRICT 6	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	17900				
DISTRICT 7	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16700	16900						
DISTRICT 8	13400	13800	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	18200	18600	19000	19400	19800	20200*
DISTRICT 9	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800							
DISTRICT 10	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17300					
DISTRICT 11	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18600		
DISTRICT 12	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200							
DISTRICT 13	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600				
DISTRICT 14	10300	10700	11100	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15600			
DISTRICT 15	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	19600*
DISTRICT 16	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	17900				

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN VIRGINIA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 17	10000	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600			
DISTRICT 18	12300	12700	13100	13500	13900	14300	14700	15100	15500	15900	16300	16400						
DISTRICT 19	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17500					
DISTRICT 20	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	17800				
DISTRICT 21	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18800	19200	
DISTRICT 22	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN WASHINGTON

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT I	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
DISTRICT II	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18700					
DISTRICT III	14500	14900	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19400				
DISTRICT IV	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	16900						
DISTRICT V	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18200					

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN WEST VIRGINIA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
REGION I	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100	15500	15600						
REGION II	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
REGION III	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	17900				
REGION IV	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600	15000	15400	15600				
REGION V	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16300						
REGION VI	12200	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200							
REGION VII	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600		
REGION VIII	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600				
REGION IX	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200						
REGION X	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000				
REGION XI	12800	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18300			

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN WISCONSIN

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
SOUTHWEST	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	18200	18600	19000	19100				
DANE	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
ROCK VALLEY	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21200		
SOUTHEASTERN	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
BAY LAKE	14200	14600	15000	15400	15800	16200	16600	17000	17400	17800	18200	18600	19000	19100				
EAST CENTRAL	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18700					
NORTH CENTRAL	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	17000	17300						
NORTHWESTERN	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							
WEST CENTRAL	13700	14100	14500	14900	15300	15700	16100	16500	16900	17300	17700	18100	18300					
MISSISSIPPI	12600	13000	13400	13800	14200	14600	15000	15400	15800	16200	16600	16900						

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN WYOMING

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
DISTRICT 1	13200	13600	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600						
DISTRICT 2	14500	14900	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19400				
DISTRICT 3	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000	18400	18700					

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN ALASKA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
SOLDOTNA	18240	18640	19040	19440	19840	20240	20640	21040	21440	21840	22240	22640	23040	23440	23840	24240	24600	
PALMER	17840	18240	18640	19040	19440	19840	20240	20640	21040	21440	21840	22240	22640	23040	23440	23840	24000	
FAIRBANKS	16640	17040	17440	17840	18240	18640	19040	19440	19840	20240	20640	21040	21440	21840	22240	22400		
JUNEAU	20100	20500	20900	21300	21700	22100	22500	22900	23300	23700	24100	24500	24900	25300	25700	26100	26500	26900*

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN HAWAII

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
HONOLULU	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21700	22100*
KAUAI	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21300	21600	
MAUI	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21100		
HAWAII	15300	15700	16100	16500	16900	17300	17700	18100	18500	18900	19300	19700	20100	20500	20900	21200		

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN GUAM

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
ENTIRE	14000	14400	14800	15200	15600	16000	16400	16800	17200	17600	18000							

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN PUERTO RICO

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
AGUADILLA	08400	08800	09200	09600	10000	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200*
ARECIBO	08800	09200	09600	10000	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600
BAYAMON	08100	08500	08900	09300	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900*
CAGUAS	08900	09300	09700	10100	10500	10900	11300	11700	12100	12500	12900	13300	13700	14100	14500	14900	15300	15600
GUAYAMA	07800	08200	08600	09000	09400	09800	10200	10600	11000	11400	11800	12200	12600	13000	13400	13800	14200	14600*
HUMACAO	08300	08700	09100	09500	09900	10300	10700	11100	11500	11900	12300	12700	13100	13500	13900	14300	14700	15100*
MAYAGUEZ	08400	08800	09200	09600	10000	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200*
PONCE	08400	08800	09200	09600	10000	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200*
SAN JUAN	08400	08800	09200	09600	10000	10400	10800	11200	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200*

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN VIRGIN ISLANDS

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
ENTIRE AREA	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600	16000							

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN NO. MARIANAS

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
ENTIRE AREA	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN TRUST TERRITORY

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
ENTIRE	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

MINIMUM INTEREST RATES FOR THE CALCULATION OF INTEREST CREDITS FOR MODERATE INCOME BORROWER IN AM. SAMOA

INTEREST RATE	3.5%	4%	4.5%	5%	5.5%	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10.5%	11%	11.5%	12%
AMORT RATE ANNUAL	51.58	55.11	58.75	62.50	66.34	70.28	74.30	78.41	82.60	86.86	91.18	95.57	100.01	104.50	109.05	113.63	118.26	122.93
AMORT RATE MONTH	4.27	4.56	4.86	5.17	5.48	5.81	6.14	6.49	6.83	7.19	7.55	7.92	8.29	8.66	9.04	9.43	9.81	10.20
ENTIRE	11600	12000	12400	12800	13200	13600	14000	14400	14800	15200	15600							

INSTRUCTIONS FOR USE OF EXHIBIT D.

THIS EXHIBIT WILL BE USED TO DETERMINE THE MINIMUM INTEREST RATE FOR A MODERATE INCOME BORROWER IN THE COMPLETION OF PART III, LINE 13 OF FORM 1944-6 (INTEREST CREDIT AGREEMENT). AMORTIZATION FACTORS FOR 33 YEARS ARE SHOWN BELOW THE INTEREST RATES. FACTORS OTHER THAN 33 YEARS MUST BE OBTAINED FROM AMORTIZATION TABLES.

DETERMINE THE APPROPRIATE INTEREST RATE BY: (1) SELECTING THE APPROPRIATE DISTRICT; (2) SELECT AN INCOME THAT IS THE SAME OR THE NEXT HIGHER THAN THE ADJUSTED ANNUAL HOUSEHOLD INCOME OF THE BORROWER. (LINE 4 OF PART III OF 1944-6); (3) SELECT THE APPROPRIATE INTEREST RATE SHOWN AT THE TOP OF THE SELECTED INCOME COLUMN.

* MODERATE-INCOME BORROWER'S WHOSE INCOME EXCEEDS THE LIMITS SET FORTH IN THIS EXHIBIT WILL NOT RECEIVE INTEREST CREDIT.

BILLING CODE 3410-07-C

Exhibit E—Rural Housing Applicant Interview

The following items will be reviewed in detail during a personal interview between the rural housing loan applicant and County Supervisor to assure an understanding of Farmers Home Administration loan making and loan servicing authorities, and the responsibilities of the applicant/borrower. *No loan will be closed without signed evidence that this interview has been held.*

1. *Equal Credit Opportunity:* FmHA assistance and services shall not be denied to any person or applicant as a result of race, sex, national origin, color, religion, marital status, age, physical or mental handicap (applicant must possess the capacity to enter into a legal contract for services), receipt of income from public assistance, or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act.

2. *Income:* Eligibility is limited to those applicants with low or moderate income who are creditworthy and have repayment ability for the loan requested. The planned income to be received by the applicant and all other adults who live or propose to live in the dwelling during the next 12 months must be included.

3. *Adjusted Income:* Qualification for low or moderate income is based on adjusted income. This is the total annual income less 5 percent thereof and less $300 for each minor person who is a member of the immediate household and lives in the home. Other deductions are contained in the regulations.

4. *Eligibility:* A determination of applicant eligibility is not an assurance that a loan will be approved. Loan approval will depend on an inspection and appraisal of the dwelling the applicant wishes to purchase and the applicant's repayment ability for the amount of loan needed to purchase the dwelling.

5. *Application Processing Priorities:* Applications will be processed in the order of priorities as outlined in FmHA regulations. When funds are inadequate to serve all eligible applicants the order of processing will be established at the beginning of each funding period considering applications on hand and not in process at that time.

6. *Counseling:* Credit counseling is available at the local County Office for any applicant or borrower who needs or desires such assistance. This will include assistance in budgeting and the use and management of household income.

7. *Energy Conservation:* The local county office will provide suggested ways homeowners may conserve on the use of energy in the home. They can also provide local sources of information such as utility companines and county extension offices, which may suggest methods of conservation.

8. *Cosigner:* An applicant who does not have repayment ability may furnish a cosigner who will guarantee repayment of the loan. Such cosigner must be approved by Farmers Home Administration.

9. *Legal Fees:* The applicant must pay necessary legal fees for title examination and loan closing. Escrow Agents or Designated Attorneys will be employed for this service. In some cases the fees may be included in the loan.

10. *Interest Credit:* Interest credit is available to qualified applicants whereby the interest rate on the loan may be reduced to a minimum of 1 percent. The amount of interest credit granted depends on the borrower's income which will be reviewed at least every 2 years.

11. *Improper Interest Credit:* Interest Credit or other subsidy assistance granted improperly either as a result of false information or through error, will be repaid by the borrower.

12. *Recapture of Interest Credit:* Interest credit received by a borrower will be subject to repayment to the Government when the mortgage is released, when the loan is assumed by another person(s), when the property is sold, or when it is no longer occupied by the borrower.

13. *Monthly Payments:* Regular payments must be made on or before the due date. Payments will be applied first to unpaid interest and the balance to principal. If for any reason a payment cannot be made on time the borrower should immediately contact the local county office.

14. *Insurance:* Every borrower will be required to obtain property insurance in a minimum amount specified by FmHA. The cost must be paid by the borrower and is not included in the regular monthly payment.

15. *Taxes:* All real estate taxes must be paid by the borrower directly to the local taxing office. They are not included in the regular monthly payment. Nonpayment of taxes can result in public sale of the property by the local tax authority or foreclosure by the Farmers Home Administration.

16. *Graduation:* FmHA is a supplemental source of credit and does not replace conventional lenders. When it appears another source of credit may be available, the borrower will be so advised and will be expected to make application for such credit and, if available, pay the FmHA loan in full.

17. *Inspection of Property:* The borrower will be responsible for making inspections necessary to protect the borrower's interest. The FmHA inspections create or imply no duty or obligation to the particular borrower but are, rather, for the dual purpose of determining that FmHA has adequate security for its loan and to enable FmHA to determine that the agency is working toward achieving the statutory goal of providing adequate housing.

18. *Compensation for Construction Defects:* For newly built dwellings the government may in some cases pay for major defects in dwelling construction which are not repaired by the builder. To be eligible, a claim must be filed at the FmHA County Office within 18 months after financial assistance is granted.

19. *Moratorium:* Borrowers may apply for a postponement of payments if due to circumstances beyond their control they are unable to continue making scheduled payments on the loan without unduly impairing their standard of living. Some of these circumstances are: Loss of job or sudden reduction of income from other sources; a loss of income or a substantial increase in expenses due to injury, illness, or death in the family.

20. *Occupancy:* Borrowers must personally occupy the dwelling. Failure to do so may result in the loan being declared due and payable in full. If for reasons beyond their control it becomes necessary to rent the dwelling temporarily, permission may be granted by the County Supervisor.

21. *Home improvements or additions:* If a borrower's home is enlarged or improved so that it exceeds modest standards for size, design and cost, the borrower may no longer be eligible to receive interest credit.

22. *Appeal:* Applicants or borrowers may appeal any FmHA program administrative action by which they are directly or adversely affected. This includes having a request for FmHA assistance denied or having FmHA assistance reduced, cancelled, or not renewed. The County Supervisor will provide information on appeal procedures.

The above items were discussed on ——— and we acknowledge receipt of a copy of the discussion outline.
County Supervisor
Applicant
Original to Borrower case file
Copy to Borrower
Co-Applicant

Exhibit F—Application Priority Rating

Applicant (Name)
Date ———

—— Points (1) *40 points (maximum)*—Adjusted annual income at the following levels for a period of more than 6 months prior to the date of application.
(a) *20 points*—Not more than 65 percent of median income for the area.
(b) *40 points*—Not more than 50 percent of median income for the area.

—— Points (2) *30 points (maximum)*—Applicant living in deficient housing, either owned or rented, for a period of more than 6 months prior to the date of application. A maximum of 30 points may be assigned using any combination of the following:
(a) *30 points*—Lack of complete plumbing; the housing does not have a bathtub or shower, wash basin, flush toilet, or hot running water for the exclusive private use of the occupant.
(b) *30 points (maximum)*—Overcrowded; more than one person per room. The number of rooms in a dwelling will include bedrooms, living rooms, dining rooms, kitchen, and any other rooms designed for living area.
(i) *15 points*—More than two persons per bedroom.
(ii) *30 points*—More than three persons per bedroom.

—— Points (3) *20 points*—Low-income participants in FmHA authorized Mutual Self-Help projects.
—— Points (4) *10 points*—Household with two more persons.
—— Total Points (maximum 100)
County Supervisor (signature)
(0+1 to be completed by the County Supervisor. Original to be placed in the application file and copy to applicant)

Exhibit F-1—Sample Letter To Applicants for Quarterly Notice of RH Application Priority

Date: ——
Dear (Applicant) ——————————
Loan funds are not sufficient for us to process your rural housing application during the coming quarter. If there should be any change by which funds might be available during the next quarter for your application, we will notify you immediately.

All applications which cannot be processed at this time, together with additional applications received during the coming quarter, will be considered for processing priority prior to the beginning of the next quarter. We will notify you as soon as funds are available to process your application.

The County Office telephone number is ——.

County Supervisor ——————————

Exhibit F-2—Sample Letter To Notify Those With Applications on File of the Processing Priority System

Date: ——
Dear (Applicant) ——————————
A recent revision of Farmers Home Administration (FmHA) regulations established a numerical rating system by which priorities for processing rural housing loan applications will be determined. Items to be considered in establishing the numerical rating include income, physical condition of the applicant's current housing, participation in self-help projects and number of persons in the household.

To implement the priority system, 75 percent of each quarterly allocation of loan funds will be used to process applications presently on hand, in the order received, until all such applications have been processed. Twenty-five percent of the allocated funds will be used to process applications in order of priority rating. Your application may be processed under whichever process will be most beneficial to you. It will be necessary that you contact our office and provide the information necessary to establish a priority rating. Please complete the questionnaire at the bottom of this letter and return it to this office as soon as possible.

If we do not hear from you within 30 days, we will assume you are not interested in a loan at this time and we will consider withdrawal of your application. You are welcome to file a new application at any time in the future if you wish to do so.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis or race, color, religion, national origin, sex, marital status and age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income is derived from public assistance program; or because the applicant has in good faith exercised any right under the Consumer Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

The County Office telephone number is ——.

County Supervisor ——————————

1. —— Total current annual income of all adult members of your household.

2. Indicate by a check mark any of the following items which *are not* available in your present housing:
☐ Bathtub or shower
☐ Wash basin
☐ Flush toilet
☐ Hot running water

3. Living area of your present housing:
——Total number of rooms
——Number of bedrooms
——Total number of persons in your household who reside there on a permanent basis.

Date ——————————
Signature Applicant ——————————

Exhibit G—Interest Credit Agreement Renewal

Dear (FmHA Borrower):

The Interest Credit Agreement you signed, reducing the effective interest rate on your Rural Housing loan, expires soon. To determine whether you are eligible to continue to receive a reduction in your housing loan payment, we will need information about:

1. Your income and the incomes of all other adults who live or propose to live in the dwelling during the next 12 months. You should report *all* income to be received from employment, including overtime pay, bonuses, commissions, tips, etc. You should also include *all* income to be received from other sources such as unemployment benefits, workman's compensation, disability income, pensions, veteran's benefits, social security, child support, alimony, welfare payments, and any other source.

2. Information that will justify income deductions or exemptions to which you may be entitled. This may include items such as: (1) income received for the care of foster children, (2) income for services rendered as a volunteer in organizations such as VISTA, Peace Corps, Foster Grandparent and Retired Senior Volunteer, (3) payment received for training or travel expenses paid by the Department of Labor to CETA participants, (4) depreciation of essential business or farm property, (5) qualified work related expenses, (6) qualified payment for child care or disabled dependent care, and (7) qualified payments for nursing home or institutional type care.

3. The number of dependent minor children (not including foster children) residing in the dwelling.

4. The amount of real estate taxes paid by you on your dwelling last year reduced by any tax exemptions available but not taken.

5. The amount you pay each year for fire or hazard insurance on your dwelling.

This information must be provided promptly to the Farmers Home Administration (FmHA) by completing the enclosed Interest Credit Agreement. When applicable, the enclosed Request for Verification of Employment should also be completed.

1. Interest Credit Agreement—Complete section II of the agreement, sign the form in the space provided, and send all copies of the form to the FmHA County Office using one of the enclosed envelopes. If you are self-employed or a farmer, contact the County Supervisor for an appointment so that the County Supervisor may assist you in providing the required information.

2. Request for Verification of Employment—You and each of the employed adult members of your household must complete one of the forms for each source of employment income. Items 1, 2, and 3 must be completed and the form signed in block 4. The form and one of the enclosed envelopes should be sent or given to each employer. You should request the employer to complete and send the form to the FmHA County Office within 10 days. To ensure that the form is returned you should place a stamp on the envelope before giving it to the employer. If additional copies of the form are needed they may be obtained from the FmHA County Office.

After the County Supervisor has received all of the required information, a copy of the Interest Credit Agreement form will be returned to you. The agreement will show the amount of interest credit, if any, that will be credited to your loan account.

Failure to provide complete and accurate information or to return the forms promptly to the FmHA may result in your not receiving all of the interest credit to which you may be entitled, thus increasing the payments on your loan.

The enclosed Interest Credit Agreement and Verification of Employment must be completed and returned to your local County Supervisor by (date). Failure to return the forms with information completed as requested will result in loss of interest credit for which you may otherwise be eligible to receive and your loan payments will be increased to $ —— beginning with your (date) payment. Please see that *all* papers are returned as all income must be considered to compute Interest Credit. If you have any questions you should contact the local County Supervisor immediately at (phone number).

Exhibit H—Mutual Self-Help Housing Guidelines

Introduction
Leadership and Supervision
Basic Requirements
Organization and Agreements
Preconstruction Meetings
Construction
Membership Agreement (Exhibit H-1)
Promissory Note (Exhibit H-2)

How to give low-income rural people an opportunity to have a decent home of their own is a major challenge in rural America. To help such persons have an adequate home at a cost they can afford, the Farmers Home Administration (FmHA) makes Rural Housing (RH) loans to individual persons to enable them to participate in a mutual self-help housing project. This program is specifically designed to help those who do not have enough income to build modest homes by

customary methods, to work together to build modest homes of their own.

Participating applicants who are approved by FmHA may obtain rural housing loans to buy materials, to pay for any skilled labor and contract costs required for work on their own homes and if necessary buy a building site. Basic construction labor will be performed by families mutually helping each other, after forming an unincorporated or incorporated association for this purpose.

This exchange of labor, without a cash cost to the families, is the key to the mutual self-help housing program. In this way the houses can be built for considerably less cash cost than by customary methods.

There also may be savings in the cost of materials purchased. All members of the group may buy their materials from suppliers who offer the most favorable prices. Material suppliers may offer discounts to those participating in mutual self-help housing if they know they will have a large volume of sales to members of the group.

Families have been able to build modest homes suited to their needs at savings of several thousand dollars. This substitution of labor equity for cash can reduce the cost of homes enough to bring the price of a modest home within reach of low-income rural families.

Persons interested in working with other families on an organized basis to build their own homes should contact the FmHA County Supervisor serving the area in which the housing will be located.

The County Supervisor will obtain the prior approval of the State Director for committing the FmHA to participate in each mutual self-help project.

Leadership and Supervision

FmHA will provide the overall leadership and supervision and determine the eligibility of the participating applicants to receive Rural Housing loans. A special construction supervisor may, with prior authorization of the National Office, be hired by the State Director to help the applicants with their home building. In some cases construction supervision assistance may be offered by another agency or organization. FmHA will consider such offers under the following conditions:

1. The agency or organization must have the legal, financial and actual capacity and resources to provide the construction supervision assistance under the direction of the FmHA County Supervisor.

2. The respective responsibilities of all parties should be clearly defined and stated in a written agreement to be signed by the participating agencies.

3. The proposal must be compatible with the FmHA borrower method of operation, more specifically:

a. FmHA will make Rural Housing loans to applicants based on the need and qualifications of each.

b. FmHA will determine the eligibility of each applicant, approve the house plans, inspect the construction, and disburse loan funds as needed on an individual-case basis. Loan funds will *not* be pooled.

c. No advance commitments of loan funds will be made for any project. A commitment of funds will be made for each loan when it is approved subject to the conditions stated in each loan approval.

d. No loan funds may be used to pay for construction supervision or to pay borrowers for working on their homes or on the homes of others who are participating.

e. The construction will involve as much on-site work as practicable, to obtain maximum savings to those participating.

f. Basic plans and construction methods should be standardized to the extent practicable.

Basic Requirements

Rural housing loans will be made by FmHA to those who participate in a self-help housing group and who:

1. Do not have sufficient income to build a modest home by customary methods.

2. Are creditworthy by FmHA standards and can comply with all other eligibility requirements for rural housing loans.

3. Desire to build a home of their own that is simple in design, structurally sound, and low in cost.

The following basic conditions are essential to the success of a self-help housing venture:

1. A sincere spirit of cooperation on the part of all participants.

2. Competent leadership and technical supervision.

3. A complete understanding by each person of the responsibilities involved.

4. Adequate time available to participants to do the work.

5. Sufficient skills among the members of the group to do at least the basic construction work.

6. All the building sites must be close enough together to permit convenient exchange of work.

7. Ordinarily from 6 to 10 families can work together satisfactorily.

Organization and Agreements

An understanding should be reached on important items such as when the individuals in the group will be available to work, the amount of work to be performed, the number to be involved in the various work groups and the amount of time each will spend working on the homes. The group will develop a written agreement drawn so as to be binding upon all members signing it. Attached as Exhibit H–1 is a suggested form of such an agreement called Membership Agreement. All participating members will sign the Membership Agreement and each applicant will be given a copy. Any such document used will be given prior review and approval by the FmHA to be sure that it is legally adequate and does not conflict with applicable State laws of FmHA regulations. This should be done with the assistance of the Office of the General Counsel.

Each applicant will execute a promissory note for an amount equal to the value of the services they agree to perform for the association to build the houses. See Exhibit H–2. Such a note should not be secured by a lien against the property.

Preconstruction Meetings

The successful conduct of a mutual self-help housing program requires a series of meetings with those participating. These meetings should be held to discuss fully all of the planning, construction, and maintenance of a home, the responsibilities of home ownership, and the requirements for a FmHA rural housing loan. These meetings also will familiarize the applicants with the self-help approach, develop mutual confidences among participants and develop the interest of community leaders in the project. During the group meetings the FmHA County Supervisor and those who will be responsible for the supervision of the construction should be able to learn about the capabilities of the individuals and determine the extent to which construction can be carried out under the self-help method.

The actual number of meetings held will depend on the rate at which the group progresses toward reaching a full understanding of the responsibilities involved. Experience indicates that from 8 to 10 meetings usually will be adequate. Local people should be used, where practical, to discuss appropriate subjects in the meetings. This will help in making the local community aware of the self-help program, and also help obtain local acceptance and support for the project. The following is a recommended sequence of meetings and suggested list of subjects to be discussed:

The first meeting should be explanatory in nature. The FmHA County Supervisor should discuss the basic principles involved in mutual self-help housing, together with a brief explanation of the purposes and limitations of and the requirements for rural housing loans. The County Supervisor should also discuss obligations of home ownership such as loan payments, taxes, insurance and maintenance. At the first meeting, time should be allowed for the individuals to become acquainted with one another. In closing the first meeting, the group should be informed of the duties and responsibilities of the officers and committees needed to carry out a mutual self-help program. The members of the group should be considering a name for the organization and the persons best suited for the various positions in order that the officers and committees can be selected at the next meeting.

At the second meeting an association should be formed and the officers and committees selected. They might include the following:

1. President
2. Vice-President
3. Secretary-Treasurer
4. Labor Manager
5. Purchasing Committee
6. Program Committee

Additional meetings are essential, but the order in which the subjects are presented or the number of subjects included in any meeting may vary. The following topics are suggested for a series of meetings:

1. *Site Planning and Building Codes.* An architect, FmHA engineer, or a good builder who also does home designing could be invited to discuss factors in selecting house size. The local building inspector could be asked to speak on building and health code requirements.

2. *Home Planning.* An architect or home economist may be invited to discuss home

kitchen layouts, traffic patterns, window placement, economical construction, and other considerations in the selection of a good house plan.

3. *Plans and Specifications.* The group will probably have questions and need individual help in making decisions concerning plans and specifications for their homes. The County Supervisor and the construction supervisor should help each applicant develop suitable specifications.

4. *Cost of Materials.* The purchasing committee will obtain and review prices of materials and contract work. At one of the last meetings to be held before the construction starts, the purchasing committee should report on its recommendations for buying materials and awarding contracts.

5. *Taxes.* A discussion of the method of tax appraising could be given by the local tax assessor. Based on plans and locations a rough estimate should be made of expected taxes.

6. *Insurance.* A local insurance agent may be asked to speak on insurance for fire and extended coverage, household policies, and other coverages of interest to the group such as liability insurance. The FmHA County Supervisor should discuss fire, windstorm and other hazard insurance requirements of RH loans.

7. *Mortgage Requirements.* The FmHA County Supervisor might discuss the FmHA mortgage and related requirements. A local attorney might be asked to discuss other legal aspects of the program.

8. *Maintenance Costs.* The County Supervisor, the construction supervisor or a local real estate agent might discuss the importance of proper maintenance for a home. They should emphasize how money spent for maintenance improves appearance, helps maintain value and saves money in the long run.

9. *Money Management.* The FmHA County Supervisor should impress upon the group the necessity of following the basic principles of money management such as keeping records, following a budget, and not overspending on non-essentials.

10. *Labor Sharing Arrangement.* The group should discuss and reach decisions as to how the members will share the labor, how records will be kept of time worked, how to make sure that labor will be exchanged on a basis that is fair to all members and how to evidence and record these decisions.

11. *Use of Tools.* One or more of the meetings should include demonstrations and training by the construction supervisor of the safe and proper use of tools. Special attention should be given to the use of basic tools such as level, square, rule, saw, and any power tools that might be used in the construction.

12. *Construction and Work Procedures.* The authority and duties of the Construction Supervisor will be discussed in detail. The procedures for actual construction will be discussed including labor sharing, work teams, order of development, function of committees, time reporting for work completed and future hours available.

13. *Ground Breaking Plans.* The final preconstruction meeting should be more of a social get-together than a business meeting. This is also the logical time to plan a ground breaking ceremony for the day the loans are closed.

Construction

The basic work is performed, largely on a labor exchange basis, by the participating families under the guidance of the construction supervisor.

The group may, depending on the skills of the individuals, plan to do all the work or plan to contract for work which they cannot do readily, such as installation of wiring, plumbing and kitchen cabinets and equipment, excavating for basements and dry-wall finishing. Highly skilled or specialized jobs will be contracted when such services are not available in the group.

There may be an inclination on the part of some participants to want to concentrate on their own homes, particularly after the framing is in place. Therefore, a prior understanding should be reached regarding the specific responsibilities of each family. Rather than completing or nearly completing each house one at a time, work should start on all houses and each stage of construction be finished on all before starting the next stage of construction on any house, to the extent consistent with good construction practices.

To effect savings, materials for all the houses may be purchased from the one or several suppliers who offer the lowest prices. Also, all contracts for members of the group may be awarded to the same contractors. To illustrate, the plumbing contractor offering the lowest price ordinarily should perform the plumbing for all of the dwellings.

Each borrower will pay the material supplier for materials used, and the contractor for work done, on its own home. All deliveries of materials will be itemized separately for each home. The Association as a whole, after considering the suggestions of the purchasing committee will recommend the suppliers from whom materials will be purchased and the contractors to whom the contracts will be awarded.

The construction supervisor with the advice of the president of the association should divide the group into work teams. Work teams should be organized on the basis of skills, compatability, and availability. For example, one team could lay out and pour footings and another team could lay bricks. The third team could begin framing as soon as the foundation is ready.

A firm understanding will be reached that no changes in construction from the approved plans and specifications may be made without furnishing the County Supervisor with full cost figures and obtaining approval in advance. If any change results in a need for additional funds, they must be furnished by the borrower before approval. All homes should be finished at or about the same time and none should be occupied prior to completion of them all.

The Association should have brief meetings, at least once a week, to:

1. Report on performance and hours of work performed.

2. Settle any disagreements.

3. Plan work schedule and purchases for the coming week.

Exhibit H–1—Membership Agreement

Membership Agreement ———— Association

We understand that by signing this agreement we will become members in the ———— Association when we receive adequate credit to finance the home we intend to build. We have read the agreement or have had it read to us and agree to comply with all its provisions. Each applicant has been given a copy to keep.

Purpose

The purpose of this Association is to provide a way whereby each member can help itself and every other member to build its own home.

Membership

Membership will be limited to those persons who:

1. Do not have an adequate home;

2. Are willing to work with the other members of the Association in building their homes;

3. Have a commitment to obtain financing for the cash cost of their home; and

4. Sign the Membership Agreement.

Applicants and co-applicants may both sign the Membership Agreement. As used in this agreement the term "Applicant" means either applicant or co-applicant when both sign the agreement, or the person signing when only one signs.

Voting Rights

Each member will have one vote in the election of officers and all other matters involving a decision by the membership.

Officers

The officers of the Association will be a President, Vice-President and a Secretary-Treasurer. Each will be elected, at a meeting, by a majority vote of all the members and will continue to hold office unless the officer resigns, dies, is incapacitated, or is removed by vote of two-thirds of all the members at a called meeting for the purpose of considering such removal. The duties of the officers will be as follows:

The President will:

1. Call membership meetings and officers' meetings;

2. Preside over all meetings;

3. Work closely with the construction supervisor; and

4. See that committees and members carry out their responsibilities in connection with mutual self-help project.

The Vice-President will:

1. Act for the President in the President's absence, and

2. Be chairman of the Program Committee.

The Secretary-Treasurer will:

1. Keep the minutes of each meeting.

2. Handle correspondence of the Association.

3. Collect and handle through a checking account in the Association's name, funds the organization may need. These may include items such as stationery, stamps and record book.

4. Maintain other records of the Association at the direction of the President.

Appointed Committees and Positions

The officers by majority vote will appoint the following from the membership:

1. A Labor Manager who will keep records of the hours worked by each member and notify the construction supervisor as to the availability of members for work on the housing.

2. A Purchasing Committee of three members of the Association that will obtain and review prices and cost estimates for the houses to be built and recommend contractors and suppliers to be used by the members.

3. Two of the three members of the Program Committee. The third member will be the Vice-President, who will be chairperson. This committee will help plan meetings and assist in obtaining outside speakers.

Meetings

Meetings of officers and meetings of members will be held as often as necessary to successfully complete the mutual self-help housing. Meetings may be called by the President when considered advisable and will be called by the President at the written request of not less than —— members, or at the request of the Farmers Home Administration County Supervisor or other authorized Farmers Home Administration employee. Each officer or member will be notified at least three days before the meeting as to the time, date and place of each meeting by mail, telephone or by announcement at the preceding meeting.

Labor Exchange Agreement

Each member agrees to furnish 700 hours of labor for the construction of houses of the other members of this Association in return for 1,500 hours of labor from other members in the actual construction of its house. We understand that if more than 1,500 hours labor is required from each member to complete all houses, each member will furnish its share of additional labor needed. In case less than 1,500 hours labor is required from each to complete all the houses, each family's obligation under this agreement will be satisfied when it has contributed the number of hours labor actually required.

The number of hours worked by each member or by any other person for any applicant credit will be verified by the Labor Manager. Each member will sign a promissory note to the Association in the amount of $——. It is understood the amount of $—— for each approved hour of labor performed will be credited on the note and that the note will be satisfied when the number of hours required of each member has been worked. However, if any member because of death, illness, or injury is unable to make its full labor contribution personally or from other sources as required, that member will be excused to that extent from performing its labor agreement, and all the other members will assist such a member in completing its house and will contribute the additional amount of labor for all the houses which otherwise the stricken member would have furnished.

We agree to exchange labor on the following basis:

1. Equal time will be allowed for labor performed by members in the actual construction of the homes regardless of the type of work involved.

2. Rates for time allowances for labor performed by persons other than members, will be determined by the Officers with the approval of the Labor Manager and the construction supervisor.

3. A member may not work alone on the members own house unless the job can be done alone and the consent of the construction supervisor has been obtained.

4. The hours worked will be reported by each worker to the construction supervisor each day. The construction supervisor will promptly turn in a work sheet for each worker to the Labor Manager, who will credit the hours worked to that member's account. In case of a dispute as to the number of hours to be credited, the question will be resolved by a majority vote of the officers of the Association.

General Agreements

We agree that:

1. The Association, by majority vote, will determine and recommend the best way to buy materials and recommend contractors for any skilled work. Each member shall make its own decision in selecting the type of building materials and in selecting a contractor from those recommended by the Association. Each member shall pay the cost of materials and the contractor in connection with its own home.

2. The Association will collect cost of operation of the Association from members, not to exceed $—— from each member.

3. The Association will collect, by any means available, payment for failing to provide the amount of labor agreed.

4. The Association will act for the group in other matters related to the project when authorized by a majority of the members.

5. Property insurance will be obtained by the members as required by the Farmers Home Administration. Members also will obtain workmen's compensation insurance as required by State law or public liability insurance against claims of others when required by the Farmers Home Administration.

Dissolution

After a determination is made by the officers that the last house is completed and that there are no obligations of or to the Association, upon majority vote of the members and with the consent of the Farmers Home Administration the Association shall terminate.

Amendments

Amendments to this agreement may be made by a majority vote of the members, at a meeting called for the announced purpose of considering amendments, to take effect upon approval by the Farmers Home Administration County Supervisor; but no amendments may decrease the rights or increase the liability of any member without such member's consent.

Date ——, Signed (Applicant) ——, Dated: ——, Signed (Co-applicant) ——.

Date ——, Signed (Applicant) ——, Dated: ——, Signed (Co-applicant) ——.

Date ——, Signed (Applicant) ——, Dated: ——, Signed (Co-applicant) ——.

Date ——, Signed (Applicant) ——, Dated: ——, Signed (Co-applicant) ——.

Exhibit H–2—Promissory Note

Date ——

Eighteen months after date for value received, we promise to pay to the —— Association or order the sum of —— ($). We have agreed to furnish said Association 700 hours of our own labor or the labor of other persons as approved by the officers and Labor Manager of the Association and the construction supervisor in accordance with the Membership Agreement of the Association. Credits will be made on this note at the rate of $—— for each hour worked by either of the undersigned, and at a rate determined in accordance with the Membership Agreement for each hour worked by any other person for the account of the undersigned, in the next eighteen months. This note will be satisfied when the undersigned have furnished the actually required number of hours labor. All time worked must be approved by the Labor Manager of the Association. This note is subject to all provisions of the Membership Agreement.

Applicant— ——
Witness— ——
Co-applicant— ——
Address— ——

Note.—This document has been reviewed in accordance with FmHA Instruction 1901–G, "Environmental Impact Statements." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

The reporting and/or recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

(42 USC 1480; 7 CFR 2.23; 7 CFR 2.70)

Dated: January 8, 1981.

Alex P. Mercure,

Under Secretary for Small Community and Rural Development.

[FR Doc. 81-1874 Filed 1-16-81; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 211 and 214

Documentary Requirements: Immigrants; Waivers; Nonimmigrant Classes: The Effect of a Strike on the Admission and Continued Employment of Certain Nonimmigrants

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: These final rules set forth the restrictions on the admission and continued employment of nonimmigrant temporary workers, intra-company transferees, and students in the occupations and at the place of a strike or other labor disputes involving a work stoppage. The rules are necessary to protect U.S. labor. These rules also eliminate a restriction on the admission of commuters destined to the site of a strike, which was declared invalid by a U.S. Court of Appeals.

EFFECTIVE DATE: February 18, 1981.

FOR FURTHER INFORMATION CONTACT:
For General Information: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 Eye Street, N.W., Washington, DC 20536. Telephone: (202) 633–3048.
For Specific Information: Michael Heilman, General Attorney, Immigration and Naturalization Service, 425 Eye Street, N.W., Washington, DC 20536. Telephone: (202) 633–2620.

SUPPLEMENTARY INFORMATION: On April 18, 1979, the Department of Justice, Office of Legal Counsel ("OLC") advised the Immigration and Naturalization Service ("INS") that 8 CFR 214.2(h)(10), which relates to the effect of a labor dispute on H nonimmigrants did not apply to aliens in the United States. In the opinion, the OLC questioned whether the regulation was rationally related to the purpose of 8 U.S.C. 1101(a)(15)(H)(ii) and concluded that its application to an alien already in the United States would contravene the alien's right to strike or not to strike guaranteed him under section 7 of the National Labor Relations Act ("NLRA").

The Department of Labor expressed its concern over the OLC opinion. It contended that the continued employment or training of H nonimmigrants during a strike would adversely affect U.S. labor. Moreover, it argued that, as a practical matter, the rights of a nonimmigrant under the NLRA are more theoretical than real, and urged that the labor policy interests underlying the Immigration and Nationality Act outweighed those underlying the NLRA in most strike situations.

In our view the amendment to 8 CFR 214.2(h)(10) protects U.S. labor while satisfying the legal concerns of the OLC. In the case of aliens covered by the NLRA, work authorization is suspended unless the employer establishes that less than 30% of the workers involved are U.S. citizens or lawful permanent resident aliens. In addition, the Department of Labor must certify that the strike has been authorized by a majority of such workers, or that a majority of such workers are participating in the strike. This latter provision is included to provide the public with guidelines to identify those situations where the impact upon U.S. labor would not be considered significant enough to override the alien's rights under the NLRA.

A similar amendment has also been added to 8 CFR 214.2(1)(3a) pertaining to petitions for intra-company transferees. The regulation also suspends employment authorization for nonimmigrant students upon certification by the Department of Labor that a strike or other labor dispute involving a work stoppage is in progress in the occupation at the place of employment and that the continued employment of the nonimmigrant student would adversely affect U.S. labor.

Numerous comments were received from the public, including representatives of labor unions and employers of temporary workers, and from the Department of Labor. The views expressed ranged from criticism of any control over the employment of nonimmigrants during a strike to support for automatic suspension of employment authorization during labor disputes. The majority of commentators criticized the proviso applicable to strikes involving nonimmigrants covered by the NLRA.

In our view it is essential that the Attorney General's authority to suspend work authorization of nonimmigrants who have entered this country for the sole purpose of working be exercised only under exceptional circumstances. Some commentators contend that a strike constitutes such exceptional circumstances to justify exercising this authority. In support of their argument they point out that, because the stay of nonimmigrants in this country depends in large part on the goodwill of the employer, abuses by an employer during a labor dispute are more likely to occur where temporary workers are employed.

We find this argument persuasive in the case of workers for whom there is no protection under federal law from unfair labor practices committed by employers. In such a situation no conflict exists with Section 7 of the NLRA which guarantees a worker the right to choose whether or not to strike. Therefore, we are providing for suspension of work authorization for these workers upon a finding of adverse effect to domestic workers. Consequently, given the Department's concern, and the Department of Labor's strong policy, we are publishing a regulation which essentially balances the interests of U.S. labor with the rights granted to certain workers under Section 7 of the NLRA.

Suspension of student employment is being provided regardless of whether or not the student qualifies as an "employee" under the NLRA. The reason for this was expressed in our proposal: inasmuch as the student is not in the U.S. for the purpose of employment, his/her rights under the NLRA are viewed as less significant than those of a temporary worker.

In order to insure that the temporary worker program is not utilized to import "strikebreakers", the final rule bars the admission of all temporary workers in the event of a strike or other labor dispute involving a work stoppage in the occupation at the place of employment regardless of whether or not they would be covered by the NLRA.

Since 8 CFR 211.5(d), relating to the admission of commuters destined to the site of a strike, has been declared invalid by the U.S. Court of Appeals for the Ninth Circuit in *Sam Andrews' Sons* v. *Mitchell*, 457 F.2d 745 (9th Cir. 1972), it is deleted consistent with our proposal.

In view of the above, the following amendments are made to Chapter I of Title 8 of the Code of Federal Regulations:

PART 214—NONIMMIGRANT CLASSES

§ 214.2 [Amended]

1. 8 CFR 214.2(h)(10) is revised to read as follows:

(h) * * *

(10) *Effect of Strike.* (i) A petition to classify an alien as a nonimmigrant as defined in section 101(a)(15)(H) of the Act shall be denied if the Secretary of Labor or his designee certifies to the Commissioner of Immigration and Naturalization or his designee that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation and at the place the beneficiary is to be employed or trained and that the employment or training of the beneficiary would adversely affect the wages and working conditions of U.S. citizen or lawful permanent resident workers.

(ii) If a petition has been approved, but the beneficiary has not yet entered the United States to take up the approved employment or training, and the Secretary of Labor or his designee certifies to the Commissioner of Immigration and Naturalization or his designee that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation and at the place the beneficiary is to be

employed or trained, and that the employment or training of the beneficiary would adversely affect the wages and working conditions of U.S. citizen or lawful permanent resident workers, the approval of the petition is automatically suspended and the application for admission on the basis of the petition shall be denied.

(iii) If a petition has been approved, and the beneficiary has entered the United States to take up the employment or training, if the beneficiary is not an "employee" as defined in the National Labor Relations Act (29 U.S.C. 152(3)), and the Secretary of Labor or his designee certifies to the Commissioner of Immigration and Naturalization or his designee that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation and place of employment or training, and that the employment or training of the beneficiary would adversely affect the wages and working conditions of U.S. citizens or lawful permanent resident workers, the approval of the petition is automatically suspended.

(iv) If a petition has been approved, and the beneficiary has entered the United States to take up employment, if the beneficiary is an "employee" within the definition of the NLRA, the existence of a strike in the occupation at the place of employment shall result in suspension of the beneficiary's authorization to work, unless the employer establishes to the satisfaction of the Secretary of Labor or his designee, who in turn certifies to the Commissioner of Immigration and Naturalization or his designee, that less than 30 percent of the work force in the occupation at the place of employment are U.S. citizens or lawful permanent resident workers, provided that the Secretary of Labor or his designee also certifies that the strike has been authorized by a majority of such U.S. citizen or lawful permanent resident workers who voted, or a majority of such workers are participating in the strike.

(v) As used in this section, "place of employment" shall mean wherever the employer or a joint employer does business.

§ 214.2 [Amended]

2. 8 CFR 214.2(1)(3a) is revised to read as follows:

* * * * *

(1) * * *

(3a) *Effect of strike:* (i) A petition to classify an alien as a nonimmigrant as defined in section 101(a)(15)(L) of the Act shall be denied if the Secretary of Labor or his designee certifies to the Commissioner of Immigration and Naturalization or his designee that a strike or other labor dispute involving a work stoppage (or layoff) of workers is in progress in the occupation at the place the beneficiary is to be employed, and that the employment of the beneficiary would adversely affect the wages and working conditions of U.S. citizens or lawful permanent resident workers.

(ii) If a petition has already been approved, but the beneficiary has not yet entered the United States to take up the approved employment, and the Secretary of Labor or his designee certifies to the Commissioner of Immigration and Naturalization or his designee that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation at the place the beneficiary is to be employed, and that the employment of the beneficiary would adversely affect the wages and working conditions of the U.S. citizens or lawful permanent resident workers, the approval of the petition is automatically suspended and the application for admission on the basis of the petition shall be denied.

(iii) If a petition has already been approved, and the beneficiary has entered the United States to take up the employment, if the beneficiary is not an "employee" as defined in the National Labor Relations Act (29 U.S.C. 152(3)), and the Secretary of Labor or his designee certifies to the Commissioner of Immigration and Naturalization or his designee that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation at the place of employment, and that the employment of the beneficiary would adversely affect the wages and working conditions of U.S. citizens or lawful permanent resident workers, the approval of the petition is automatically suspended.

(iv) If a petition has been approved and the beneficiary has entered the United States to take up employment, if the beneficiary is an "employee" within the definition of the NLRA, the existence of a strike in the occupation at the place of employment shall result in revocation of the beneficiary's authorization to work, unless the employer establishes to the satisfaction of the Secretary of Labor or his designee, who in turn certifies to the Commissioner of Immigration and Naturalization or his designee, that less than 30 percent of the work force in the occupation at the place of employment are U.S. citizens or lawful permanent resident workers, provided that the Secretary of Labor or his designee also certifies that the strike has been authorized by a majority of such U.S. citizens or lawful permanent resident workers who voted, or a majority of such workers participating in the strike.

(v) As used in this section, "place of employment" shall mean wherever the employer or a joint employer does business.

* * * * *

3. 8 CFR 214.2(f)(6) is amended by revising the last sentence in the paragraph to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(f) * * *

(6) *Employment.* * * * Permission which is granted to a student to engage in any employment shall not extend beyond the expiration date of his/her authorized stay, and authorization for all employment, whether or not part of any academic program, is automatically suspended upon certification by the Secretary of Labor or his designee to the Commissioner of Immigration and Naturalization or his designee that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation at the place of employment. As used in this section, "place of employment" shall mean wherever the employer or a joint employer does business.

* * * * *

PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS: WAIVERS

4. 8 CFR 211.5(d) is removed in its entirety.

§ 211.5 Alien Commuters

* * * * *

(d) [Revoked]

(Sec. 103, and 214; (8 U.S.C. 1103, and 1184))

Dated: January 12, 1981.

David Crosland,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 81-1769 Filed 1-16-81; 8:45 am]

BILLING CODE 4410-10-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

Physical Protection of Plants and Materials: Reporting of Physical Security Events

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to clarify existing requirements dealing with the reporting of events which significantly affect physical security effectiveness. Proposed amendments were published for comment in October 1979, and have been revised to take into consideration public comment. Instead of reporting within 1 hour as originally proposed, a range of reporting times up to 24 hours or the recording of an event in the licensees' records would be allowed, depending on the severity of the event and compensatory measures taken.

Concurrently with the issuance of the final rule, the NRC staff is issuing a Regulatory Guide which provides a procedure that may be used to determine whether an event is reportable, including a partial list of typical events that a licensee should report. This guide was issued for comment along with the proposed regulation and has been revised to reflect both the changes made in the effective regulation and the comments received on the proposed guide.

EFFECTIVE DATE: April 6, 1981.

NOTE: The Nuclear Regulatory Commission has submitted this rule to the Comptroller General for review of its reporting requirement under the Federal Reports Act, as amended, 44 U.S.C. 3512. The date on which the reporting requirement of the rule becomes effective, unless advised to the contrary, includes a 45-day period which that statute allows for Comptroller General review (44 U.S.C. 3512(c)(2)).

FOR FURTHER INFORMATION CONTACT: Mr. James Prell, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301–443–5903).

SUPPLEMENTARY INFORMATION: On October 22, 1979, the NRC published in the Federal Register (44 FR 60743) proposed amendments to 10 CFR Part 73 of its regulations concerning reporting of safeguards events. Interested persons were invited to submit written comments and suggestions in connection with the proposed amendments, within 60 days after publication in the Federal Register. Concurrently with the publication of the proposed amendments, the NRC issued for comment a guide which provides a procedure for implementing the regulations (Draft Regulatory Guide, Reporting of Safeguard Events, SG 901–4). After reviewing public comments on the regulation and the guide, the NRC has decided to make a number of changes to both documents.

Following is a summary of the substantive changes to the amendments. These changes were accompanied by appropriate changes to the guide.

1. *Reporting Times.* Several comments suggest that a clearer distinction be made between serious and less serious types of events, and that reporting times be made commensurate with the severity of the event. The NRC agrees with this suggestion and has developed criteria for classifying event severity and the associated reporting times. The final rule makes a distinction between events which must be reported by phone within 1 hour and those that must be reported within 24 hours. Events which must be reported within 1 hour are those that involve an explicit threat or a major loss of physical security effectiveness. Events that must be reported within 24 hours are those involving a potential threat or a moderate loss of physical security effectiveness. Reporting of a major loss of physical security effectiveness can be delayed for 24 hours if: (a) compensatory measures specified in an approved security or contingency plan have been taken, or (b) within ten minutes of that event's occurrence, compensatory measures are implemented that provide a level of security equivalent to that existing prior to the event. Similarly, a moderate loss of physical security effectiveness event need not be reported if equivalent compensatory measures have been implemented. Every event must be entered into the licensee's records. Events that have been defined in a licensee's approved security or contingency plan as not being reportable need not be reported to the NRC.

2. *Compensating Measures.* Several comments suggest that when, following an event, compensating measures are placed into force that provide a level of security equivalent to that existing prior to the event, it need not be reported to the NRC but merely recorded in the licensee's records. This suggestion has been adopted for a moderate loss of physical security event. However, for a compensated major loss of physical security effectiveness event, a report must be made within 24 hours instead of 1 hour. Even though measures have been taken to compensate for this type of event, a report is required because the NRC needs to be informed of the cause of such an event and the action taken to correct it.

3. *Distinction in Reporting Requirements Between High and Low Enriched Uranium.* One comment suggests that reporting requirements for events involving formula quantities of strategic special nuclear material should be different from those involving moderate and low strategic significance material. The basis cited for this suggestion is the considerable differences in their respective physical security requirements, as specified in §§ 73.25, 73.26, 73.45, 73.46 versus 73.67. The NRC agrees with this comment with regard to the loss of physical security effectiveness type events. Accordingly, events pertaining to material or moderate strategic significance, which must meet the safeguard requirements of Section 73.67 paragraphs (d) and (e), have been placed in the moderate loss of physical security effectiveness category, while events pertaining to material of low strategic significance, which must meet the safeguard requirements of Section 73.67 paragraphs (f) and (g), do not have to be reported. However, explicit or potential threats concerning all types of material covered by safeguards regulations must be reported.

4. *Material Control and Accounting.* Some comments suggest that material control and accounting reporting requirements are adequately addressed by existing regulations. The NRC has reevaluated the need for the reporting of events involving material control and accounting and agrees with these comments.

5. *More Definite Description of Authorized Individual.* Some comments suggested there are many "authorized individuals" at fuel cycle facilities who could feel bound to report the same event. The commenters proposed that a responsible individual be more specifically identified. The NRC disagrees with this suggestion. The Commission is not concerned with who reports the security event, but rather that the event be reported within the required time frame beginning at the moment of discovery by a member of the security organization or any other employee of the licensee. The requirement has been changed to better reflect this concern.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendments to Title 10, Chapter 1, Code of Federal Regulations, Part 73, are published as a document subject to codification.

1. Section 73.71 of 10 CFR Part 73 is amended by adding a new paragraph (c) to read as follows:

§ 73.71 Reports of unaccounted-for shipments, suspected thefts, unlawful diversion, radiological sabotage, or events which significantly threaten or lessen the effectiveness of safeguards.

* * * * *

(c) Each licensee under either a specific or general license shall report to the director of the appropriate Nuclear Regulatory Commission Inspection and Enforcement Regional Office listed in Appendix A of this Part, by telephone, any event which significantly threatens or lessens the effectiveness of a physical security system as established by regulations in this chapter, or by the licensee's approved physical security, contingency, and security personnel qualification and training plans or by both. This report shall be made within the time period specified below. The time period begins upon discovery of the event by any member of the security organization or any other employee of the licensee. The licensee shall submit a written report to the appropriate NRC Regional Office listed in Appendix A of this Part describing the event in detail within 5 days of the time of discovery. A copy of such written report shall be sent to the Director of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Such notification and reports satisfy both the notification requirements of Part 21 of this chapter, if the event is also reportable under Part 21, and Section 50.72(a)(4) of Part 50 of this chapter, if applicable. A separate log shall be maintained to record events reportable under Section 73.71. Licensees need not report any event which is designated as not reportable in their security or contingency plans.

Reporting of Physical Security Events

Note.—This Table should be used in conjunction with the Responsibility Matrix developed under the requirements of 10 CFR Part 73, Appendix C—Licensee Safeguards Contingency Plans.

Event	Reporting time to NRC
Explicit threat [1]	Within 1 hour.
Major loss of physical security effectiveness [2].	Within 1 hour.
Potential threat [3]	Within 24 hours.
Major loss of physical security effectiveness which has been properly compensated [4].	Within 24 hours.
Moderate loss of physical security effectiveness [5].	Within 24 hours.
Moderate loss of physical security effectiveness which has been properly compensated.	No requirement, log in licensee's records.

[1] Explicit Threat. An explicit threat is information received by a security organization that an act of theft or radiological sabotage will be attempted. All licensees may be subject to this event.

[2] Major Loss of Physical Security Effectiveness. A major loss of physical security effectiveness occurs when security features breakdown which allow unauthorized or undetected access to material access or vital areas, shipments of formula quantities of SSNM, or shipments of irradiated reactor fuel, or at facilities licensed to possess formula quantities of SSNM the communication systems used to summon offsite reponse become inoperative. Licensees which are required to meet the requirements of 10 CFR §73.20, §73.37, and §73.50 may be subject to this event.

[3] Potential Threat. A potential threat is information received by a security organization which supports a belief that an act of theft or radiological sabotage will be attempted. All licensees may be subject to this event.

[4] Properly Compensated. Properly compensated means measures as specified in a security or contingency plan or, if the event is not specified in either of these plans, it means measures implemented within 10 minutes of an event's occurrence that provide a level of security equivalent to that existing before the event. Licensees which are required to meet the requirements of 10 CFR §73.20, §73.37 and §73.50 may be subject to this event.

[5] Moderate Loss of Physical Security Effectiveness. A moderate loss of physical security effectiveness occurs when: (1) a major loss of effectiveness occurs but is properly compensated, (2) security features breakdown which allow unauthorized or undetected access to protected or controlled access areas or shipments of moderate strategic significance nuclear material, (3) a breakdown in security features protecting material access or vital areas occurs which leaves these areas under the protection of only one security system. (This includes loss of either alarm station.) All licensees may be subject to this event.

(Sec. 53, 161o, Pub. L. 83–703, 68 stat. 50, as amended, Pub. L. 85–507, 72 Stat 327; Sec. 201, Pub. L. 93–438, 88 Stat. 1242–1243 (42 U.S.C. 2073, 2201, 5841))

Dated at Washington, DC this 31st day of December, 1980.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 81–1414 Filed 1–16–81; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 210

[Docket No. ERA–R–80–28]

Amendments to Normal Business Practices Rule

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is amending the normal business practices rule, 10 CFR 210.62, to eliminate DOE's restrictions on extensions of credit for purchases of motor gasoline at the retail level.

DATES: Effective date: September 5, 1980.

FOR FURTHER INFORMATION CONTACT:

William Webb (Office of Public Information), Economic Regulatory Administration, Room B–110, 2000 M Street N.W., Washington, D.C 20461, (202) 634–2170.

Maurice Boehl (Regulations and Emergency Planning), Economic Regulatory Administration, Room 2304, 2000 M Street, N.W., Washington, D.C 20461, (202) 653–4290.

William Funk or Sue Sheridan (Office of General Counsel), Department of Energy, Room 6A–127, 1000 Independence Ave., S.W., Washington, D.C. 20585, (202) 252–6736 or 252–6754.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Comments Received and Discussion
III. Amendments Adopted
IV. Procedural Requirements

I. Background

On August 20, 1980, we issued a notice of proposed rulemaking (45 FR 57138, August 27, 1980) to amend the normal business practices rule by removing credit controls on sales of gasoline to consumers at retail sales outlets and in retail sales to wholesale purchaser-consumers and bulk purchasers. We also proposed an alternate amendment to the normal business practices rule to eliminate credit controls only with respect to consumer sales of gasoline at retail sales outlets. We also requested comments on, but did not propose, the general elimination of credit controls at all levels of gasoline distribution and possible amendments to the price regulations that would enable retail sellers to offer price discounts for cash purchases of gasoline.

II. Comments Received and Discussion

Public hearings were held in Houston, Texas, on October 2, 1980, and in Washington, D.C., on October 7, 1980. A total of thirty-seven oral and written comments were submitted by twenty-two refiners, eight trade associations representing wholesale and retail gasoline distributors, one trade association representing independent refiners, one trade association representing financial institutions that issue credit cards, one federal government department, one Member of Congress, one gasoline reseller and one private citizen.

The refiners who commented generally supported the primary proposal to eliminate credit controls in all sales of gasoline to ultimate consumers, primarily because they felt that abolishing DOE's credit controls at the retail level would be a logical step in the transition to decontrol. The majority of these refiners, however, stated that the proposal did not go far enough and expressed a preference for the elimination of DOE's credit controls at all levels of distribution. The Department of Justice also favored the elimination of all existing credit controls, on the ground that continued regulatory interference is not justified by current market conditions. We will take these comments into consideration as we consider the advisability of eliminating DOE's credit controls in sales between refiners, jobbers, and

dealers. In the event that we decide to propose such action, however, a separate rulemaking proceeding would be required.

Of the eight trade associations representing wholesale and retail gasoline distributors, two endorsed the primary proposal, one supported the alternate proposal, and five were opposed to any change in the rule. In addition to the reasons given by refiners, those trade associations that supported the primary proposal favored it because it would eliminate existing inconsistencies in credit restrictions as they pertain to retailers and reseller-retailers that price under different provisions of DOE's price rules. The trade association that favored the alternate proposal expressed the opinion that, while gasoline consumers enjoy considerable flexibility in choosing sellers on the basis of favorable credit terms, neither wholesale purchaser-consumers nor bulk purchasers have such flexibility in selecting suppliers, particularly in times of tight supplies. Although we appreciate the fact that wholesale purchaser-consumers and bulk purchasers may under certain circumstances have less freedom to select suppliers on the basis of favorable credit terms, we believe that the advantages of the rule we are adopting, in terms of easing the transition to decontrol and eliminating credit restrictions that apply to refiners and reseller-retailers that price under § 212.93(a)(5), far outweigh any disadvantages with regard to credit which wholesale purchaser-consumers and bulk purchasers might experience.

The five trade associations that expressed opposition to any change in the normal business practices rule did so primarily on the basis that there had been no demonstrated necessity to eliminate credit controls at the retail level and that adoption of either proposal would likely lead to the elimination of refiner credit cards and a resulting loss of business to retailers that currently accept such cards. The dissenting trade associations also expressed concern that dealers associated with refiners who withdraw their retail credit cards will be placed at a competitive disadvantage relative to other dealers whose suppliers retain credit cards. For the reasons discussed at length in the August 20 notice of proposed rulemaking, we believe that the proposed amendments are appropriate, not only as transitional steps towards decontrol, but also to eliminate inconsistencies in the credit restrictions applicable to various retailers and reseller-retailers and to clarify the interaction of the rule with Federal Reserve Board policies. Moreover, we do not believe that refiners are likely to discontinue the use of retail credit cards, since consumer credit is a well-established marketing practice among competing sellers of gasoline. Finally, even were some refiners to selectively or totally discontinue the use of credit cards under this rule, this would merely reflect marketing actions that could occur after September 30, 1981.

Some trade associations were concerned that the proposed amendments would place branded jobbers at a disadvantage relative to unbranded jobbers, since the cost of credit is already built into their suppliers' product prices and would remain even after the competitive advantage of being able to offer the use of credit cards to consumers ended. We do not believe that this problem is likely to occur because, with the elimination of the equal application rule on November 1, 1980, which grants refiners greater pricing flexibility, refiners that eliminate credit cards are not likely to maintain pricing structures that place branded jobbers at a competitive disadvantage relative to unbranded jobbers. Moreover, for the reasons stated above, we believe that refiners are unlikely to eliminate the use of credit cards. In any event, we believe that the advantage of easing the transition to decontrol which will be accomplished by adopting the primary proposal outweighs the possibility that certain jobbers might experience temporary competitive disadvantages prior to September 30, 1981, when all of DOE's price controls expire.

The majority of commenters who opposed any change in the rule were concerned that adoption of this proposal would open the door to total elimination of credit controls at all levels of distribution. While this rulemaking requested comments on the possible total elimination of DOE's credit controls, it specifically did not *propose* such a change to the existing rule, and should not be interpreted as a signal that such a change is necessarily forthcoming. As noted earlier, DOE will continue to consider proposals to modify various aspects of the normal business practices rule in light of the comments received.

Most of the commenters also responded to our second request for comments, regarding a proposal to amend the price rules to allow incentives for dealers to offer price discounts for cash purchases of gasoline at retail sales outlets. Reaction to the proposal was mixed, with refiners generally favoring such a rule change and dealers' and distributors' trade associations generally opposed to it. We will continue to study Exxon's cash discount proposal and alternate proposals in light of these comments, but wish to make clear that such a rule change would have to be the subject of a separate rulemaking proceeding.

With regard to the proposed regulatory language, one commenter expressed concern that the proposal was unclear as to whether the rule authorized refiners to change the terms of their consumer credit cards not only in their own retail outlets and direct retail sales but also in sales by branded independent dealers that accept those refiners' credit cards. In response to these comments, we are modifying the proposed regulatory language in this final rule to clarify our intent that the amendment applies to all credit extended in retail gasoline sales.[1] In addition, we are also modifying the proposed regulatory language to make it clear that the amendments apply only to retail sales of *gasoline*. Sales of propane at the retail level and at all other levels of distribution are still subject to the credit restrictions of the normal business practices rule.

We would also like to make clear that the amendments adopted today only affect credit terms to ultimate consumers of gasoline, and leave intact existing credit controls with respect to supplier-purchaser relationships between refiners, jobbers and retailers.

Since DOE eliminated the equal application rule [45 FR 72626, November 3, 1981], some questions have arisen in connection with that rulemaking and its effect on suppliers' obligations to maintain historical discounts to purchasers. There is no explicit prohibition in § 210.62 against changes in discounts generally. Section 210.62(c), which mentions discounts, does so only as an example of practices that are prohibited if they constitute a means to obtain a price higher than permitted by the regulations.[2] Section 210.62(b) prohibits any form of discrimination that has the effect of extending a preference that frustrates the objectives of the Emergency Petroleum Allocation Act of 1973 (EPAA) or the regulations

[1] This does not mean, however, that refiners can alter the terms upon which these credit card slips are used by retailers to reimburse refiners for gasoline.

[2] Prior to November 3, 1980, both the class of purchaser concept and the equal application rule effectively made reductions or eliminations of discounts a means to attain a price higher than permitted by the regulations.

thereunder. Section 210.62(a) prohibits expressly only more stringent credit terms or payment schedules. Thus, under the normal business practices rule suppliers may eliminate non-credit discounts so long as that elimination does not result in higher than lawful prices and does not extend a sales preference that frustrates the objectives of the EPAA or the regulations thereunder. For example, if a refiner has sufficient increased costs to cover the additional revenue generated by the elimination of a trade discount (e.g., 2¢ off DTW), generally we believe that after November 3, 1980, there would be no regulatory bar to the elimination of that discount. On the other hand, a refiner could *not* alter any credit discount (e.g., a 5% discount if the invoice is paid within 10 days), except in its retail sales or with respect to consumers using its credit card. In short, while the normal business practices rule continues to require the maintenance of *credit* terms historically offered to purchasers other than ultimate consumers, including *credit-related* discounts, suppliers are now generally free to eliminate other types of discounts and establish new prices for various classes of purchasers, so long as doing so does not result in a supplier's recovering more than its total allowable costs under DOE's price regulations. ERA will, however, review any pricing practices which appear to constitute an attempt to discourage purchases by historical or assigned customers, as such practices would constitute unlawful discrimination under § 210.62(b).

III. Amendments Adopted

This rule amends the normal business practices rule to abolish the rule's restrictions with respect to credit in all retail sales of gasoline to ultimate consumers, including wholesale purchaser-consumers and bulk purchasers. The rule adds a new § 210.62(d)(4) and makes conforming changes to 210.62(d)(3). Refiners, as well as reseller-retailers that price under 212.93(a)(5), may now change their credit terms and payment schedules in sales of gasoline to consumers.

IV. Procedural Requirements

A. Section 404 of the DOE Act

Pursuant to the requirements of section 404 of the Department of Energy Act, a copy of the proposed rule was sent to the Federal Energy Regulatory Commission (FERC) for review. The FERC determined that this rule would not significantly affect any of its functions.

B. National Environmental Policy Act

It has been determined that this rule does not constitute a "major Federal action significantly affecting the quality of the human environment" within the meaning of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, and therefore an environmental assessment or an environmental impact statement is not required by NEPA and the applicable DOE regulations for compliance with NEPA.

C. Executive Order 12044

ERA has decided that the preparation of a reguatory analysis under Executive Order No. 12044, entitled "Improving Government Regulations" (43 FR 12661, March 24, 1978), is not required for this rule. A detailed explanation of the basis for this decision may be found in the August 20 Notice.

D. Effective Date

The provisions of 5 U.S.C. 553(d) generally requiring that a substantive rule may not be made effective less than 30 days following publication do not apply to rules that grant an exemption, relieve a restriction, are interpretative or if the agency finds good cause for the rule's earlier effectiveness. In this instance, the rule relieves a restriction. For the reasons discussed at length in the August 20 notice, we are making this rule effective retroactively to September 5, 1980.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*, Pub. L. 93–159, as amended, Pub. L. 93–511, Pub. L. 94–99, Pub. L. 94–133, Pub. L. 94–163, and Pub. L. 94–385; Federal Energy Administration Act of 1974, 15 U.S.C. § 787 *et seq.*, Pub. L. 93–275, as amended, Pub. L. 94–332, Pub. L. 94–385, Pub. L. 95–70, and Pub. L. 95–91; Energy Policy and Conservation Act, 42 U.S.C. § 6201 *et seq.*, Pub. L. 94–163, as amended, Pub. L. 94–385, Pub. L. 95–70, Pub. L. 95–619, and Pub. L. 96–30; Department of Energy Organization Act, 42 U.S.C. § 7101 *et seq.*, Pub. L. 95–91, Pub. L. 95–509, Pub. L. 95–619, Pub. L. 95–620, and Pub. L. 95–621; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, we are amending Part 210 of Chapter II, Title 10 of the Code of Federal Regulations, as set forth below, effective September 5, 1980.

Issued in Washington, D.C., January 12, 1981.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

1. Section 210.62(d) is amended by revising paragraph (3) and adding a new paragraph (4) to read as follows:

§ 210.62 Normal business practices rule.

* * * * *

(d) Notwithstanding the provisions of this section:

* * * * *

(3) A retailer or reseller-retailer, which establishes maximum lawful selling prices pursuant to § 212.93(a)(2), may offer in retail sales discounts, premiums, and different commodities, services, and equipment than previously offered or sold.

(4) A retailer, reseller-retailer or refiner may offer in retail sales of gasoline (including any sale to a consumer with a consumer credit card) different credit terms or payment schedules than previously offered.

* * * * *

[FR Doc. 81–1816 Filed 1–16–81; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 80–NW–45–AD, Amdt. 39–4024]

Airworthiness Directives: Boeing Model 727–100 and 727–100C Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Airworthiness Directive (AD) requires replacement or modification of the aft airstair emergency extension control handle on certain Model 727–100 and 727–100C airplanes. There have been four instances in which the control handle broke during attempts to lower the stairway. A broken handle could prevent actuation of the emergency extension system, which could leave the exit unusable in an evacuation.

DATES: Effective date February 21, 1981.

ADDRESSES: The service bulletin specified in this directive may be obtained upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108.

FOR FURTHER INFORMATION CONTACT: Mr. Roger S. Young, Airframe Branch, ANW120S, Seattle Area Aircraft Certification Office, FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108, telephone (206) 767–2516.

SUPPLEMENTARY INFORMATION: During a recent evacuation, a flight attendant attempted to lower the aft airstair by pulling the emergency extension control handle, which broke. The attendant then lowered the airstair by pulling on the cable that actuates the system. The control handle is plastic and can be broken when it is allowed to cock when attempting to activate the system. Since this situation may result in the aft airstair being unusable during an evacuation, this AD require replacement or modification of the control handle.

Public Participation

This amendment is based on a Notice of Proposed Rulemaking (NPRM) (45 FR 67678, October 14, 1980). All interested persons have been given an opportunity to participate in the rulemaking of the amendment and due consideration has been given to all matters presented. Two comments were received.

Discussion of Comments

Both commenters noted that this AD should not apply to airplanes on which the aft airstair emergency extension system has been deactivated and one commenter requested that the compliance time be extended to one year to permit the modification to be accomplished during "C" checks.

The FAA did not intend to require modification of the control handle on airplanes where the FAA has approved deactivation of the emergency extension system and those airplanes have been excluded from compliance with the requirements of this AD.

Because of the safety implications of this AD, and since the required modification should not result in any additional-airplane down-time, the FAA does not agree that the compliance time for this minor modification should be extended.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

Boeing: Applies to all Boeing Model 727–100 and 727–100C series airplanes equipped with the aft airstair emergency extension system, except all-cargo configurations and those airplanes where the aft stair emergency extension system has been deactivated. Compliance is required as indicated. Accomplish the following:

A. Prior to June 1, 1981, replace or modify the aft airstair emergency extension control handle in a manner approved by the Chief, Seattle Area Aircraft Certification Office, FAA Northwest Region. (Note: Accomplishment of Boeing Service Bulletin 727–52–120 dated March 21, 1980, or later FAA approved revisions has been approved as a means of compliance with the requirements of this AD).

B. Upon request of the operator, an FAA aviation safety inspector, subject to prior approval by the Chief, Seattle Area Aircraft Certification Office, FAA Northwest Region, may adjust the compliance date if the request contains substantiating data to justify the change.

This amendment becomes effective February 21, 1981.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89).

Note.—The FAA has determined that this document involves a regulation which is not considered to be significant under the provisions of Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Seattle, Washington, on January 7, 1981.

Charles R. Foster,

Director, Northwest Region.

[FR Doc. 81–1755 Filed 1–16–81; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 81–NW–1–AD; Amdt. 39–4023]

Airworthiness Directives: Lockheed-California Company Model L–1011 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), which requires the replacement of all one-man old design type fixed chemical oxygen generators on Lockheed Model L–1011 series aircraft. This AD is needed to insure that emergency oxygen will be supplied to cabin attendants and passengers in the event of cabin decompression.

DATES: Effective January 27, 1981. Compliance schedule—as prescribed in the body of the AD.

ADDRESSES: The applicable service information may be obtained from: Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63–11, U–33, B–1. This information may also be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108; or 15000 Aviation Boulevard, Hawthorne, California 90261, Room 6W14.

FOR FURTHER INFORMATION CONTACT: Anthony Bonanno, Aerospace Engineer, Systems and Equipment Branch, ANW–130L, Los Angeles Area Aircraft Certification Office, Federal Aviation Administration, Northwest Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009, telephone (213) 536–6387.

SUPPLEMENTARY INFORMATION: There have been reports of electrical shorting failures of the ceramic coated wires within the case of one specific type of Scott Aviation fixed chemical oxygen generators on Lockheed L–1011 series aircraft. These failures were discovered during an inspection phase of a requalification test program. This type of failure can prevent the initiation of oxygen generation within the affected unit. Therefore, this AD action is being taken to require replacement of the Scott Aviation one-man fixed chemical oxygen generators, P/N 801462–01, with Scott Aviation P/N 801462–04 oxygen generators.

There are approximately 99 United States registered L–1011 aircraft in service. The cost of the replacement oxygen generators for these aircraft will be approximately $102,435. The labor cost associated with the installation of the replacement oxygen generators, based on an assumption of 14 manhours per aircraft at $35 per manhour, is estimated to be $46,550. This results in an estimated cost impact to the U.S. L–1011 fleet of $148,985.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Adoption of Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive.

Lockheed-California: Applies to all Model L–1011 series airplanes certificated in all categories. Compliance required within 300 hours time-in-service after the effective date of this AD. To assure availability of emergency passenger oxygen, accomplish the following:

A. Replace all one-man fixed chemical oxygen generators, Scott Aviation P/N

801462-01 with Scott Aviation P/N 801462-04 oxygen generators, in accordance with a method approved by the Chief, Los Angeles Area Aircraft Certification Office.

(Note.—Accomplishment of Lockheed Service Bulletin 093-35-030, dated September 15, 1980, has been approved as a means of compliance with this requirement.)

B. Alternative means of compliance or other actions which provide an equivalent level of safety may be used when approved by the Chief, Los Angeles Area Aircraft Certification Office, FAA Northwest Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

This amendment becomes effective January 27, 1981.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423; Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89))

Note.—The Federal Aviation Administration has determined that this document involves a proposed regulation which is not considered to be significant under Executive Order 12044 and as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Seattle, Washington, on January 7, 1981.

Charles R. Foster,

Director, Northwest Region.

[FR Doc. 81-1756 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 80-WE-28-AD; Amdt. 39-4022]

Airworthiness Directives; McDonnell Douglas Model DC-8 Series Airplanes Equipped with Upper Main Cargo Doors

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires inspection, replacement as necessary, lubrication, and sealing of upper cargo door attach hardware on McDonnell Douglas Model DC-8 series airplanes equipped with such cargo doors. This AD is needed to prevent stress corrosion cracking of the upper cargo door spool fitting attach bolts, which could jeopardize the door latching/locking capability, resulting in a possible loss of cabin pressure.

DATES: Effective date February 19, 1981.

Compliance schedule—as prescribed in the body of the AD.

ADDRESSES: The applicable service information and copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training C1750, (54 60). This information may also be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108, or 15000 Aviation Boulevard, Hawthorne, California 90261, Room 6W14.

FOR FURTHER INFORMATION CONTACT: Michael E. O'Neil, Aerospace Engineer, Airframe Branch, ANW-120L, Federal Aviation Administration, Los Angeles Area Aircraft Certification Office, Northwest Region, P.O. Box 92007 World Way Postal Center, Los Angeles, California 90009, telephone (213) 536-6356.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an Airworthiness Directive requiring inspection, lubrication, and sealing of upper cargo door attach hardware of McDonnell Douglas Model DC-8 series airplanes so equipped was published in the **Federal Register** on June 30, 1980 (45 FR 43792).

The proposal was prompted by reports of upper cargo door latch spool fitting attach bolt failures on McDonnell Douglas Model DC-8 series airplanes, which could jeopardize the door latching/locking capability. This has been attributed to stress corrosion produced by bolt preload and entrapped moisture in the void area between the bolts and spool attach fittings. Since this condition is likely to exist or develop in other airplanes of the same type design, this AD requires inspection, lubrication and sealing and bolt replacement, if required, on upper main cargo door latch spool fitting attach bolts on McDonnell Douglas Model DC-8 series airplanes so equipped.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One commenter opposed the issuance of the AD contending that voluntary operator compliance with applicable service bulletins would be sufficient. The FAA's position is that an unsafe condition exists for which mandatory airworthiness directive action is necessary in the interest of safety.

Subsequent to the issuance of the NPRM, the Douglas Aircraft Company released Douglas Aircraft Company Service Bulletin DC-8 SB 52-82, dated October 28, 1980, which includes the detailed instructions set forth in the NPRM. For purposes of simplicity and to allow operators to use alternative methods of compliance with this AD when they are approved, the detailed instructions which were set forth in the NPRM have not been repeated in the rule as adopted. Rather, the rule as adopted permits compliance in accordance with any method approved by the Chief, Los Angeles Area Aircraft Certification Office, FAA Northwest Region. Douglas Aircraft Company Service Bulletin DC-8 SB 52-82 is noted as an approved means of compliance.

It is estimated that 66 U.S. operated aircraft will be affected by this AD, that it will take approximately 60 manhours per aircraft to accomplish the required actions, and that the average labor cost will be $35 per hour. Based on these figures, the total cost impact of this amendment is estimated to be approximately $138,600.

Adoption of Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

McDonnell Douglas

Applies to all Model DC-8 series airplanes equipped with upper main cargo door, certificated in all categories. Compliance required as indicated unless already accomplished. To prevent stress corrosion cracking of the upper cargo door spool fitting attach bolts accomplish the following:

A. For airplanes not modified per Douglas Aircraft Company Service Bulletin DC-8 SB 52-78, dated May 5, 1975, within 12 months after the effective date of this AD, inspect, lubricate, replace as necessary, and seal the cargo door latch spool fitting attach bolts in accordance with a method approved by the Chief, Los Angeles Area Aircraft Certification Office. (Note: Accomplishment of the instructions in Figure 1 of Douglas Aircraft Company Service Bulletin DC-8 SB 52-82, dated October 28, 1980, has been approved as a means of compliance with this requirement.)

B. For airplanes modified per Douglas Aircraft Company Service Bulletin DC-8 SB 52-78, within 24 months after the effective date of this AD, inspect, lubricate, replace as necessary, and seal the cargo door latch spool fitting attach bolts in accordance with a method approved by the Chief, Los Angeles Area Aircraft Certification Office. (Note: Accomplishment of the instructions in Part II, Group II, Paragraph C of DC-8 SB 52-82 has been approved as a means of compliance with this requirement.)

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes unpressurized to a base for the accomplishment of inspections/modifications required by this AD.

D. Alternative inspections, modifications, or other actions which provide an equivalent level of safety may be used when approved by the Chief, Los Angeles Area Aircraft Certification Office, FAA Northwest Region.

This amendment becomes effective February 19, 1981.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not considered to be significant under the provisions of Executive Order 12044 and as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Seattle, Washington on January 6, 1981.

Charles R. Foster,

Director, Northwest Region.

[FR Doc. 81-1718 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 80-WE-29-AD; Amdt. 39-4020]

Airworthiness Directives; McDonnell Douglas Model DC-9 Series Airplanes Equipped With Upper Main Cargo Doors

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires inspection, replacement as necessary, lubrication, and sealing of upper cargo door attach hardware on McDonnell Douglas Model DC-9 series airplanes equipped with such cargo doors. This AD is needed to prevent stress corrosion cracking of the upper cargo door spool fitting attach bolts, which could jeopardize the door latching/locking capability, resulting in a possible loss of cabin pressure.

DATES: Effective date February 19, 1981. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information and copies may be obtained from: McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training C1750, (54 60).

This information may also be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108; or 15000 Aviation Boulevard, Hawthorne, California 90261, Room 6W14.

FOR FURTHER INFORMATION CONTACT: Michael E. O'Neil, Aerospace Engineer, Airframe Branch, ANW-120L, Federal Aviation Administration, Los Angeles Area Aircraft Certification Office, Northwest Region, P.O. Box 92007 World Way Postal Center, Los Angeles, California 90009, telephone (213) 536-6356.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an Airworthiness Directive requiring inspection, lubrication, and sealing of upper cargo door attach hardware of McDonnell Douglas Model DC-9 series airplanes so equipped was published in the **Federal Register** on June 30, 1980 (45 FR 43791).

The proposal was prompted by reports of upper cargo door latch spool fitting attach bolt failures on McDonnell Douglas Model DC-9 series airplanes, which could jeopardize the door latching/locking capability. This has been attributed to stress corrosion produced by bolt preload and entrapped moisture in the void area between the bolts and spool attach fittings. Since this condition is likely to exist or develop in other airplanes of the same type design, this AD requires inspection, lubrication and sealing, and bolt replacement if required, on upper main cargo door latch spool fitting attach bolts on McDonnell Douglas Model DC-9 series airplanes so equipped.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No objections were received.

Subsequent to the issuance of the NPRM the Douglas Aircraft Company released Douglas Aircraft Company Service Bulletin DC-9 SB 52-119, dated October 28, 1980, which includes the detailed instructions set forth in the NPRM. For purposes of simplicity, and to allow operators to use alternative methods of compliance with this AD when they are approved, the detailed instructions which were set forth in the NPRM have not been repeated in the rule as adopted. Rather, the rule as adopted permits compliance in accordance with any method approved by the Chief, Los Angeles Area Aircraft Certification Office, FAA Northwest Region. Douglas Aircraft Company Service Bulletin DC-9 SB 52-119 is noted as an approved means of compliance.

It is estimated that 42 U.S. operated aircraft will be affected by this Airworthiness Directive; that it will take approximately 60 manhours per aircraft to accomplish the required actions; and that the average labor cost will be $35 per hour. Based on these figures the total cost impact of this amendment is estimated to be approximately $88,200.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adding the following new Airworthiness Directive:

McDonnell Douglas: Model DC-9 series airplane equipped with an upper main cargo door; certificated in all categories.

Compliance required as indicated, unless already accomplished.

To prevent stress corrosion of the upper cargo door spool fitting attach bolts accomplish the following:

(a) For fuselage numbers 0 through 675, within 12 months after the effective date of this AD, inspect, lubricate, replace as necessary, and seal the latch spool fitting attach bolts in accordance with a method approved by the Chief, Los Angeles Area Aircraft Certification Office, FAA Northwest Region. (Note: Douglas Aircraft Company Service Bulletin DC-9 SB 52-119, dated October 28, 1980, has been approved as a means of compliance with this requirement).

(b) For fuselage numbers 676 and subsequent and those airplanes modified in accordance with Douglas Aircraft Company DC-9 AOL 9-833A, dated April 2, 1979, within 24 months after the effective date of this AD, inspect, lubricate, replace as necessary, and seal the upper cargo door latch spool fitting attach bolts in accordance with a method approved by the Chief, Los Angeles Area Aircraft Certification Office, FAA Northwest Region. (Note: Accomplishment of the instructions set forth in Part 2, Group II, Paragraph C of Douglas Aircraft Service Bulletin DC-9 SB 52-119 has been approved as a means of compliance with this requirement.)

(c) Special flight permits may be issued in accordance with FAR 21.197 and 121.199 to operate airplanes unpressurized to a base for the accomplishment of inspections/modifications required by this AD.

This amendment becomes effective February 19, 1981.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.85)

Note.—The FAA has determined that this document involves a regulation which is not considered to be significant under the provisions of Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Seattle, Washington, on January 6, 1981.

Charles R. Foster,

Director, Northwest Region.

[FR Doc. 81-1720 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 80-WE-30-AD; Amdt. 39-4021]

Airworthiness Directives; McDonnell Douglas Model DC-10 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires inspection, replacement as necessary, lubrication, and sealing of cargo door attach hardware on McDonnell Douglas Model DC-10 series airplanes. This AD is needed to prevent stress corrosion cracking of the upper and lower cargo door spool fitting attach bolts, which could jeopardize the door latching/locking capability, resulting in a possible loss of cabin pressure.

DATE: Effective date February 19, 1981.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information and copies may be obtained from: McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publication and Training C1750 (54 60). This information may also be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108; or 15000 Aviation Boulevard, Hawthorne, California 90261, Room 6W14.

FOR FURTHER INFORMATION CONTACT: Michael E. O'Neill, Aerospace Engineer, Airframe Branch, ANW-120L, Federal Aviation Administration, Los Angeles Area Aircraft Certification Office, Northwest Region, P.O. Box 92007 World Way Postal Center, Los Angeles, California 90009, telephone (213) 536-6356.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an Airworthiness Directive requiring inspection, lubrication, and sealing of cargo door attach hardware of McDonnell Douglas Model DC-10 series airplanes so equipped was published in the **Federal Register** on June 30, 1980 (45 FR 43791).

The proposal was prompted by reports of cargo door latch spool fitting attach bolt failures on McDonnell Douglas Model DC-10 series airplanes, which could jeopardize the door latching/locking capability. This has been attributed to stress corrosion produced by bolt preload and entrapped moisture in the void area between the bolts and spool attach fittings. Since this condition is likely to exist or develop in other airplanes of the same type design, this AD requires inspection, lubrication and sealing, and bolt replacement, if required, of cargo door latch spool fitting attach bolts on McDonnell Douglas Model DC-10 series airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One commenter opposed the issuance of the AD, contending that voluntary operator compliance with applicable service bulletins would be sufficient. The FAA's position is that an unsafe condition exists for which mandatory airworthiness directive action is necessary in the interest of safety.

Subsequent to the issuance of the NPRM, the Douglas Aircraft Company released Douglas Aircraft Company Service Bulletin DC-10 SB 52-183, dated October 28, 1980, which includes the detailed instructions set forth in the NPRM. For purposes of simplicity, and to allow operators to use alternative methods of compliance with this AD when they are approved, the detailed instructions which were set forth in the NPRM have not been repeated in the rule as adopted. Rather, the rule as adopted permits compliance in accordance with any method approved by the Chief, Los Angeles Area Aircraft Certification Office, FAA Northwest Region. Douglas Aircraft Company Service Bulletin DC-10 SB 52-183 is noted as an approved means of compliance.

It is estimated that 154 U.S. operated aircraft will be affected by this Airworthiness Directive, that it will take approximately 170 manhours per aircraft to accomplish the required actions, and that the average labor cost will be $35 per hour. Based on these figures, the total cost impact of this amendment is estimated to be approximately $916,300.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to all Model DC-10 series airplanes certificated in all categories. Compliance required as indicated, unless already accomplished. To prevent stress corrosion cracking of the upper and lower cargo door spool fitting attach bolts accomplish the following:

A. For fuselages 1-125, within 12 months after the effective date of this AD, inspect, lubricate, replace as necessary, and seal the cargo door latch spool fitting attach bolts in accordance with a method approved by the Chief, Los Angeles Area Aircraft Certification Office, FAA Northwest Region.

Note.—Accomplishment of the instructions set forth in Figure 1 of Douglas Aircraft Company Service Bulletin DC-10 SB 52-183, dated October 28, 1980, has been approved as a means of compliance with this requirement.

B. For fuselage 126 and subsequent, within 24 months after the effective date of this AD, inspect, lubricate, replace as necessary, and seal the cargo door latch spool fitting attach bolts in accordance with a method approved by the Chief, Los Angeles Area Aircraft Certification Office, FAA Northwest Region.

Note.—Accomplishment of the instructions set forth in Part 2, Group II, Paragraph C of Douglas Aircraft Company Service Bulletin DC-10 SB 52-183, dated October 28, 1980, has been approved as a means of compliance with this AD.

C. Special flight permits may be issued in accordance with FARs 21.197 and 21.199 to operate airplanes unpressurized to a base for the accomplishment of inspections/modifications required by this AD.

D. Alternative inspections, modifications, and other actions which provide an equivalent level of safety may be used when approved by the Chief, Los Angeles Area Aircraft Certification Office, FAA Northwest Region.

This amendment becomes effective February 19, 1981.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not considered to be significant under the provisions of Executive Order 12044 and as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Seattle, Washington, on January 6, 1981.

Charles R. Foster,

Director, Northwest Region.

[FR Doc. 81-1719 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-ASW-52]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Revocation of Offshore Transition Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This action revokes two 700-foot transition areas over the Gulf of

Mexico. These transition areas are no longer required for air traffic control purposes and their revocation reduces the burden on the public by eliminating flight operational requirements associated with controlled airspace.

DATES: Effective date February 19, 1981. Comments must be received by February 19, 1981.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Southwest Region, Attention: Chief, Air Traffic Division, Docket No. 80–ASW–52, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101.

The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket (AGC–204), Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: John Watterson, Airspace Regulations Branch (AAT–230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8525.

SUPPLEMENTARY INFORMATION:

Request for Comments

The purpose of this amendment is to revoke two 700-foot transition areas over the Gulf of Mexico. These transition areas were originally designated in 1976 for the use of IFR helicopters executing instrument approach procedures to offshore oil rigs. These oil rigs have been relocated and the airspace associated with their use are no longer required. Because this action removes a burden on the public by reducing the amount of controlled airspace, I find that notice and public procedure are unnecessary. However, comments are invited on the rule. When the comment period ends, the FAA will use the comments received and any other information available to review the regulation. Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) revokes the Sabine Pass, Tex., and the Galveston, Tex., 700-foot offshore areas. Section 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) was republished in the **Federal Register** on January 2, 1981, (46 FR 540).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) as republished (46 FR 540) is amended, effective 0901 GMT, February 19, 1981, as follows:

In § 71.181: The title and text of the "Galveston, Tex., (Offshore)" and the "Sabine Pass, Tex., (Offshore)" transition areas are revoked in their entirety.

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510; Executive Order 10854 (24 FR 9565); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.).

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on January 13, 1981.

Shelomo Wugalter,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 81–1757 Filed 1–16–81; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM79–14]

Order of the Director, OPPR of Publication of Incremental Pricing Acquisition Cost Thresholds Under Title II of the NGPA

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order prescribing incremental pricing thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Williams, Federal Energy Regulatory Commission, 825 N. Capitol Street, N.E., Washington, D.C. 20426, (202) 357–8500.

Order of the Director, OPPR

Issued: January 12, 1981.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of January 1981, is issued by the publication of a price table for the applicable month.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

Table I.—*Incremental Pricing Acquisition Cost Threshold Prices*

Calendar year 1980

	January	February	March	April	May	June	July	August	September	October	November	December
Incremental Pricing Threshold	$1.702	$1.738	$1.750	$1.762	$1.776	$1.790	$1.804	$1.819	$1.834	$1.849	$1.863	$1.877
NGPA Section 102 Threshold	2.358	2.381	2.404	2.428	2.453	2.478	2.504	2.532	2.560	2.588	2.614	2.640
NGPA Section 109 Threshold	1.786	1.799	1.812	1.825	1.839	1.853	1.867	1.883	1.899	1.915	1.929	1.943
130% of No. 2 Fuel Oil in New York City Threshold	7.170	7.260	7.410	7.110	7.380	8.040	7.840	7.380	7.400	7.400	7.450	7.580

Table I.—*Incremental Pricing Acquisition Cost Threshold Prices*—Continued

Calendar Year 1981

	January	February	March	April	May	June	July	August	September	October	November	December
Incremental Pricing Threshold	$1.891											
NGPA Section 102 Threshold	2.667											
NGPA Section 109 Threshold	1.957											
130% of No. 2 Fuel Oil in New York City Threshold	7.610											

[FR Doc. 81-1855 Filed 1-16-81; 8:45 am]

BILLING CODE 6450-85-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 81-14]

Vessels in Foreign and Domestic Trades; Coastwise Transportation

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

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to add the Polish People's Republic and Kuwait to the lists of nations which permit vessels of the United States to transport certain articles specified in section 27, Merchant Marine Act of 1920, as amended, between their ports. The Department of State has received satisfactory evidence that both the Polish People's Republic and Kuwait place no restrictions on the transportation of the specified articles by vessels of the United States between ports in those countries. This amendment provides reciprocal privileges for vessels registered in the Polish People's Republic and Kuwait.

EFFECTIVE DATES: May 14, 1980, as to vessels of the Polish People's Republic and May 16, 1980, as to vessels of Kuwait.

FOR FURTHER INFORMATION CONTACT: Donald H. Reusch, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5706).

SUPPLEMENTARY INFORMATION:

Background

Section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. 883) (the "Act"), provides generally that no merchandise shall be transported by water, or by land and water, between points in the United States except in vessels built in and documented under the laws of the United States and owned by U.S. citizens. However, the Act, as amended by Pub. L. 90-474 (82 Stat. 700; T.D. 68-227), provides that if the Secretary of State advises the Secretary of the Treasury that a foreign nation does not restrict the transportation of certain articles between its ports by vessels of the United States, reciprocal privileges will be accorded to vessels of that nation, and the prohibition against the transportation of those articles between points in the United States will not apply to its vessels.

Section 4.93(b)(1), Customs Regulations (19 CFR 4.93(b)(1)), lists those nations found to extend reciprocal privileges to vessels of the United States for the transportation of empty cargo vans, empty lift vans, and empty shipping tanks. The Polish People's Republic is among the countries listed. Those nations found to grant reciprocal privileges to vessels of the United States for the transportation of equipment for use with cargo vans, lift vans, or shipping tanks; empty barges specifically designed for carriage aboard a vessel and certain equipment for use with such barges; certain empty instruments of international traffic; and certain stevedoring equipment and material are listed in section 4.93(b)(2), Customs Regulations (19 CFR 4.93(b)(2)).

On May 14, 1980, the Department of State advised the Secretary of the Treasury that the Polish People's Republic now places no restrictions on the transportation of equipment for use with cargo vans, lift vans, or shipping tanks; empty barges specifically designed for carriage aboard a vessel and certain equipment for use with such barges; certain empty instruments of international traffic; and certain stevedoring equipment and material by vessels of the United States between ports in that country. In addition, on May 16, 1980, the Department of State advised the Secretary of the Treasury that Kuwait places no restrictions on the transportation of any of the articles listed in the Act by vessels of the United States between ports in that country. Therefore, appropriate reciprocal privileges are to be accorded to vessels registered in the Polish People's Republic as of May 14, 1980, and to vessels registered in Kuwait as of May 16, 1980.

Finding

On the basis of the information received from the Secretary of State, as described above, I find that the Governments of the Polish People's Republic and Kuwait place no restrictions on the transportation of the articles specified in section 27 of the Merchant Marine Act of 1920, as amended, by vessels of the United States between ports in those countries. Therefore, appropriate reciprocal privileges are accorded to vessels registered in the Polish People's Republic as of May 14, 1980, and to vessels registered in Kuwait as of May 16, 1980.

Amendments to the Regulations

To reflect the reciprocal privileges granted to vessels registered in the Polish People's Republic and Kuwait, section 4.93(b)(1), Customs Regulations (19 CFR 4.93(b)(1)), is amended by inserting "Kuwait" in appropriate alphabetical order in the list of nations under that section. Section 4.93(b)(2), Customs Regulations (19 CFR 4.93(b)(2)), is amended by inserting "Kuwait" and "Polish People's Republic" in appropriate alphabetical order in the list of nations under that section.

(Sec. 27, 41 Stat. 999, as amended, sec. 14, 67 Stat. 516, Pub. L. 90-474, 82 Stat. 700 (5 U.S.C. 301, 19 U.S.C. 1322(a), 46 U.S.C. 883)).

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because these are minor amendments in which the public is not particularly interested and there is a statutory basis for the described extension of reciprocal privileges, notice and public procedure pursuant to 5 U.S.C. 553(b)(B) are unnecessary. In accordance with 5 U.S.C. 553(d)(1), a delayed effective date is not required because these amendments grant an exemption.

Regulation Determined To Be Nonsignificant

In a directive published in the Federal Register on November 8, 1978 (43 FR 52120), implementing Executive Order 12044, "Improving Government Regulations," the Treasury Department stated that it considers each regulation or amendment to an existing regulation published in the Federal Register and codified in the Code of Federal Regulations to be significant. However, regulations which are nonsubstantive, are essentially procedural, do not materially change existing or establish new policy, and do not impose substantial additional requirements or

costs on, or substantially alter the legal rights or obligations of, those affected, with Secretarial approval may be determined not to be significant. Accordingly, it has been determined that this document does not meet the Treasury Department criteria in the directive for "significant" regulations.

Drafting Information

The principal author of this document was James A. Seal, Regulations and Information Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices of the Customs Service and the Departments of State and the Treasury participated in its development.

Dated: December 30, 1980.

Richard J. Davis,

Assistant Secretary of the Treasury.

[FR Doc. 81-1923 Filed 1-16-81; 8:45 am]

BILLING CODE 4810-22-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regulations Nos. 4, 16]

Determining Disability and Blindness Supplemental Security Income for the Aged, Blind, and Disabled; and Determining Disability and Blindness Substantial Gainful Activity Earnings Guidelines for 1980

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These regulations finalize the interim rules published on March 18, 1980 (45 FR 17131). Those rules increased the money amounts used as earnings guidelines to determine whether persons with impairments other than blindness are able to do substantial gainful activity.

DATES: The regulations are effective on January 1, 1980.

FOR FURTHER INFORMATION CONTACT: David Smith, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301-594-7338.

SUPPLEMENTARY INFORMATION: These regulations increase the earnings guidelines we use to evaluate the work activity of claimants and beneficiaries with impairments other than blindness under titles II and XVI of the Social Security Act. We use these guidelines to determine whether an individual has shown the ability to do substantial gainful activity (SGA).

Under the increased guideline amounts, we consider a person's earnings from work activity averaging more than $300 a month in calendar year 1980 and later years as showing that he or she is able to do SGA, unless there is other evidence that the person is not able to do SGA.

Under the increased guideline amounts, we consider an employee's earnings from work activity averaging less than $190 a month in calendar year 1980 and later years as showing he or she did not do SGA unless there is other evidence to the contrary.

The increased guideline amounts reflect the general rise in earnings levels of workers in the national economy. The new amounts also maintain the same relationship to earnings levels which has existed in the past. The upper level amount was determined by multiplying $280 (the 1979 upper level amount) by 1.079410 (the ratio of the average of the total wages (as defined in § 404.1048(c)) reported for 1978 to those reported for 1977). This produced the amount of $302.23, which was rounded to $300, the nearest multiple of $10. The 1980 lower level amount was determined by multiplying $180 (the 1979 lower level amount) by the same ratio. This produced the amount of $194.29, which was rounded to $190. We published these rules as interim regulations on March 18, 1980 (45 FR 17131). Interested persons were given the opportunity to submit, within 60 days, comments on the changes. We received six comments. Five commenters felt the new guidelines were still too low. The other commenter was opposed to any increases which would correspondingly increase State medicaid caseloads.

In response to comments that the increases are too low, we believe they fairly reflect the general rise in the earnings levels of workers in the national economy and maintain the same relationship to those earnings as have SGA increases in prior years. In response to the comment opposing the increase, were we not to raise the guidelines as we have it would impose an undue hardship on those who are attempting to work in an economy where each dollar of earnings has lost a significant amount of its purchasing power.

Section 302 of Pub. L. 96-265, effective December 1, 1980, enables disabled persons, in arriving at their earnings for SGA purposes, to deduct the costs they personally incur for drugs, services, and other items, in order to work. Under this provision a substantial number of disabled persons will be able to increase their earnings and still receive benefits. That provision, however, does not affect this regulation. We will be publishing in the near future a notice of proposed rulemaking explaining how we propose to implement section 302 of Pub. L. 96-265.

These rules were recodified on August 20, 1980 (45 FR 55593 and 55632) but the amounts were not given final effect. What appeared as § 404.1534 in the interim regulations is now § 404.1574. What was § 416.934 in the interim regulations is now § 416.974. There were minor irregularities in the format of that part of the recodification which affect §§ 404.1574, 404.1575, 416.974, and 416.975. We are setting out the full text of these paragraphs as corrected.

The amendments to §§ 404.1574, 404.1575, 416.974, and 416.975 of Title 20 CFR Parts 404 and 416 are adopted as set forth below.

(Secs. 205, 223, 1102, 1614 and 1631 of the Social Security Act; 53 Stat. 1368, as amended, 70 Stat. 815, as amended, 49 Stat. 647, as amended, and 86 Stat. 1471, 1475, as amended; 42 U.S.C. 405, 423, 1302, 1382c and 1383)

(Catalog of Federal Domestic Assistance Program No. 13.802 Disability Insurance; 13.807 Supplemental Security Income)

Dated: December 18, 1980.

William J. Driver,

Commissioner of Social Security.

Approved: January 13, 1981.

Patricia Roberts Harris,

Secretary of Health and Human Services.

Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. §§ 404.1574 and 404.1575 are revised to read as follows:

§ 404.1574 Evaluation guides if you are an employee.

(a) *General.* We use several guides to decide whether you have done substantial gainful activity.

(1) *Your earnings may show you have done substantial gainful activity.* The amount of your earnings from work you have done may show that you have engaged in substantial gainful activity. Generally, if you worked for substantial earnings, this will show that you are able to do substantial gainful activity. On the other hand, the fact that your earnings are not substantial will not necessarily show that you are not able to do substantial gainful activity. Earnings from work that you were forced to stop after a short time because of your impairment will not show that you are able to do substantial gainful activity.

(2) *We consider only the amounts you earn.* We do not consider any income

not directly related to your productivity when we decide whether you have done substantial gainful activity. If your earnings are being subsidized, the amount of the subsidy is not counted when we determine whether or not your work is substantial gainful activity. Thus, where work is done under special conditions, we only consider the part of your pay which you actually "earn". For example, where a handicapped person does simple tasks under close and continuous supervision, we would not determine that the person worked at the substantial gainful activity level only on the basis of the amount of pay. An employer may set a specific amount as a subsidy after figuring the reasonable value of the employee's services. If your work is subsidized and your employer does not set the amount of the subsidy or does not adequately explain how the subsidy was figured, we will investigate to see how much your work is worth.

(3) *If you are working in a sheltered or special environment.* If you are working in a sheltered workshop, you may or may not be earning the amounts you are being paid. The fact that the sheltered workshop or similar facility is operating at a loss or is receiving some charitable contributions or governmental aid does not establish that you are not earning all you are being paid. Since persons in military service being treated for severe impairments usually continue to receive full pay, we evaluate work activity in a therapy program or while on limited duty by comparing it with similar work in the civilian work force or on the basis of reasonable worth of the work, rather than on the actual amount of the earnings.

(4) *If you have special work-related expenses.* If you have out-of-the-ordinary expenses in connection with your work and because of your impairment (for example, you may require special transportation), we will deduct these from your earnings if they exceeded the normal work-related expenses you would have if you were not impaired. When we decide if your work is substantial gainful activity, however, we do not deduct expenses for those things (e.g., medication or equipment) which you need even when you are not working.

(b) *Earnings guidelines.* (1) *General.* If you are an employee, we first consider the criteria in paragraph (a) of this section, and then the guides in paragraphs (b) (2), (3), (4), (5), and (6) of this section.

(2) *Earnings that will ordinarily show that you have engaged in substantial gainful activity.* We will consider that your earnings from your work activities as an employee show that you have engaged in substantial gainful activity if—

(i) Your earnings averaged more than $200 a month in calendar years prior to 1976;

(ii) Your earnings averaged more than $230 a month in calendar year 1976;

(iii) Your earnings averaged more than $240 a month in calendar year 1977;

(iv) Your earnings averaged more than $260 a month in calendar year 1978;

(v) Your earnings averaged more than $280 a month in calendar year 1979; or

(vi) Your earnings averaged more than $300 a month in calendar years after 1979.

(3) *Earnings that will ordinarily show that you have not engaged in substantial gainful activity.* We will generally consider that the earnings from your work as an employee will show that you have not engaged in substantial gainful activity if—

(i) Your earnings averaged less than $130 a month in calendar years before 1976;

(ii) Your earnings averaged less than $150 a month in calendar year 1976;

(iii) Your earnings averaged less than $160 a month in calendar year 1977;

(iv) Your earnings averaged less than $170 a month in calendar year 1978;

(v) Your earnings averaged less than $180 a month in calendar year 1979; or

(vi) Your earnings averaged less than $190 a month in calendar years after 1979.

(4) *If you work in a sheltered workshop.* If you are working in a sheltered workshop or a comparable facility especially set up for severely impaired persons, your earnings and activities will ordinarily establish that you have not done substantial gainful activity if—

(i) Your average earnings are not greater than $200 a month in calendar years prior to 1976;

(ii) Your average earnings are not greater than $230 a month in calendar year 1976;

(iii) Your average earnings are not greater than $240 a month in calendar year 1977;

(iv) Your average earnings are not greater than $260 a month in calendar year 1978;

(v) Your average earnings are not greater than $280 a month in calendar year 1979; or

(vi) Your average earnings are not greater than $300 a month in calendar years after 1979.

(5) *If there is evidence showing that you may have done substantial gainful activity.* If there is evidence showing that you may have done substantial gainful activity, we will apply the criteria in paragraph (b)(6) of this section regarding comparability and value of services.

(6) *Earnings that are not high of low enough to show whether you engaged in substantial gainful activity.* If your earnings, on the average, are between the amounts shown in paragraphs (b)(2) and (3) of this section, we will generally consider other information in addition to your earnings, such as whether—

(i) Your work is comparable to that of unimpaired people in your community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work, or

(ii) Your work, although significantly less than that done by unimpaired people, is clearly worth the amounts shown in paragraph (b)(2) of this section, according to pay scales in your community.

§ 404.1575 Evaluation guides if you are self-employed.

(a) *If you are a self-employed person.* We will consider your activities and their value to your business to decide whether you have engaged in substantial gainful activity if you are self-employed. We will not consider your income alone since the amount of income you actually receive may depend upon a number of different factors like capital investment, profit sharing agreements, etc. However, income from activities that you were forced to stop after a short time because of your impairment will not show that you are able to do substantial gainful activity. We will evaluate your work activity on the value to the business of your services regardless of whether you receive an immediate income for your services. We consider that you have engaged in substantial gainful activity if—

(1) Your work activity, in terms of factors such as hours, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of unimpaired individuals in your community who are in the same or similar businesses as their means of livelihood;

(2) Your work activity, although not comparable to that of unimpaired individuals, is clearly worth the amount shown in § 404.1574(b)(2) when considered in terms of its value to the business, or when compared to the salary that an owner would pay to an employee to do the work you are doing; or

(3) You render services that are significant to the operation of the

business and receive a substantial income from the business.

(b) *What we mean by significant services.* (1) If you are not a farm landlord and you operate a business entirely by yourself, any services that you render are significant to the business. If your business involves the services of more than one person, we will consider you to be rendering significant services if you contribute more than half the total time required for the management of the business, or you render management services for more than 45 hours a month regardless of the total management time required by the business.

(2) If you are a farm landlord, that is, you rent farm land to another, we will consider you to be rendering significant services if you materially particpate in the production or the management of the production of the things raised on the rented farm. (See § 404.1082 of this chapter for an explanation of "material participation".) If you were given social security earnings credits because you materially participated in the activities of the farm and you continue these same activities, we will consider you to be rendering significant services.

(c) *What we mean by substantial income.* We will consider the income you receive from a business, after we deduct from gross income the reasonable value of any significant amount of unpaid help and any soil bank payments that were included as farm income, as well as normal business expenses, to be substantial if—

(1) Your net income from the business averages more than the amounts described in § 404.1574(b)(2); or

(2) Your net income from the business averages less than the amounts described in § 404.1574(b)(2) but the livelihood which you get from the business is either comparable to what it was before you became disabled or is comparable to that of unimpaired self-employed persons in your community who are in the same or similar businesses as their means of livelihood.

2. §§ 416.974 and 416.975 are revised to read as follows:

§ 416.974 Evaluation guides if you are an employee.

(a) *General.* We use several guides to decide whether you have done substantial gainful activity.

(1) *Your earnings may show you have done substantial gainful activity.* The amount of your earnings from work you have done may show that you have engaged in substantial gainful activity. Generally, if you worked for substantial earnings, this will show that you are able to do substantial gainful activity. On the other hand, the fact that your earnings are not substantial will not necessarily show that you are not able to do substantial gainful activity. Earnings from work that you were forced to stop after a short time because of your impairment will not show that you are able to do substantial gainful activity.

(2) *We consider only the amounts you earn.* We do not consider any income not directly related to your productivity when we decide whether you have done substantial gainful activity. If your earnings are being subsidized, the amount of the subsidy is not counted when we determine whether or not your work is substantial gainful activity. Thus, where work is done under special conditions, we only consider the part of your pay which you actually "earn". For example, where a handicapped person does simple tasks under close and continuous supervision, we would not determine that the person worked at the substantial gainful activity level only on the basis of the amount of pay. An employer may set a specific amount as a subsidy after figuring the reasonable value of the employee's services. If your work is subsidized and your employer does not set the amount of the subsidy or does not adequately explain how the subsidy was figured, we will investigate to see how much your work is worth.

(3) *If you are working in a sheltered or special environment.* If you are working in a sheltered workshop, you may or may not be earning the amounts you are being paid. The fact that the sheltered workshop or similar facility is operating at a loss or is receiving some charitable contributions or governmental aid does not establish that you are not earning all you are being paid. Since persons in military service being treated for severe impairments usually continue to receive full pay, we evaluate work activity in a therapy program or while on limited duty by comparing it with similar work in the civilian work force or on the basis of reasonable worth of the work, rather than on the actual amount of the earnings.

(4) *If you have special work-related expenses.* If you have out-of-the ordinary expenses in connection with your work and because of your impairment (for example, you may require special transportation), we will deduct these from your earnings if they exceeded the normal work-related expenses you would have if you were not impaired. When we decide if your work is substantial gainful activity, however, we do not deduct expenses for those things (e.g., medication or equipment) which you need even when you are not working.

(b) *Earnings guidelines.*—(1) *General.* If your are an employee, we first consider the criteria in paragraph (a) of this section, and then the guides in paragraphs (b) (2), (3), (4), (5), and (6) of this section.

(2) *Earnings that will ordinarily show that you have engaged in substantial gainful activity.* We will consider that your earnings from your work activities as an employee show that you have engaged in substantial gainful activity if—

(i) Your earnings averaged more than $200 a month in calendar years prior to 1976;

(ii) Your earnings averaged more than $230 a month in calendar year 1976;

(iii) Your earnings averaged more than $240 a month in calendar year 1977;

(iv) Your earnings averaged more than $260 a month in calendar year 1978; or

(v) Your earnings averaged more than $280 a month in calendar year 1979; or

(vi) Your earnings averaged more than $300 a month in calendar years after 1979.

(3) *Earnings that will ordinarily show that you have not engaged in substantial gainful activity.* We will generally consider that the earnings from your work as an employee will show that you have not engaged in substantial gainful activity if—

(i) Your earnings averaged less than $130 a month in calendar years before 1976;

(ii) Your earnings averaged less than $150 a month in calendar year 1976;

(iii) Your earnings averaged less than $160 a month in calendar year 1977;

(iv) Your earnings averaged less than $170 a month in calendar year 1978; or

(v) Your earnings averaged less than $180 a month in calendar year 1979; or

(vi) Your earnings averaged less than $190 a month in calendar years after 1979.

(4) *If you work in a sheltered workshop.* If you are working in a sheltered workshop or a comparable facility especially set up for severely impaired persons, your earnings and activities will ordinarily establish that you have not done substantial gainful activity if—

(i) Your average earnings are not greater than $200 a month in calendar years prior to 1976;

(ii) Your average earnings are not greater than $230 a month in calendar year 1976;

(iii) Your average earnings are not greater than $240 a month in calendar year 1977;

(iv) Your average earnings are not greater than $260 a month in calendar year 1978;

(v) Your average earnings are not greater than $280 a month in calendar year 1979; or

(vi) Your average earnings are not greater than $300 a month in calendar years after 1979.

(5) *If there is evidence showing that you may have done substantial gainful activity.* If there is evidence showing that you may have done substantial gainful activity, we will apply the critera in paragraph (b)(6) of this section regarding comparability and value of services.

(6) *Earnings that are not high or low enough to show whether you engaged in substantial gainful activity.* If your earnings, on the average, are between the amounts shown in paragraphs (b)(2) and (3) of this section, we will generally consider other information in addition to your earnings, such as whether—

(i) Your work is comparable to that of unimpaired people in your community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work, or

(ii) Your work, although significantly less than that done by unimpaired people, is clearly worth the amounts shown in paragraph (b)(2) of this section, according to pay scales in your community.

§ 416.975 Evaluation guides if you are self-employed.

(a) *If you are a self-employed person.* We will consider your activities and their value to your business to decide whether you have engaged in substantial gainful activity if your are self-employed. We will not consider your income alone since the amount of income you actually receive may depend upon a number of different factors like capital investment, profit sharing agreements, etc. However, income from activities that you were forced to stop after a short time because of your impairment will not show that you are able to do substantial gainful activity. We will evaluate your work activity on the value to the business of your services regardless of whether you receive an immediate income for your services. We consider that you have engaged in substantial gainful activity if—

(1) Your work activity, in terms of factors such as hours, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of unimpaired individuals in your community who are in the same or similar businesses as their means of livelihood;

(2) Your work activity, although not comparable to that of unimpaired individuals, is clearly worth the amount shown in § 416.974(b)(2) when considered in terms of its value to the business, or when compared to the salary that an owner would pay to an employee to do the work you are doing; or

(3) You render services that are significant to the operation of the business and receive a substantial income from the business.

(b) *What we mean by significant services.* (1) If you are not a farm landlord and you operate a business entirely by yourself, any services that you render are significant to the business. If your business involves the services of more than one person, we will consider you to be rendering significant services if you contribute more than half the total time required for the management of the business, or you render management services for more than 45 hours a month regardless of the total management time required by the business.

(2) If you are a farm landlord, that is, you rent farm land to another, we will consider you to be rendering significant services if you materially participate in the production or the management of the production of the things raised on the rented farm. (See § 404.1082 of this chapter for an explanation of "material participation".) If you were given social security earnings credits because you materially participated in the activities of the farm and you continue these same activities, we will consider you to be rendering significant services.

(c) *What we mean by substantial income.* We will consider the income you receive from a business, after we deduct from gross income the reasonable value of any significant amount of unpaid help and any soil bank payments that were included as farm income, as well as normal business expenses, to be substantial if—

(1) Your net income from the business averages more than the amounts described in § 416.974(b)(2); or

(2) Your net income from the business averages less than the amounts described in § 416.974(b)(2) but the livelihood which you get from the business is either comparable to what it was before you became disabled or is comparable to that of unimpaired self-employed persons in your community who are in the same or similar businesses as their means of livelihood.

[FR Doc. 81-1856 Filed 1-16-81; 8:45 am]
BILLING CODE 4110-07-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 201

[Docket No. R-81-898]

Property Improvement and Manufactured (Mobile) Home Loans

AGENCY: Department of Housing and Urban Development (HUD)

ACTION: Final rule.

SUMMARY: This rule provides for increases in loan amounts for manufactured (mobile) home loans as authorized by Section 308 of the Housing and Community Development Act of 1980.

EFFECTIVE DATE: February 18, 1981.

FOR FURTHER INFORMATION CONTACT: John L. Brady, Director, Office of Title I Insured Loans, Department of Housing and Urban Development, Room 9172, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone (202) 755-6680 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Section 308 of the Housing and Community Development Act of 1980 amended Section 2(b) of the National Housing Act to authorize increases for manufactured (mobile) home loans in the following amounts: (1) On single-wide homes from $18,000 to $20,000; (2) on double-wide homes from $27,000 to $30,000.

The term, manufactured housing, has been used throughout this rule to reflect the new terminology of the 1980 Act. However, the word, mobile, is used parenthetically as a guide to persons familiar with the old terminology.

The Secretary has determined that the benefits afforded by these increases be made available as soon as possible. The rule removes a current restriction and the Secretary has therefore determined that public notice and procedure pursuant to 24 CFR Part 10 are unnecessary with regard to this rule.

The legislative review provisions of Section 7(o) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o) have been met.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement Section 102(2)(C) of the

National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

This rule is not listed in the Department's semi-annual agenda of Significant Rules pursuant to Executive Order 12044, as extended by Executive Order 12221.

The program number and title in the Catalog of Federal Domestic Assistance is 14.110, Manufactured (Mobile) Home Loan Insurance-Financing Purchase of Manufactured (Mobile) Homes as Principal Residences of Borrowers (Title I).

Accordingly, 24 CFR Part 201 is amended by amending the first sentence of paragraph (a) and by revising paragraph (c) to read as follows:

§ 201.530 Maximum loan amount.

(a) *Basic limitation.* The proceeds of a manufactured (mobile) home loan shall not exceed the lesser of $20,000 ($30,000 where the manufactured (mobile) home is composed of two or more modules) * * *

(b) * * *

(c) The charges and fees authorized in paragraph (b) of this section may be added to the loan, if the inclusion of such items does not increase the total loan proceeds to more than $20,000 ($30,000 where the manufactured (mobile) home is composed of two or more modules).

(Sec. 7(d), Department of Housing and Urban Development Act 42 U.S.C. 3535(d) Title I, sec. 2, 48 Stat. 1246 (12 U.S.C. 1703 as amended))

Issued at Washington, D.C., December 4, 1980.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 81-1532 Filed 1-16-81; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 256

Off-Reservation Treaty Fishing; Extension of Deadline for Issuance of Fishing Identification Cards

January 7, 1981.

AGENCY: Bureau of Indian Affairs (BIA).

ACTION: Final rule.

SUMMARY: Temporary off-reservation fishing identification cards may be issued to any member of a tribe whose tribal roll is not yet current and approved, providing the member submits appropriate evidence of entitlement to membership. Under the present regulations, the expiration date for issuance of identification cards is December 31, 1980. The BIA is amending its regulations to continue issuance of cards to members of tribes whose roll is not yet current and complete. This extension will allow the BIA to continue issuing the temporary identification fishing cards until December 31, 1982.

DATE: This regulation is effective January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Ulyses S. St. Arnold, Acting Chief, Division of Fish, Wildlife and Recreation, Bureau of Indian Affairs, 1951 Constitution Avenue, N.W., Washington, D.C. 20245.

SUPPLEMENTARY INFORMATION: On page 4257 of February 1, 1978, **Federal Register** (43 FR 4257), there was published a notice of amendment to final rulemaking to extend the deadline for issuing temporary identification cards to tribal members in connection with treaty fishing rights. Since this revision extends a deadline for issuing temporary identification cards to tribal members to be used in connection with treaty fishing rights, advance notice and public procedure would delay issuance of the identification cards to those entitled to receive them and this delay is deemed contrary to the public interest; therefore, advance notice and public procedure are dispensed with under the exception provided in 5 U.S.C. 553(b)(B) (1970). Furthermore, the only change made by this amendment is to extend the date of expiration in § 256.3(b) from December 31, 1980, to December 31, 1982, for issuance of tribal identification cards concerning Indian treaty fishing. This change is deemed to be minor and technical in nature. For the above reasons, the Department has also determined that this amendment will be effective upon publication.

The authority for issuing this amendment is contained in 5 U.S.C. 301, and sections 463 and 465 of the revised statutes (25 U.S.C. 2 and 9), and 209 DM 8.

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

The primary author of this document is Ulyses S. St. Arnold, Division of Fish, Wildlife and Recreation, Office of Trust Responsibilities, Bureau of Indian Affairs, telephone: 202-343-6574.

Section 256.3(b) of Subchapter W of Chapter I of title 25 of the Code of Federal Regulations is hereby amended by revising § 256.3(b) to read as follows:

PART 256—OFF-RESERVATION TREATY FISHING

§ 256.3 Identification cards.

* * * * *

(b) No such card shall be issued to any Indian who is not on the official membership roll of the tribe which has been approved by the Secretary of the Interior. *Provided,* That until December 31, 1982, a temporary card may be issued to any member of a tribe not having an approved current membership roll who submits evidence of his entitlement thereto satisfactory to the issuing officer and, in the case of a tribally issued card, to the countersigning officer. Any Indian claiming to have been wrongfully denied a card may appeal the decision in accordance with Part 2 of this chapter.

* * * * *

Thomas W. Fredericks,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 81-1768 Filed 1-16-81; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 150

[T.D. 7755]

Temporary Excise Tax Regulations Under the Crude Oil Windfall Profit Tax Act of 1980; Windfall Profit Tax Administrative Provisions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Amendment of temporary regulations.

SUMMARY: This document amends temporary excise tax regulations relating to the windfall profit tax on domestic crude oil imposed by title I of the Crude Oil Windfall Profit Tax Act of 1980. The new temporary regulations relate primarily to administrative aspects of the tax. In addition, the text contained in the temporary regulations set forth in this document serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register.**

DATE: These temporary regulations are effective with respect to oil removed

after February 29, 1980, except as specifically provided otherwise in the regulations.

FOR FURTHER INFORMATION CONTACT: David B. Cubeta of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202–566–3297).

SUPPLEMENTARY INFORMATION: Initial regulatory flexibility analysis.

Background

On April 4, 1980, the **Federal Register** published temporary regulations (45 FR 23384) under sections 4986, 4987, 4988, 4989, 4991, 4992, 4993, 4994, 4995, 4996, 4997, 6050C, 6076, and 6402 of the Internal Revenue Code of 1954. The temporary regulations were required to implement various sections of the Crude Oil Windfall Profit Tax Act of 1980. Certain amendments to the temporary regulations have since been published. This document contains further amendments to several sections of those temporary regulations (relating primarily to various administrative provisions). The rules will apply to all entities, large and small, engaged in the production or purchase of domestic crude oil and related activities. The amendments add no rules that duplicate, overlap, or conflict with any other known Federal rules.

Explanation of Provisions

Under the temporary regulations published on April 4, 1980, the first purchaser of domestic crude oil is the person charged with the withholding obligation. A limited exception to this rule is provided by § 150.4995–4 which permits the operator and purchaser to elect to have the operator responsible for all windfall profit tax responsibilities otherwise imposed upon the purchaser. However, the election is only available if the operator is otherwise required to make deposits as a purchaser of oil produced from a different reservoir.

Commentators, large and small, on the proposed windfall profit tax regulations have suggested that more flexibility should be permitted in determining who the withholding agent is to be. The commentators have pointed out that in many cases the operator of a property or a designated disburser rather than the gathering company or refinery purchasing the oil holds a division order. It is that person who is responsible for distributing the sales proceeds to the various producers. In those instances, the purchaser of the oil must be informed of the amount to be taxed at different rates in order to correctly withhold. The after-tax proceeds are then distributed by the disburser to the producers in accordance with the division order. This extra level of information exchange gives rise to a greater potential for error and subsequent adjustments. Consequently, many commentators, large and small, have requested that the holder of the basic division order be permitted to elect to act as the withholding agent because it is the person who is in the best position to know the producers' tax status, to be aware of transfers of title, and to more efficiently comply with the withholding requirements.

It is recognized that the parties to the purchasing transaction are in a position to determine which of those parties are best able to act as the withholding agent. However, a substantial problem is encountered in defining the "holder of the basic division order", particularly in the case of a unitization where there may be many "division orders". A rule specifying which of several division orders is the "basic division order" would cause many of the same problems that the suggested rule was intended to relieve.

Accordingly, a system has been adopted that avoids this definitional problem and provides flexibility for the parties. The system is based upon a series of potential elections available to those holding division orders and other disbursers of payments for oil which will allow them to act as the withholding agent for the producers to whom they make payment. To the extent that the elections are not made, the purchaser of the oil is required to withhold as under current regulations.

The regulations fix the obligation to withhold upon the purchaser in the absence of any elections. The purchaser is defined as the first person purchasing domestic crude oil production.

Any other party making disbursements of 20 percent or more of the entire proceeds from the sale of oil from the property (excluding that person's own share of production) or any federally registered partnership may elect to act as the withholding agent with respect to his payee producers. If a disburser does so elect, he furnishes a certificate to the person from whom he receives payment. Any person receiving the certificate then knows not to withhold and furnishes a copy through intermediate disbursers to the purchaser. The purchaser is require to furnish a copy of the certificate to the Service. A separate certificate is required for each property with respect to which an election is made. If the disburser subsequently wishes to revoke the election, the disburser must furnish a revocation certificate to the person who received the election certificate. The disburser must also furnish a copy of the revocation to the Service and must notify the operator and all affected producers of the revocation. The election to act as withholding agent is a one-way election that does not require the consent of the party otherwise required to withhold.

The qualified disburser election is in addition to the current operator election and available to all eligible persons regardless of whether that person is an operator who previously elected under § 150.4995–4. Persons eligible for both elections may choose either election. If an operator who prefers the qualified disburser election has previously elected under § 150.4995–4, the operator should terminate the previous election under the rules of § 150.4995–4 and follow the rules for making the new election provided by § 150.4995–5.

Persons making either election who are also producers of oil from the property subject to the election are to treat the tax on their own production as an amount not subject to withholding. Therefore, the net income limitation with respect to this production may be taken into account in determining the amount to be deposited although the net income limitation may not be considered in determining the amount to be withheld and deposited with respect to the other producers.

In determining the deposit schedule applicable to a qualified disburser for both amounts withheld and amounts paid on the qualified disburser's own production, the qualified disburser's status as an integrated oil company or an independent producer or purchaser generally is controlling. However, a special rule is provided for disbursers undertaking division order responsibilities held by an integrated oil company on December 31, 1980. In those instances, the deposit obligation of the integrated oil company applies.

These regulations also amend the definition of "integrated oil company" and provide an election for companies whose status changes from quarter to quarter.

The April 4, 1980, regulations recognized that, in certain situations, the withholding agent will withhold more or less than the amount of tax imposed by section 4986 with respect to oil purchased. For instance, the special rules to be followed in the absence of a valid operator's certificate may result in the withholding of tax in excess of the amount that would have been withheld if the certificate had been received, or computational errors by one of the parties to a transaction may cause under

or overwithholding. Therefore, the regulations provided rules to be followed in withholding on later payments in order to adjust the under or overpayment. If the error is one of overwithholding, the regulations required the adjustment to be made by reducing the amount of tax withheld from subsequent payments to the same producer. Commentators on the regulations noted that if the amount overwithheld is large, the purchaser must carry a windfall profit tax credit forward from payment to payment, and the producer may be required to file a claim for refund if the overwithholding is not fully adjusted. Therefore, some purchasers requested the flexibility to adjust overwithholding errors by making an immediate payment of the overwithheld amount from the pool of tax that would otherwise be deposited. The amended regulations provide withholding agents with the requested flexibility on a voluntary basis.

Under the temporary regulations, all purchasers subject to the withholding rules are required to provide each producer from whom they have purchased crude oil a monthly statement of the amount of tax withheld. An annual statement of the producer's tax liability and a variety of other information are to be sent both to the producer and to the Internal Revenue Service. The annual statement was originally required to be furnished to the producer by January 31 and to IRS by February 28. Form 6248 has been provided for this purpose. If the purchaser withheld tax from payments made to an operator or partnership rather than directly to the producer of oil, the purchaser is to furnish the statement to the person who received the payment. Generally, that person is then required to relay the information within 15 days and to file information returns with the Internal Revenue Service.

For most taxpayers, the income tax deduction for the windfall profit tax will be the amount actually withheld during the year, rather than the amount of tax imposed upon oil removed during the year (some of which will be withheld in the subsequent tax year). Therefore, the regulations also require that the annual statement set forth the amount withheld in the course of the year.

If the producer's liability for tax exceeds the amount of tax withheld, the regulations originally required the producer to file an annual return due by the last day of February.

Several commentators, large and small, on the proposed regulations suggested that problems arise with respect to the interrelationship between the withholding adjustment mechanism, the annual information statement, and the annual return for producers subject to windfall profit tax withholding. For instance, if a price adjustment occurs with respect to oil removed late in a calendar year, the annual information statement may not be accurate. Consequently, many amended annual information statements and amended producers' returns would be required. Another potential problem discussed in the comments involves the requirement that an underwithheld producer file a return by the last day of February. In order to file an accurate return, the producer needs the annual information statement from each purchaser. However, if the producer does not deal directly with the purchaser, it is possible that the producer would not receive the statement until after the due date of the return.

Finally, the temporary regulations do not permit withholding adjustments in payments made after the annual information statement has been furnished. Consequently, many adjustments may be precluded, thereby requiring the producer to file a return or claim for refund that would otherwise be avoided.

In order to ease these potential difficulties, the amended regulations postpone the time for furnishing the annual statement to March 31 and the due date of the producer's return to May 31. These changes should permit the purchaser to furnish an accurate statement that will be received by the producer in time to file an accurate return. Withholding adjustments are permitted for all payments made before the statement is furnished.

Large and small producers commenting on the proposed windfall profit tax regulations have requested that purchasers be required to furnish more information to producers on a monthly basis. These producers have argued that a monthly statement detailing the removal price, base price, and severance tax adjustment for each barrel of oil removed during the month is necessary to enable the producer to calculate the barrels subject to the lower rate of tax for independent producer oil and the barrels subject to the net income limitation. Purchasers, on the other hand, have expressed concern that a detailed monthly reporting requirement could become unduly burdensome. Since the net income limitation is calculated on an annual basis and independent producer status is determined on a quarterly basis, a monthly statement does not appear to be essential. Therefore, the amended regulations require that a detailed report be furnished on a quarterly or annual basis when requested by a producer, operator, partnership, or disburser.

Numerous large and small commentators on the April 4, 1980, regulations stressed that the absence of withholding when oil is removed from the premises before sale may cause difficulty, particularly when the oil is transported to a near by storage tank where the oil is commingled with oil from other properties. The regulations adopt a new definition of "removed from premises" that will generally treat oil as removed only after removal from the storage tank. Therefore, withholding will generally be required at that point. Furthermore, the amended regulations provide the withholding agent with the option of withholding when oil is removed from the premises before sale. It is anticipated that this option will be exercised most frequently when a qualified disburser has elected to become the withholding agent. For instance, an operator who has made the disburser election may compute and withhold the tax from all the producers even though the oil is delivered to the purchaser away from the lease. These amendments should mitigate the removal before sale problem to a large extent, especially for small entities who would generally be withheld upon.

It was also suggested that withholding should not be required on the Federal royalty share of oil produced from a Federal lease. This suggestion has been adopted and a certificate procedure with respect to that share provided.

These regulations also address the concern expressed by independent producers (generally small entities) that the independent producer certification requirements may result in overwithholding. Those requirements are amended to clarify that the certificate may be furnished on a property-by-property basis and to achieve more accurate withholding.

A large volume of comments on the April 4, 1980 regulations was received, and the comments addressed many issues not dealt with in these temporary regulations. Those issues are outside the scope of these amendments which are primarily administrative in nature. For instance, numerous commentators requested a clarification of "newly discovered oil" and "incremental tertiary oil". The fact that a particular issue has not been addressed in these amendments to the regulations should not be construed as foreclosing the issuance of amended regulations providing further guidance on those issues.

Waiver of Procedural Requirements of Treasury Directive

The expeditious adoption of the provisions contained in this document is necessary because of the need for immediate guidance to taxpayers liable for the windfall profit tax on domestic crude oil and to other persons required to withhold and deposit tax, file returns, provide information, etc. For this reason, William E. Williams, Acting Commissioner of Internal Revenue, has determined that the provisions of paragraphs 8 through 14 of the Treasury Department directive implementing Executive Order 12044 must be waived.

Drafting Information

The principal author of these regulations is David B. Cubeta of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of amendments to the regulations

Accordingly, Part 150, Temporary Excise Tax Regulations under the Crude Oil Windfall Profit Tax Act of 1980, is amended as follows:

Paragraph 1. Section 150.4988–1 is amended by revising paragraph (b)(1) to read as follows:

§ 150.4988–1 Windfall profit; removal price.

* * * * *

(b) *Removal price*—(1) *In general.* The "removal price" generally is the amount for which the barrel is sold to the purchaser (including any adjustments to the sales price made after sale). However, in the case of a sale between related persons (within the meaning of section 103(b)(6)(C)), the removal price shall not be less than the constructive sales price for purposes of determining gross income from the property under section 613. Also, if crude oil is removed from the premises before it is sold (or is deemed removed under section 4988(c)(4) or § 150.4996–1(d)), the removal price shall be the constructive sales price for purposes of determining gross income from the property under section 613.

* * * * *

Par. 2. Section 150.4995–1 is amended by revising paragraphs (a) and (b) (3), by deleting subparagraph (4) of paragraph (b), and by revising paragraph (c). The revised provisions read as follows:

§ 150.4995–1 Requirement of withholding.

(a) *General rule; when required*—(1) *In general.* Except as otherwise provided in this section, the purchaser (as defined in § 150.4996–1 (a)) of domestic crude oil shall deduct and withhold tax from amounts payable by that purchaser for the oil. However, the preceding sentence shall not apply if—

(i) The crude oil is removed from the premises (as defined in § 150.4996–1 (d)) before it is sold, or

(ii) The manufacture or conversion of crude oil into refined products begins before the oil is removed from the premises, or

(iii) The producer of the oil is an integrated oil company (as defined in § 150.4996–1 (g)) that has furnished a certificate to the purchaser pursuant to paragraph (c) (2) of § 150.4995–2 (or, in the case of any payment for oil produced by an integrated oil company made before February 18, 1981 the purchaser does not in fact deduct, withhold, and deposit the tax), or

(iv) The purchaser has received a qualified disburser's certificate pursuant to § 150.4995–5 with respect to that oil and the certificate is still in effect, or

(v) In the case of oil removed after March 31, 1981, the United States (or any agency or instrumentality thereof) is the producer of the oil as holder of a royalty or net profits interest and the oil is sold to the purchaser directly by the Department of the Interior, or

(vi) The purchaser has received a Federal royalty certificate from an operator or lessee pursuant to paragraph (c) (3) of § 150.4995–2.

The amount of tax to be deducted and withheld shall be determined in accordance with the rules of paragraphs (b) and (c) of this section. See, however, paragraph (d) of this section for rules applicable to certain payments made prior to June 4, 1980. For purposes of the tax imposed by section 4986, the producer shall be treated as having paid on the last day of the first February after the calendar year in which the oil is removed from the premises the amount deducted and withheld with respect to such oil by the purchaser under this section.

(2) *Special rule for oil removed before sale.* If the purchaser of crude oil would be required to deduct and withhold tax from amounts payable for the oil but for the fact that the oil was removed from the premises before sale, and if the purchaser can determine the amount of tax imposed by section 4986 with respect to the oil, the purchaser may elect to withhold. If the purchaser elects to withhold, the purchaser shall be deemed to be required to withhold under paragraph (a) (1) of this section. The election shall be made by furnishing to the operator of the property from which the oil was produced and to each person to whom the purchaser makes payment for the oil a document that informs the recipient that the tax is being withheld. The election document shall be furnished within 5 days of receipt of the first oil to which it applies. Unless the election document specifies otherwise, the election shall remain effective until 30 days after the purchaser furnishes each recipient of the election document (or a successor in interest) a document informing the recipient that the tax will not be withheld. See §§ 150.4995–4 and 150.4995–5 for the elections pursuant to which an operator or qualified disburser is treated as the purchaser.

See § 150.4995–3 for the depository rules applicable to oil removed during each month (semi-monthly period in the case of certain integrated oil companies).

(b) *Amount to be deducted and withheld.* * * *

(3) *Producer's certification.* If, pursuant to § 150.4995–2, the purchaser has received a certification that a producer's share of production from a property qualifies as "exempt oil" or "independent producer oil", and if the purchaser has no reason to believe that any statement in the certification bearing on such qualification is not correct, the purchaser—

(i) Shall not withhold tax from amounts payable for the share of production that has been certified as exempt oil (the provisions of paragraph (b) (1) and (2) of this section notwithstanding), and

(ii) In determining the amount to be withheld under paragraph (b)(1) of this section from amounts payable for the share of production that has been certified as independent producer oil, shall apply the rates provided in section 4987(b)(2) and, in determining the amount to be withheld under paragraph (b)(2) of this section, shall substitute 50 percent for 70 percent.

If a payment by a purchaser is made to an operator, partnership, or other disburser, rather than directly to the producer of the oil, the amount of exempt oil and independent producer oil shall be determined on the basis of information provided to the purchaser by the operator, partnership, or disburser pursuant to paragraph (e) of § 150.4995–2.

(c) *Withholding adjustments*—(1) *General rule.* (i) A purchaser who ascertains that the amount of tax withheld from any payment for crude oil

was more or less than the amount of tax imposed by section 4986 (computed without regard to the net income limitation) with respect to that crude oil shall make adjustments in the amount to be withheld from subsequent payments to the same person as provided in this paragraph. For purposes of this paragraph, a purchaser has ascertained that the amount withheld was more or less than the tax imposed when the purchaser has sufficient information to be able to determine the amount of tax imposed by section 4986 (computed without regard to the net income limitation) with respect to that crude oil. Thus, adjustments are generally required when the purchaser made an incorrect calculation with respect to a prior payment, when the purchaser has withheld in accordance with the rules of paragraph (b)(2) because of the absence of an effective operator's certification and the purchaser later receives an effective certification, when an earlier certification is corrected, or when the purchaser has withheld tax from a producer at the generally applicable rates and the purchaser subsequently receives a retroactively effective independent producer's certificate. Every adjustment under this paragraph shall be reflected on Form 720 (the return from which is prescribed for use in reporting windfall profit tax withholding). If the entire adjustment would be reported in the return for the same taxable period as the withholding giving rise to the adjustment, the return for that period shall reflect only the amount withheld as adjusted. Otherwise, every return on which an overpayment or underpayment is adjusted pursuant to this paragraph must include such statements and other information as may be required by the instructions to the return.

(ii) Except as otherwise provided in subparagraph (3) of this paragraph, the purchaser must make a full adjustment by underwithholding or overwithholding in subsequent payments to the same person (whether or not from the same property) so that the total amount withheld is equal to the tax imposed by section 4986 (computed without regard to the net income limitation).

The full adjustment must be made, if possible, in the next payment. If it is not possible to complete the adjustment in the next payment, the purchaser shall adjust by underwithholding or overwithholding to the fullest extent possible in each subsequent payment until the adjustment is completed. However, no adjustment is to be made in the amount withheld from payments made after the statement required by § 150.4997–2(c) (relating to annual statement of windfall profit tax liability) is furnished. Furthermore, no adjustment is required to be made in the amount withheld from payments made for oil removed in a subsequent calendar year, although the purchaser may make such an adjustment if the adjustment is reflected in the statement required by § 150.4997–2(c) for the year in which the error occurred. If the error is one of underwithholding that is not fully adjusted under this paragraph (*e.g.*, where the relationship between the producer and the purchaser has terminated), the producer is required to file a return at the end of the year in accordance with § 150.4997–1 unless the producer's entire liability for tax under section 4986 has been satisfied by reason of overwithholding by another purchaser. If the error is one of overwithholding that is not fully adjusted under this paragraph, the rules of § 150.6402–1 with respect to claims for credit or refund are applicable to the producer.

(iii) If the purchaser is required to make an adjustment by overwithholding under this paragraph because the purchaser withheld less than the amount required to be withheld from an earlier payment, the overwithholding under this paragraph shall not be treated as an amount withheld or required to be withheld for purposes of § 150.4995–3 (relating to depositary requirements) to the extent that the excess of the amount originally required to be withheld over the amount actually withheld has been deposited by the purchaser (and reported if the underwithholding occurred in an earlier taxable period).

(2) *Special rules.* (i) No amount shall be deducted or withheld from any payment in excess of the windfall profit with respect to the oil giving rise to that payment.

(ii) If, pursuant to section 4995(a)(3)(D), the producer and purchaser agree to additional withholding, any amount withheld pursuant to the agreement shall be treated as an amount required to be withheld.

(iii) If, under the rules of this paragraph, the purchaser would otherwise be required (or permitted) to make an adjustment by underwithholding in subsequent payments, the purchaser may (at the purchaser's option) adjust the overwithholding (in full or in part) by making a payment to the producer or the producer's agent in the amount of the overwithheld tax (or a portion thereof). For purposes of § 150.4995–3 (relating to depositary requirements), any amount paid pursuant to the preceding sentence shall be treated as a reduction in the amount required to be deposited under § 150.4995–3 with respect to oil removed from the premises during the month immediately preceding the month of payment (during the semi-monthly period of the payment in the case of an integrated oil company making deposits under paragraph (a) of § 150.4995–3). However, any adjustment by payment under this subdivision shall not exceed the amount that would reduce to zero the amount otherwise required to be deposited under § 150.4995–3 for the depositary period referred to in the preceding sentence.

(3) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). A, a purchaser of crude oil, has been withholding in accordance with the special rules of paragraph (b)(2) because the operator of the property from which A purchases oil has not provided A with the certification required by § 150.6050C–1. Subsequently, the operator does provide A with the certification, and A, withholding under the rules of paragraph (b)(1), ascertains that the amount withheld earlier exceeds the amount of tax imposed by section 4986 based upon the information provided by the operator. Although A withheld properly in accordance with the information available during the earlier period, the amount withheld is subject to the adjustment rules of this paragraph.

Example (2). Purchaser B, in the third calendar quarter of the year, ascertains that too little tax was withheld from payments for oil purchased in the preceding calendar quarter with respect to producer C. B must attempt to fully adjust the underwithholding by increasing the amount withheld from subsequent payments made to C (up to the full amount of windfall profit). If the adjustment has not been completed when B makes the final payment for oil removed during the calendar year, B is permitted, but not required, to continue the adjustments in payments for oil removed after the close of the calendar year so long as the annual information statement and return required by § 150.4997–2 (c) reflects the adjustment. B is required to inform C of C's liability for any amount remaining unadjusted and to provide that information to the Internal Revenue Service in accordance with the rules of § 150.4997–2.

Example (3). D, the producer of exempt oil, failed to provide purchaser E with an exemption certificate in time to avoid the withholding of tax from a payment made by E to D. Under paragraph (c)(2)(iii), E has the option of adjusting the overwithholding by making a payment to D.

* * * * *

Par. 3. Section 150.4995–2 is amended to read as follows:

§ 150.4995–2 Producer's certificate.

(a) *In general.* The producer of "exempt front-end oil" (as defined in section 4994(c)) or "exempt Indian oil"

(as defined in section 4994(d)), or the holder of any interest in crude oil that is a "qualified governmental interest" (as defined in section 4994(a)) or is a "qualified charitable interest" (as defined in section 4994(b)), may execute an exemption certificate with respect to such oil. In the case of "exempt Indian oil" produced from lands administered by the Bureau of Indian Affairs, the certificates may be furnished and filed by the Commissioner of Indian Affairs or his delegate on behalf of the producer. Any producer of "independent producer oil" (as defined in section 4992) may execute a certificate with respect to such oil. Any certificate executed pursuant to this paragraph shall be furnished to the purchaser of the oil or, if the producer receives payment for the oil through the operator of the property from which the oil is produced, a partnership, or other disburser of the sales proceeds, to such operator, partnership, or disburser. Every integrated oil company shall follow the rules of paragraph (c)(2) of this section (relating to mandatory and optional withholding exemption certificates). Any certificate provided under this section must set forth the facts that establish entitlement to the exemption or lower rates claimed. The certificate (or any revocation of a certificate) shall identify the producer by name, address, and employer identification number (or, if none, social security number) and shall be signed by the producer (under the penalties of perjury except in the case of a revocation). Form 6458 is provided for this purpose. For the requirement that the operator of a property, partnership, or other disburser who has received such a certificate furnish a copy of the certificate, or certify as to its contents, to the person making payment for oil, see paragraph (e) of this section. For the certification requirement of operators or lessees selling certain oil from a Federal lease, see paragraph (c)(3) of this section. For the effect of the furnishing of certificates, see § 150.4995–1(b)(3) (relating to the withholding requirement). For the criminal penalty applicable to the furnishing of a false statement, see section 7206.

(b) *Exemption certificate.* For purposes of this section, an exemption certificate is a written statement certifying that the producer's oil is exempt from the tax imposed by section 4986 because the oil constitutes exempt Indian oil or exempt front-end oil or the oil is from a qualified governmental interest or a qualified charitable interest. Any producer who furnishes an exemption certificate to an operator, purchaser, partnership, or other disburser shall also file an exemption certificate with the Internal Revenue Service Center, Austin, Texas (unless the producer filed the certificate with a different service center prior to January 19, 1981. Only one such certificate need be filed even though the producer may furnish certificates to more than one operator, purchaser, partnership, or other disburser.

(c) *Other producers' certificates*—(1) *Independent producer's certificate.* An independent producer's certificate is a written statement certifying that the producer holds a working interest (as defined in section 4992(d)(2)) in a certain property and that the entire amount of production attributable to that interest is qualified production of oil as defined in section 4992(d). No certificate may be furnished with respect to oil if it is reasonable to believe that the number of barrels to be affected by the certificate, taken together with all other oil with respect to which an independent producer's certificate has been furnished by the producer to any operator, purchaser, partnership, or other disburser, will exceed the producer's independent producer amount (see section 4992 (c) and (e)). Producers who are members of a related group (within the meaning of section 4992(e)(2)) shall set forth in the certificate the members of the related group identified by employer identification number (or, if none, social security account number), and shall file one such certificate with the Internal Revenue Service Center, Austin, Texas. Only one such certificate need by filed even though the producer may furnish certificates to more than one operator, purchaser, partnership, or other disburser. The certificate shall be filed by the 30th day following the day that the producer first furnishes such a certificate to any operator, purchaser, partnership, or other disburser (or May 31, 1981, if later). Independent producers who are not members of a related group need not file the independent producer certificate with the Internal Revenue Service.

(2) *Integrated oil company's certificate*—(i) *Mandatory certificates.* Every integrated oil company that is a producer of oil from a property of which that company is the operator (or would be the operator in the absence of a designation under § 150.4996–1(c)) shall furnish the statement described in paragraph (c)(2)(iii) of this section to each purchaser of oil from that property no later than the date by which the first statement by the operator to the purchaser under § 150.6050C–1 is required to be furnished (or May 12, 1980, if later).

(ii) *Optional certificate.* Any integrated oil company that is a producer of oil from a property of which that company is not the operator may, at its option, furnish such a statement with respect to such oil to the purchaser of the oil or, if the producer receives payment for the oil through the operator of the property from which the oil is produced, a partnership, or other disburser of the sales proceeds, to such operator, partnership, or disburser.

(iii) *Contents of certificate.* The certificate furnished pursuant to this subparagraph shall state that the producer is an integrated oil company (as defined in § 150.4996–1(g)), that the producer will deposit its own windfall profit tax liability, and that the producer's share of production is not to be withheld upon under § 150.4995–1.

(iv) *Date certificate becomes effective.* Any certificate furnished pursuant to this subparagraph shall apply to all payments for oil of which the integrated oil company is the producer made by or for the purchaser after the date on which the purchaser received the certificate.

(3) *Federal royalty certificate*—(i) *Certificate required.* If the United States (or any agency or instrumentality thereof) is the producer of oil that is sold to the purchaser by the lessee or operator for the Department of the Interior, the lessee or operator shall furnish the statement described in paragraph (c)(3)(ii) of this section to each purchaser of such oil no later than the date by which the first statement by the operator to the purchaser under § 150.6050C–1 is required to be furnished (or March 15, 1981, if later). The statement described in paragraph (c)(3)(ii) need not be furnished if the United States, acting through the Department of the Interior, sells its production directly to the purchaser.

(i) *Contents of certificate.* The certificate furnished pursuant to this subparagraph shall state that the United States (or any agency or instrumentality thereof) is the producer of the oil (or a specified portion of the oil), that the oil is sold for the Department of the Interior, and that the United States' share of production is not to be withheld upon under § 150.4995–1.

(d) *Revocation of certificate.* If the producer has furnished a certificate with respect to oil, and the producer subsequently discovers that the oil is not, or has ceased to be, eligible for certification under the rules of paragraphs (a) through (c) of this section, the producer shall furnish notice within 10 days to the person to whom

the certificate was furnished that the certificate is revoked.

(e) *Operators, partnerships, and other disbursers.* If payment for a producer's oil is to be made by the purchaser through one or more operators, partnerships, or other disbursers rather than to each producer individually, the information contained in any certifications permitted by this section shall be aggregated in a certification by the operator, partnership, or disburser to the person from whom payment is received, unless such operator, partnership, or disburser has undertaken the withholding obligation of the purchaser pursuant to §§ 150.4995–4 or 150.4995–5. Each certification shall state the percentage of the oil that is certified as exempt from tax or subject to a lower rate of tax. The certification may certify oil as exempt from tax or subject to a lower rate of tax only to the extent that the operator, partnership, or disburser has received certifications from the producers (or another operator, partnership, or disburser). Any operator, partnership, or disburser furnishing a certification shall retain in its records, for so long as material in the administration of any internal revenue law, each certification that was used as the basis for the certification furnished by the operator, partnership, or disburser under this section.

(f) *Substitution of operator or qualified disburser for purchaser.* If, pursuant to §§ 150.4995–4 or 150.4995–5, the operator of a property or a qualified disburser elects to be responsible for the obligations otherwise imposed upon the purchaser, the purchaser shall forward to the responsible person, at the time of the election, any exemption certificate or any notice of revocation previously received by the purchaser. The purchaser shall immediately forward to the responsible person any exemption certificate or any notice of revocation received after the election. The operator or qualified disburser shall treat any exemption certificate or any notice of revocation forwarded by a purchaser as an exemption certificate or notice of revocation from the producer.

Par. 4. Section 150.4995–3 is amended by revising so much of paragraph (a)(1) as precedes subdivision (i), by revising paragraphs (a)(2), (b), (c), (d), (f)(2), (g), and (i) (2) and (3). The revised provisions read as follows:

§ 150.4995–3 Depositary requirements.

(a) *Deposits by integrated oil companies other than independent refiners*—(1) *In general.* Every integrated oil company (as defined in § 150.4996–1(g)) other than an independent refiner (as defined in § 150.4996–1(h)) that is either liable as a producer for the tax imposed by section 4986 (unless such tax is required by § 150.4995–1 to be deducted and withheld by the purchaser) or is required as a purchaser to deduct and withhold tax pursuant to § 150.4995–1 shall make deposits with respect to semimonthly periods (as defined in paragraph (a)(3)(i) of this section). The amount to be deposited for each semimonthly period is the amount of tax imposed by section 4986 (computed with regard to the net income limitation provided in section 4988(b), if applicable) on the removal in that semimonthly period of oil that is not subject to withholding under § 150.4995–1 for which the company is liable as a producer, plus the amount required to be withheld by the company as a purchaser pursuant to § 150.4995–1 from payments that have been or will be made for oil removed from the premises during that semimonthly period. However, if the amount withheld by the company as a purchaser from any payment is more than the amount required to be withheld, the amount to be deposited shall be the amount withheld. The deposits shall be made on or before the depositary date (as defined in paragraph (a)(3)(ii) of this section) for the semimonthly period in which the oil is removed. These depositary requirements will be considered to have been met for a semimonthly period with respect to estimated deposits, including deposits based upon the producer's estimate of the effect of the net income limitation provided in section 4988(b) only if—

* * * * *

(2) *Special requirement.* If the aggregate amount of deposit liability for a taxable period (determined without regard to subdivisions (i) through (iv) of paragraph (a) (1) of this section) exceeds the total amount deposited by the company pursuant to paragraph (a) (1) of this section for such taxable period, then the company shall, on the removal in that semimonthly period of oil that is not subject to withholding under § 150.4995–1 for which the company is liable as a producer, plus the amount required to be withheld by the company as a purchaser pursuant to § 150.4995–1 from payments that have been or will be made for oil removed from the premises during that semimonthly period. However, if the amount withheld by the company as a purchaser from any payment is more than the amount required to be withheld, the amount to be deposited shall be the amount withheld. The deposits shall be made on or before the depositary date (as defined in paragraph (a) (3) (ii) of this section) for the semimonthly period in which the oil is removed. These depositary requirements will be considered to have been met for a semimonthly period with respect to estimated deposits, including deposits based upon the producer's estimate of the effect of the net income limitation provided in section 4988 (b), only if—

* * * * *

(2) *Special requirement.* If the aggregate amount of deposit liability for a taxable period (determined without regard to subdivisions (i) through (iv) of paragraph (a) (1) of this section) exceeds the total amount deposited by the company pursuant to paragraph (a) (1) of this section for such taxable period, then the company shall, on or before the last day of the second month following the close of the taxable period, deposit an amount equal to the amount by which the deposit liability exceeds the total deposits made pursuant to paragraph (a) (1) of this section for the taxable period.

* * * * *

(b) *Independent refiners purchasing oil pursuant to a delayed payment contract.* Purchasers that are independent refiners (as defined in § 150.4996–1 (h)) shall make deposits for each calendar month in accordance with the rules of paragraph (c) of this section except in the case of oil purchased under a contract therefor under which no payment is required to be made by the purchaser before the 46th day after the close of the month in which the oil is purchased. In the case of oil purchased under such a contract, the deposits shall be made for each calendar month not later than the last day of the second month which begins after the month in which the oil was removed. The amount to be deposited for each month is the amount required to be withheld pursuant to § 150.4995–1 from payments that have been or will be made for oil removed during that month. However, if the amount withheld by the purchaser from any payment is more than the amount required to be withheld, the amount to be deposited shall be the amount withheld.

(c) *Deposits by other purchasers.* Except as provided in paragraph (a) or (b) of this section, purchasers shall make deposits for each calendar month not later than 45 days after the close of that month. The amount to be deposited for each month is the amount required to be withheld pursuant to § 150.4995–1 from payments that have been or will be made for oil removed from the premises during that month. However, if the amount withheld by the purchaser from any payment is more than the amount

required to be withheld, the amount to be deposited shall be the amount withheld.

(d) *Special rules for electing operators and qualified disbursers*—(1) *Electors who are also producers.* Any operator or qualified disburser who makes the election provided by §§ 150.4995–4 or 150.4995–5 and who is the producer of oil subject to the election shall deposit with respect to that oil by treating the oil as not subject to withholding. However, if section 4995 (a) (7) (A) (ii) applies to amounts withheld by the operator electing under § 150.4995–4, that section shall also apply to amounts deposited by the operator under the preceding sentence.

(2) *Special rules for qualified disbursers.* The rules of this subparagraph apply to every qualified disburser making the election provided by § 150.4995–5 regardless of whether that qualified disburser is an operator entitled to make (or who has previously made) the election provided by § 150.4995–4. Except as provided in the following sentence, a qualified disburser shall deposit both the amount required to be deposited as a purchaser and the liability of the qualified disburser as a producer (if any) in accordance with the rules of paragraph (a) of this section if the qualified disburser is an integrated oil company (other than an independent refiner) and in accordance with the rules of paragraphs (c) and (f) of this section in any other case. However, if, on December 31, 1980, an integrated oil company (other than an independent refiner) was a disburser (as defined in § 150.4996–1(j)) with respect to a property, any qualified disburser subsequently undertaking any portion of the distribution responsibility of the integrated oil company shall deposit all amounts attributable to that property in accordance with the rules of paragraph (a) of this section.

* * * * *

(f) *Deposits by producers of tax due on oil not subject to withholding.* * * *

(2) *Special requirement.* If the total liability for the tax imposed by section 4986 for a taxable period exceeds the total amount deposited by the producer pursuant to subparagraph (1) of this paragraph for such taxable period, then the producer shall deposit the difference not later than the last day of the second month following the close of the taxable period.

(g) *Special rules applicable to overdeposits*—(1) *Purchasers who are not also depositing tax as a producer.* If, for any taxable period, a purchaser is not also depositing tax as a producer, the excess (if any) of the purchaser's deposits for a semimonthly period (calendar month in the case of purchasers depositing under paragraph (b) or (c) of this section) with respect to the removal of oil in that semimonthly period (or month) over the amount required to be deposited shall be applied in order of time to each of the purchaser's succeeding semimonthly periods (or months) in the same taxable period, to the extent that the amount by which the purchaser's deposit liability for that period (or month) exceeds the deposit for such subsequent period (or month), until such excess is exhausted.

(2) *Treatment of deposits by a producer in excess of liability*—(i) *In general.* The rules of this subparagraph apply to producers required to deposit tax under paragraph (a) or (f) of this section, including producers who are also depositing as a purchaser. The excess (if any) of a producer's deposits for a semimonthly period (calendar month in the case of producers depositing under paragraph (f) of this section) with respect to the tax imposed by section 4986 on the removal in that semimonthly period (or month) of oil that is not subject to withholding under § 150.4995–1 plus the amount deposited as a purchaser for oil removed during that period (or month) over the sum of the tax imposed by section 4986 (computed with regard to the net income limitation) on the removal of oil that is not subject to withholding plus the amount required to be deposited as a purchaser shall be applied in order of time to each of the producer's succeeding semimonthly periods (or months), to the extent that the amount by which the total deposit liability (as a producer and purchaser) for that period (or month) exceeds the deposit for such subsequent period (or month), until such excess is exhausted. The preceding sentence shall not apply to any amount for which the producer files a claim for credit or refund pursuant to § 150.6402–1. Furthermore, no amount shall be applied to a deposit for a subsequent semimonthly period (or month) that occurs in a taxable period beginning in a different taxable year (for Federal income tax purposes).

(ii) *Examples.* The rules of this paragraph and their relationship to the rules of § 150.6402–1 may be illustrated by the following examples:

Example (1). A, whose taxable year (for Federal income tax purposes) ends September 30, is the producer of oil from property X. For each taxable period (calendar quarter) within his taxable year ending September 30, 1981, A's windfall profit tax liability, determined without taking the net income limitation into account, is $1,000. The purchaser of A's oil is not required to withhold any windfall profit tax, and for the last taxable period of 1980 A has deposited $1,000. At the beginning of the first taxable period of 1981, A determines that the net income limitation will reduce the windfall profit tax with respect to the oil removed from property X during the taxable year ending September 30, 1981, by approximately 10 percent. Therefore, A concludes that the tax paid for the preceding taxable period (calendar quarter) exceeds his liability for tax for that period, although the exact amount of the excess cannot be determined until the taxable year ends. Under § 150.6402–1 A may not claim a refund for the amount of any such excess until the taxable year ends on September 30, 1980. However, paragraphs (a) and (f) of § 150.4995–3 do not require deposit of more than the tax imposed by section 4986. Therefore, A may estimate the effect of the net income limitation in determining the amount of windfall profit tax to be deposited for each taxable period. Furthermore, the amount by which the tax deposited by A for a preceding deposit period exceeds the actual liability for that period is treated as deposited for the next period. Accordingly, A deposits a total of $800 for the first taxable period of 1981 and $900 for each of the next two taxable periods. Thus, at the end of the four taxable periods ending within A's taxable year, A has made the following deposits:

October–December 1980, $1,000
January–March 1981, $800
April–June 1981, $900
July–September 1981, $900

After September 30, 1981, A computes his net income limitation for property X and determines that his actual tax liability was $850 for each taxable period. A has satisfied the deposit requirements and is entitled to file a claim for credit or refund of $200.

Example (2). Assume the same facts as in example (1), except that A overestimates the effect of the net income limitation and deposits a total of $600 for the first taxable period of 1981 and $800 for each of the next two taxable periods. After September 30, 1981, A's deposits are as follows:

October–December 1980, $1,000
January–March 1981, $600
April–June 1981, $800
July–September 1981, $800

$150 of the deposits for October, November, and December 1980 is treated as carried over to and deposited in the next taxable period, bringing the total deposit required for Jan–Mar 1981 to $700 (the amount equal to the $850 actual liability less $150 carried from the preceding period). However, due to the overestimation of the effect of the net income limitation, A has not deposited the total liability for that period or the next two taxable periods. Therefore, A is liable for $200 in undeposited tax (the amount equal to $3,400 total liability less $3,200 total deposits) plus interest and penalties (unless A's error was due to reasonable cause).

(iii) *Reporting requirements.* For the requirement that the producer file quarterly and annual statements if windfall profit tax deposits have been based on an application of the net

income limitation provided in section 4988(b), see § 150.4997–1

* * * * *

(i) *Depositary forms.* * * *

(2) *Tax deposit forms.* Each remittance of amounts required to be deposited by this section shall be accompanied by an FTD (Federal Tax Deposit, Excise Taxes) form (Form 504). Such form shall be prepared in accordance with the instructions applicable thereto. The remittance, together with FTD Form 504, shall be forwarded to a financial institution authorized as a depositary for Federal taxes in accordance with 31 CFR 214 or, at the election of the person remitting the tax, to a Federal Reserve bank. For procedures governing the deposit of Federal taxes at a Federal Reserve bank see 31 CFR 214.7. The timeliness of the deposit is determined by the date stamped on the Federal Tax Deposit form by the Federal Reserve bank or the authorized financial institution or, if section 7502(e) applies, by the date the deposit is treated as received under section 7502(e). Each person making deposits pursuant to this section shall report on the return for the period with respect to which such deposits are made information regarding such deposits in accordance with the instructions applicable to such return.

(3) *Procurement of prescribed forms.* Copies of the applicable deposit forms will so far as possible be furnished to purchasers and producers. Such a person will not be excused from making a deposit, however, by the fact that no form has been furnished to it. A person not supplied with the proper form should make application therefor in ample time to make the required deposits within the time prescribed. A person may secure the forms or additional forms by applying therefor and supplying its name, identification number, address, and the taxable period to which the deposits will relate. Copies of FTD Form 504 may be secured by application to a director of an Internal Revenue Service Center.

Par. 5. Paragraph (a) of § 150.4995–4 is amended to read as follows:

§ 150.4995–4 Election of purchaser and operator to have operator withhold, deposit tax, etc.

(a) *General rule.* Pursuant to section 4995(a)(7)(B), it has been determined that the substitution of the operator for the purchaser will make the administration of the windfall profit tax more practicable only when the operator is otherwise required by § 150.4995–4 to make deposits as a purchaser of oil produced from a different oil reservoir. Consequently, a purported election pursuant to section 4995(a)(7) is invalid except in that circumstance. In the allowed case, the operator of the property and a purchaser of crude oil produced from that property may make a joint election under this section with respect to oil produced from the entire property or any portion thereof. While the election is in effect, and to the extent of the oil subject to the election, the operator shall be treated as the purchaser for purposes of chapter 45 (or related provisions of subtitle F of the Code) and this part and, accordingly, is subject to all of the requirements imposed thereby upon the purchaser (except to the extent that a qualified disburser's election under § 150.4995–5 relieves the operator of those requirements). The purchaser shall not be held responsible for failing to meet those requirements. The operator shall promptly notify all producers of oil from that property (or portion) that a joint election has been made and that all information otherwise required to be sent to the purchaser should be sent to the operator. If the operator makes payment for oil produced from the property to a partnership rather than directly to the producers, the notice shall be sent to the partnership. The operator and the purchaser must agree to transfer to the operator responsibility for meeting all the requirements otherwise imposed upon the purchaser in order for the agreement to constitute an effective election.

* * * * *

Par. 6. A new § 150.4995–5 is added immediately after § 150.4995–4. Section § 150.4995–5 reads as follows:

§ 150.4995–5 Election of qualified disburser to withhold, deposit tax, etc.

(a) *In general.* Any "qualified disburser", as defined in paragraph (b) of this section, may make an election under this section to act as the withholding agent with respect to the oil the sales proceeds of which are distributed by that qualified disburser and to treat as not subject to withholding amounts received for its own production. While the election is in effect, and to the extent of the oil subject to the election, the qualified disburser shall be treated as the purchaser for purposes of chapter 45 (and related provisions of subtitle F of the Code) and this part (other than this section), and, accordingly, is subject to all of the requirements imposed thereby upon the purchaser. The qualified disburser shall promptly notify the operator of the property and every payee of any portion of its disbursements that the election has been made and that all information otherwise required to be sent to the purchaser should be sent to the qualified disburser.

(b) *Qualified disburser defined.* The term "qualified disburser" means either—

(1) A disburser (as defined in § 150.4995–1 (j)) who distributes 20 percent or more of the entire proceeds from the sale of oil from a property (or a portion of a property if that portion constituted a separate property prior to a unitization or aggregation), exclusive of that person's own share of the proceeds (if any), or

(2) A federally registered partnership as defined in section 6501(o)(4).

(c) *Method of making election; termination of election.* (1) The election shall be made by furnishing to the purchaser a signed and dated document that states facts that would establish that the person making the election is a "qualified disburser" and makes clear that the person has assumed complete responsibility for meeting all the requirements otherwise imposed upon the purchaser by chapter 45 (or related provisions of subtitle F) of the Code or by this part (other than this section) with respect to the oil the sales proceeds of which are distributed by the qualified disburser and for treating as not subject to withholding amounts received for its own production. The election document shall set forth the elector's identifying number (employer identification number or, if none, social security account number) and the property subject to the election, including the lease name, location, and identifying number, if any. Form 6458 is provided for this purpose. If the election is made with respect to more than one property, a separate document shall be furnished for each property. Generally, the election shall become effective on the date the election document is furnished to the purchaser (or a later effective date specified in the election document). However, the election may be made retroactively effective with respect to all oil removed after December 31, 1980, if the purchaser and qualified disburser so agree in writing, and if the election is made no later than March 1, 1981. The election shall remain in effect until 60 days after the qualified disburser furnishes the purchaser a signed and dated document that declares that the election is terminated (or a later date specified in the termination document) unless the purchaser agrees in writing to an earlier termination date. The qualified disburser shall promptly notify the operator and all affected producers of the termination and the resulting changes in responsibilities and shall, within 10 days of furnishing the

termination document to the purchaser, forward a copy to the Internal Revenue Service Center, Austin, Texas.

Both the purchaser and qualified disburser shall retain in their records, for so long as they may be material in the administration of any internal revenue law, a copy of the election document and any subsequent termination document. If a qualified disburser making the election provided by this section receives payment of the sales proceeds of the oil from an intermediate disburser rather than directly from the purchaser, any document required by this section to be furnished to the purchaser shall be furnished to such other disburser. Any person receiving such a document shall furnish a copy to the person from whom that person receives payment.

(2) Any qualified disburser who, acting in good faith, undertook the responsibilities of the purchaser with respect to disbursements made after February 29, 1980, and before January 19, 1981 for oil removed from a property (or portion of a property) and who, on or before February 18, 1981, makes the election provided by this section with respect to oil removed from that property (or portion) may treat the election as being retroactively effective by so stating in the election document. However, the preceding sentence shall not have the effect of retroactively relieving the actual purchaser of any liability for failure to meet the requirements imposed upon the purchaser by chapter 45 (or related provisions of subtitle F of the Code) or this part.

(d) *Obligation of purchaser to furnish copy of election document to the Internal Revenue Service.* Within 10 days of receipt of an election document under this section, the purchaser shall forward a copy to the Internal Revenue Service Center, Austin, Texas.

(e) *Status of electing qualified disburser who is also a producer.* An electing qualified disburser who is also a producer of oil from the property subject to the election shall comply with all the requirements of this part that are imposed upon a producer whose oil is not subject to withholding (see, e.g., § 150.4995–3 (a) and (f) relating to the deposit schedules for producers not subject to withholding; see also, § 150.4995–3(d) relating to special deposit rules for certain operators and electing qualified disbursers).

(f) *Authority of district director to revoke election, require bond, etc.* If the district director for the district in which the principal place of business of the qualified disburser is located determines that the election under this section of any qualified disburser is not in the best interest of the Government in the effective collection and administration of the windfall profit tax, the district director may revoke the election or may permit the election to continue upon compliance with reasonable conditions, such as the posting of a bond. In the case of a revocation, the district director shall promptly notify the purchaser or other affected disbursers of the change in responsibilities.

(g) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). P purchases crude oil from a lease operated by O. P pays 100 percent of the sales proceeds to O who retains 50 percent (the amount attributable to O's share of production) and distributes the remaining 50 percent to all the other producers in accordance with their percentage share of production. Since O is a qualified disburser, O may elect under this section to undertake all the windfall profit tax responsibilities otherwise imposed upon P. If O does elect, O furnishes P the election document and P withholds no windfall profit tax from payments to O. P must submit a copy of the election document to the Internal Revenue Service.

Example (2). Assume the same facts as in example (1) except that one of the producers receiving payment from O is a federally registered partnership. The partnership and O are both qualified disbursers entitled to make the election provided by this section. If the partnership and O both make the election, O must not withhold tax from payments to the partnership and must furnish a copy of the partnership's election document to P together with O's election document. If the partnership makes the election but O does not, O must furnish a copy of the partnership's election document to P. P should withhold tax from payments made to O except for the portion of the payment that is attributable to the partnership's share of production. P must submit to the Internal Revenue Service a copy of any election document received by P.

Example (3). Assume the same facts as in example (1). Assume further that O pays A, a producer, 20 percent of the entire sales proceeds, and that A retains 50 percent of the 20 percent payment from O and distributes the remaining 50 percent to producer B. A is not a qualified disburser because A distributes only 10 percent of the entire proceeds of sale.

Example (4). Assume the same facts as in example (1) except that P directly pays producer C, who has a 20 percent share of production and that the remaining 80 percent is paid to O who retains the 50 percent share attributable to O's share of production and distributes the remaining 30 percent to the other producers. O is a qualified disburser who may make the election provided by this section with respect to the sales proceeds received by O. C, who retains the entire proceeds received from P, is not a qualified disburser. Thus, P must withhold upon the payment to C in accordance with the rules of § 150.4995–1.

Example (5). Assume the same facts as in example (1) except that O, after retaining the 50 percent share of the sales proceeds attributable to O's production, distributes the remaining proceeds to producer A. Assume further that A retains 20 percent of the 50 percent payment from O and distributes the remaining 80 percent to other producers. O and A are both qualified disbursers because O distributes 50 percent of the entire sales proceeds and A distributes 40 percent. If both O and A make the election provided by this section, O does not withhold tax from the payments to A and deposits tax with respect to O's own production as a producer whose oil is not subject to withholding.

Par. 7. Section 150.4996–1 is amended by revising paragraphs (a), (c), (d), and (g), by revising so much of paragraph (h) as precedes subparagraph (1), by redesignating paragraph (j) as paragraph (k), and by adding new paragraphs (j) and (l). The revised and added provisions read as follows:

§ 150.4996–1 Definitions.

For purposes of this part and chapter 45 of the Code—

(a) *Purchaser.* The term "purchaser" includes only the first person (as defined in section 7701(a)(1)) purchasing production of domestic crude oil.

* * * * *

(c) *Operator.* The term "operator" means the person who bears more of the responsibility for the management and operation of crude oil production from the property than any other person. In the case of a business entity, the operator is the entity and not its employee or owner. However, under section 4996(a)(2)(B), another person may be designated as the operator, for purposes of chapter 45 of the Code, by persons holding 50 percent or more of the total shares of production attributable to operating mineral interests in the property. Such a designation must be made in writing and signed by all persons participating in the designation. A copy of the designation document shall be furnished to the district director for the district in which the principal place of business of the designated operator is located within 30 days of its effective date.

(d) *Removed from the premises; deemed removed.* (1) Oil is removed from the premises when the oil is physically transported off the premises. The term "premises" has the same meaning as it has for purposes of determining gross income from the property under section 613. See § 1.613–3(a). However, oil shall not be considered removed from the premises when, prior to sale, it is transported a short distance from the premises to a storage facility where the oil is to be held until sale. In that case, the oil shall

be considered to be removed from the premises when it is removed from the storage facility. Except as otherwise provided in this paragraph, if oil is used on the premises or if the manufacture or conversion of crude oil into refined products begins on the premises, the oil shall be treated as removed on the day the use, manufacture or conversion begins. However, oil that is produced and then reinjected into the reservoir or used on the premises to power a production process or production equipment is not removed from the premises so long as the oil is at no time transported from the premises from which it was produced.

(2) Oil used to power a production process or production equipment will not be considered removed from the premises if it is transported from one tract or parcel of land to a contiguous tract or parcel of land, provided that 100 percent of the operating mineral interests (as defined in § 1.614–2 (b)) in both tracts or parcels of land is held by the same persons. For purposes of the preceding sentence, in the case of oil produced from a property from which more than one tier of oil (as defined in section 4991) is produced, the oil used to power a production process or production equipment shall be deemed of the higher or highest tier designation to the extent of production in such tier and thereafter of the next lower tier. The rules of this paragraph apply only for purposes of the tax imposed by section 4986.

* * * * *

(g) *Integrated oil company.* Except as provided in paragraph (g)(4) of this section, the term "integrated oil company" means a taxpayer that is a "retailer" or "refiner" or a taxpayer who has made the election provided in paragraph (g)(3) of this section.

(1) *Retailer.* The term "retailer" means any taxpayer described in section 613A(d)(2), applying that section on a quarterly basis, i.e., one who directly, or through a related person, sells oil or natural gas (excluding bulk sales to commercial or industrial users) or any product derived from oil or natural gas—

(i) Through any retail outlet operated by the taxpayer or a related person, or

(ii) To any person—

(A) Obligated under an agreement or contract with the taxpayer or related person to use a trademark, trade name, or service mark or name owned by such taxpayer or related person, in marketing or distributing oil or natural gas or any product derived from oil or natural gas, or

(B) Given authority, pursuant to an agreement or contract with the person or related person, to occupy any retail outlet owned, leased, or in any way controlled by the taxpayer or related person.

However, notwithstanding the preceding sentence, this subparagraph shall not apply in any case where the combined gross receipts from the sale of such oil, natural gas, or any product derived therefrom, for the taxable period of all retail outlets taken into account for purposes of this subparagraph do not exceed $1,250,000. For purposes of this subparagraph, sales of oil, natural gas, or any product derived from oil or natural gas shall not include sales made of such items outside the United States, if no domestic production of the person or a related person is exported during the taxable period of immediately preceding taxable period.

(2) *Refiner.* The term "refiner" means any taxpayer described in section 613A(d)(4), applying that section on a quarterly basis, i.e., one who is engaged in the refining of crude oil or is related to a person so engaged, provided that on any day during the taxable period the refinery runs of the person and any related person exceed 50,000 barrels.

(3) *Election to be treated as an integrated oil company.* Any taxpayer who was an integrated oil company during any taxable period of the current or preceding calendar year may elect, for purposes of administering the windfall profit tax, to be treated as an integrated oil company for some or all of the taxable periods in the current year during which the taxpayer would not otherwise be considered to be an integrated oil company. The election shall be made by filing a document with the Internal Revenue Service Center, Austin, Texas. The document shall state that the election is made and shall set forth the facts that entitle the taxpayer to make the election. The election shall be considered to take effect with the first taxable period beginning after the election document is received by the Internal Revenue Service Center and to remain in effect for all taxable periods until revoked, unless the election document specifies a different effective period. The election may be revoked at any time by filing with the Internal Revenue Service Center, Austin, Texas a document that states that the election is revoked. The revocation shall be effective with the first taxable period beginning after the revocation document is received by the Internal Revenue Service Center unless a later effective date is specified in the revocation document. If an election or revocation document is sent to the service center by mail, it shall be considered received when posted by United States mail, properly addressed, and with sufficient postage.

(4) *Special rule.* For purposes of administering the windfall profit tax for any taxable period, if a taxpayer is an integrated oil company solely because that taxpayer is related to a person who is an independent refiner (as defined in paragraph (h) of this section), such taxpayer shall not be considered an integrated oil company for that taxable period.

For purposes of this paragraph, the term "related person" has the same meaning as in section 613A(d) (2) and (4).

(h) *Independent refiner.* The term "independent refiner" means any taxpayer who is engaged in the refining of crude oil and who

* * * * *

(j) *Disburser.* The term "disburser" means a person receiving payments from the sale of crude oil who is responsible for distributing some or all of the payment to one or more producers of the oil (either directly or through intermediate disbursers).

(k) *Other.* * * *

(l) *Effective dates.* Paragraphs (c) and (d)(1) of this section are effective with respect to oil removed from the premises (as defined in § 150.4996–1(d) of Treasury Decision 7690) on or after January 1, 1981, and so much of paragraph (g) of this section as precedes subparagraph (1) is effective with respect to oil so removed on or after the date that is 30 days after publication of final regulations under section 4995(b)(3). For the text of those paragraphs as in effect prior to those dates, see T.D. 7690, 45 FR 23384 (April 4, 1980).

Par. 8. Section 150.4997–1 is amended to read as follows:

§ 150.4997–1 Returns and recordkeeping.

(a) *Returns.* Returns with respect to windfall profit taxes imposed by section 4986 shall be made as provided in this section.

(1) *Quarterly return.* A return for each taxable period (on Form 720, with Form 6047 attached thereto, in accordance with the instructions on those forms) shall be made by the following:

(i) Each purchaser of crude oil required to deduct and withhold tax pursuant to § 150.4995–1;

(ii) Each operator of a property or qualified disburser who, having made an election pursuant to §§ 150.4995–4 or 150.4995–5, is required to deduct and withhold tax; and

(iii) Each producer of crude oil the tax with respect to which is excepted from

the withholding requirement by a subparagraph of § 150.4995–1(a).

(2) *Annual return.* A return for each calendar year shall be made by each producer of crude oil whose liability for tax with respect to oil that was removed during the four taxable periods of the calendar year exceeds the amount of tax withheld with respect to that oil.

See § 150.6076–1 for the rules relating to the time for filing the returns required by this section.

(b) *Recordkeeping requirements.* Each taxpayer liable for tax under section 4986, each producer or purchaser of domestic crude oil, each operator of a property from which domestic crude oil was produced, each disburser, and each partnership or other person receiving information on behalf of or providing information to producers under this part shall keep records of all documents, material, and information necessary to the determination of the windfall profit tax or that affect his or her administrative obligations under the Crude Oil Windfall Profit Tax Act of 1980 or the regulations in this part, including material furnished to other persons, as well as information received from other persons. The records shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained so long as the contents thereof may become material in the administration of any internal law.

Par. 9. Section 150.4997–2 is amended to read as follows:

§ 150.4997–2 Certain information to be furnished by purchaser and others.

(a) *In general*—(1) *Purchasers.* If a purchaser is subject to the rules for collection and deposit of tax under §§ 150.4995–1 and 150.4995–3 with respect to any crude oil purchased (or would be subject to such rules in the absence of an exemption certificate given pursuant to § 150.4995–1(b)(3)), such purchaser shall furnish statements in accordance with paragraphs (b), (c), (d) and (e) of this section to each producer of the crude oil purchased, except that, if payment for the oil purchased is made to the operator of the property from which the oil is produced, a partnership, or other disburser (whether or not a "qualified disburser", as defined in § 150.4995–5) rather than to each producer individually, the statements shall be furnished to the operator, partnership, or other disburser, as the case may be. Such purchaser shall also file the information return required by paragraph (c) of this section with the Internal Revenue Service (in the case of yearly statements).

(2) *Operators, partnerships, disbursers.* Any person who receives a statement pursuant to paragraph (a)(1) of this section with respect to oil of which such person is not the producer shall, within 15 days of receipt of the statement, furnish to each producer, operator, partnership, or disburser to whom such person makes payment for the oil the information relating to the share of oil attributable to that producer, operator, partnership, or disburser. However, the rule of the preceding sentence shall apply to the statement required by paragraph (b) of this section (relating to monthly statements of tax withheld) to be furnished by a partnership to a partner only if the partner to receive the statement has requested that it be furnished. In the case of a partnership furnishing the statement required by paragraph (c) (Form 6248) or an annual statement required by paragraph (d) directly to any of its partners, the statement shall be furnished by the date that is the later of—

(i) 15 days following receipt of the statement by the partnership, or

(ii) The first April 30 following the end of the year to which the statement relates.

Any person furnishing the statement required by paragraph (c) (Form 6248) shall file a copy with the Internal Revenue Service as an information return. If a person required to furnish a statement or file a return under this paragraph receives more than one statement with respect to the same producer, operator, partnership, or disburser, all such statements may be aggregated in the statement and information return furnished under this paragraph.

(3) *Producer's and disburser's identifying numbers.* Every person with respect to whom the annual information return prescribed by paragraph (c) of this section (Form 6248) is required to be made by another person and every person who is required to be shown as a member of a related group on another person's independent producer certificate pursuant to § 150.4995–2(c)(1) shall furnish to such other person the person's employer identification number, or if an employer identification number has not been assigned, the person's social security account number.

(b) *Monthly statement*—(1) *In general.* The purchaser shall furnish statements for each calendar month showing the total amount of windfall profit tax withheld by the purchaser from payments made to the producer, operator, partnership, or disburser with respect to oil removed during that month. If the purchaser did not withhold tax from payments to that person because of the receipt of an exemption certificate, the monthly statement need only state the reason for the absence of withholding.

(2) *Time for furnishing monthly statement.* Any statement required to be furnished by a purchaser under this paragraph for any calendar month shall be furnished before the first day of the second month which begins after the close of the month to which the statement applies.

(c) *Yearly statement of windfall profit tax liability*—(1) *In general.* For each calendar year, the purchaser shall furnish statements and shall file information returns with the Internal Revenue Service. A separate statement shall be furnished to and a separate information return shall be filed for each producer, operator, partnership, or disburser to whom the purchaser made payments for oil purchased during the calendar year. Each statement and information return shall contain the following information with respect to oil for which that person received payment:

(i) The quantity, removal price, severance tax adjustment, adjusted base price, and windfall profit tax liability (computed without regard to the net income limitation) for taxable crude oil in each tier that was removed during that calendar year;

(ii) The total quantity of the taxable crude oil that was removed during that year;

(iii) The total amount of the windfall profit tax liability incurred with respect to the oil removed during that year;

(iv) The total amount of windfall profit tax withheld by the purchaser with respect to the oil removed during that year; and

(v) The total amount of windfall profit tax withheld by the purchaser from payments made during the calendar year without regard to when the oil was removed.

If the purchaser did not withhold tax from payments to that person because of the receipt of an exemption certificate, the yearly statement and information return shall identify the applicable exemption and set forth the number of barrels that would have been in each tax tier if the oil had been taxable crude oil. For purposes of the preceding two sentences, each category of tier 3 oil, independent producer oil withheld upon at a 50 percent rate, and independent producer oil withheld upon at a 30 percent rate shall be treated as a separate tier.

(2) *Additional information the case of withholding adjustments.* In the case of

withholding adjustments that were not completed under paragraph (c) of § 150.4995–1, the purchaser shall provide additional information in the yearly statement and information return with respect to the person subject to the adjustment. The statement and information return shall set forth the amount ascertained to have been underwithheld or overwithheld, the amount actually adjusted, and the amount remaining unadjusted. If the adjustment was due to underwithholding, the statement shall also inform the recipient that the producer is liable for the amount of the tax under section 4986 in excess of the amount of such tax withheld by the purchaser. If the withholding adjustment was due to overwithholding, the statement shall inform the recipient that the purchaser was unable to fully adjust the overpayment under paragraph (c) of § 150.4995–1 and that the producer is eligible for a credit or refund which he may claim in accordance with the rules provided in § 150.6402–1.

(3) *Producers not subject to withholding.* Every producer of oil not subject to withholding under § 150.4995–1 shall file the information return with respect to that oil that would otherwise have been required to be filed by the purchaser.

(4) *Prescribed form.* The statement and information return required by this paragraph shall be furnished and filed on Form 6248. The statement and return shall also contain such other information as is required by the form or its instructions. The statement shall be furnished in duplicate. The information return shall be filed in the place and in the manner provided in the instructions to Form 6248.

(5) *Time for furnishing yearly statement of windfall profit tax liability and filing yearly information returns.* Each yearly statement required to be furnished by a purchaser under this paragraph for any calendar year shall be furnished on or before March 31 of the year immediately following the calendar year to which the statement applies, and each yearly information return required to be filed by a purchaser shall be filed on or before April 30 of that year.

(6) *Correction of errors in statements and returns.* If a person required to furnish a statement or file a return under this paragraph ascertains after the statement has been furnished or the return filed that the person has made an error on the statement or return such person shall correct the error within 60 days of ascertaining the error by furnishing a corrected statement and filing a corrected return. On the other hand, where it is ascertained that the statement or return contains an inaccuracy not within the control of such person (e.g., where a producer's certificate provided to such person is incorrect), such person shall correct the inaccuracy not later than the next following date for furnishing such a statement or filing such a return by either furnishing a corrected statement and filing a corrected return or by indicating the correction on the statement furnished and return filed for the year within which the error was ascertained.

(7) *Identifying numbers.* Any person required to make an information return with respect to any other person under this paragraph shall request from that other person that person's identifying number (employer identification number or, if none, social security account number) and shall include that number in the information return. Furthermore, any person required to make an information return that is based, in whole or in part, upon information received from another person shall include that other person's identifying number in the information return.

(d) *Detailed statement to be furnished upon request.* (1) Any producer, operator, partnership, or disburser receiving sales proceeds from which windfall profit tax has been withheld may furnish the person from whom the proceeds are received a written request for some or all of the following information with respect to the computation of the withheld tax: The quantity of oil in each tax tier and the removal price, severance tax adjustment, adjusted base price, and tax rate applicable to that quantity. The information request may specify that the information is requested either on a property-by-property basis or in the aggregate. Any person receiving such a request who has made payments to the person making the request shall provide the requested information for the period and at the time specified in paragraph (d)(2).

(2) For taxable periods beginning after December 31, 1980, if the information request specifies that the information is requested for each taxable period, the information shall be provided for each taxable period not later than the last day of the second month following the end of the taxable period. If the information request states that the person requesting the information has an income tax year (for Federal income tax purposes) that ends on a date other than the last day of a calendar quarter and states the date on which the taxable year ends, the information for the taxable period within which the taxable year (for Federal income tax purposes) ends shall be provided for each month in that period. In any other case, the requested information shall be provided for each calendar year not later than March 31 of the following calendar year.

(e) *Suspended accounts.* If, due to the fact that the identity of the producer is not known or is in dispute, the sales proceeds of oil have been placed in escrow or otherwise held in suspense and have not been distributed to the producer at the time that the information return is required to be filed under paragraph (c), a return for each such account shall be filed with an indication that the return relates to suspended funds. At the filer's option, some or all of the returns may be aggregated into a single return. Not later than 60 days after the sales proceeds have been released to the producer, an information return shall be filed with an identification of the producer, and the statements required by paragraphs (c) and (d) of this section for past periods shall be furnished to the producer.

(f) *Cross reference.* For the requirement that the operator or qualified disburser furnish the statements and file the returns required by this section in the event that the election has been made to have the operator or qualified disburser deduct and withhold tax, etc. see §§ 150.4995–4 and 150.4995–5.

Par. 10. Section 150.6050C–1 is amended by revising paragraphs (a), (e), and (f). The revised paragraphs read as follows:

§ 150.6050C–1 Information furnished by operator for purposes of windfall profit tax.

(a) *In general.* The operator of any property from which domestic crude oil is removed during a calendar month shall furnish a monthly statement, signed under the penalties of perjury if the statement is furnished to the purchaser, certifying the information specified in paragraph (b) of this section to:

(1) The purchaser of the oil, if the purchaser is required to withhold tax from payments for the oil pursuant to § 150.4995–1 (see paragraph (e) of this section for the requirement that the statement be furnished to a qualified disburser), or

(2) The producer, in any other case, except that if the producer of oil is a partner in a partnership, this statement may be furnished to the partnership if the producer and the partnership so agree. In that case, the partnership shall furnish the information to the producer with respect to that producer's share of the oil within 15 days of receipt.

* * * * *

(e) *Special rule.* If an election under § 150.4995–1 is in effect under which a qualified disburser assumes the obligations of the purchaser, the statement otherwise required by this section to be furnished to the purchaser shall be furnished to the qualified disburser.

(f) *Producer's certificate.* For the requirement that certain operators furnish producer certificates to purchasers, see § 150.4995–2(e).

* * * * *

Par. 11. Section 150.6076–1 is amended to read as follows:

§ 150.6076–1 Time for filing return of windfall profit tax.

Each quarterly return required by paragraph (a)(1) of § 150.4997–1 shall be filed not later than the last day of the second month following the close of the taxable period. Each annual return required by paragraph (a)(2) of § 150.4997–1 shall be filed not later than May 31 of the first year following the close of the calendar year in which the oil giving rise to the underpayment was removed.

Par. 12. Section 6402–1 is amended by revising paragraphs (a) and (b) to read as follows:

§ 150.6402–1 Credit or refund of overpayment of windfall profit tax.

(a) *In general.* Any purchaser or producer who pays, or is deemed to have paid under section 4995(a)(4), more than the correct amount of the crude oil windfall profit tax imposed by chapter 45 for a taxable period may file a claim for refund of the overpayment or may claim credit for such overpayment, in the manner and subject to the conditions stated in this section and § 301.6402–2 of this chapter (Regulations on Procedure and Administration).

(b) *Overpayments by purchasers and by producers depositing tax*—(1) *In general.* If, for any taxable period, a purchaser or a producer (or a person acting in both capacities) has paid more than the sum of the amount required to be deposited as a purchaser for oil removed during that taxable period plus the amount of tax imposed by section 4986 (computed without regard to the net income limitation on windfall profit provided in section 4988(b)) on the removal in that taxable period of oil that is not subject to withholding, the purchaser or producer may file a claim for refund of that overpayment on or after the date for filing the return of such tax for such taxable period under section 6076 or may claim credit for such overpayment against any liability for a tax imposed by chapter 1 or 45 in accordance with the forms and instructions provided for that purpose.

(2) *Producers; net income limitation.* Except as provided in paragraph (b)(1), if, for any taxable period, a producer has paid more than the amount of tax imposed by section 4986 (computed with regard to the net income limitation provided in section 4988(b)) on the removal in that taxable period of oil that is not subject to withholding, the producer may file a claim for credit or refund of that overpayment only after the end of the producer's taxable year (for Federal income tax purposes) with respect to which the limitation is computed. At that time, the producer may claim a credit or refund of the overpayment as provided in paragraph (b)(1) of this section.

(3) *Purchasers unable to recover underwithholding through subsequent overwithholding.* A purchaser who withheld less than the amount required to be withheld from a payment under § 150.4995–1, who deposited the amount required to be withheld, and who has not corrected the underwithholding pursuant to § 150.4995–1(c) before the expiration of the adjustment period, may file a claim for refund of the excess of the amount deposited over the amount withheld if the amount claimed has been reported as underwithholding on the appropriate Form 6248 furnished and filed pursuant to § 150.4997–2(c). The claim for refund shall be filed on Form 843.

* * * * *

There is need for the immediate guidance provided by the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in sections 4995, 4996, 4997, 6050C, 6109, and 7805 of title 26 of the United States Code (94 Stat. 244, 247, 249–250, and 251, 75 Stat. 828 and 68A Stat. 917; 26 U.S.C. 4995, 4996, 4997, 6050C, 6109, and 7805).

William E. Williams,

Acting Commissioner of Internal Revenue.

Approved: January 14, 1981.

Emil M. Sunley,

Acting Assistant Secretary of the Treasury.

[FR Doc. 81–1850 Filed 1–14–81; 2:44 pm]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 4

Labor Standards for Federal Service Contracts

AGENCY: Wage and Hour Division, Labor.

ACTION: Final rule.

SUMMARY: This rule revises § 4.133 of the regulations of the Department of Labor (29 CFR 4.133) to clarify the treatment of concession contracts under the Service Contract Act. Subsection (a) of the revised regulation makes it clear that government concession contracts, like all other government contracts for services, are covered by the Act. Subsection (b) indicates the types of concession contracts the Secretary of Labor is exempting from the Act's coverage pursuant to his authority under Section 4(b) of the Service Contract Act.

EFFECTIVE DATE: February 18, 1981.

FOR FURTHER INFORMATION CONTACT: Dorothy P. Come, Assistant Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone: 202–523–8333.

SUPPLEMENTARY INFORMATION: Coverage of the Service Contract Act is broad. It encompasses all contracts, or any bid specifications therefor, entered into by and with the Government, which have as their principal purpose the furnishing of "services in the United States through the use of service employees." Since 1968 the Department of Labor excepted from the Act's requirements those concession contracts which provide services of "indirect or remote" benefit to the Government, for example, National Park Service food and lodging concessionaires serving the general public.

However, difficulties were encountered in applying the language of 29 CFR 4.133, particularly in circumstances where it is difficult to determine how "indirect or remote" is the benefit to the Government. Further, the regulation was susceptible of being misconstrued as providing that the Act itself does not cover a contract unless the services provided are of direct benefit to the Government.

For these reasons, the Department of Labor proposed to recast the regulation to indicate that the Act covered all government concession contracts for services, and to continue to provide an exemption for National Park Service

concession contracts which furnish food or lodging services to the general public. This proposed revision of § 4.133 was published in the **Federal Register** (44 FR 77057) on December 28, 1979. Comments concerning this proposed revision were received from the National Counsel of Technical Service Industries and three government agencies—the Federal Aviation Administration (FAA), the National Aeronautics Space Administration (NASA), and the General Services Administration (GSA). All except GSA questioned the correctness of the interpretation of the Department of Labor that the Service Contract Act covers concession contracts for services irrespective of the beneficiary of the contract services. NASA and FAA contended that the Act was intended to cover only concession contracts which are of a direct benefit to the Government or its personnel, and was not intended to cover concession contracts which primarily benefit the general public.

However, these contentions must be rejected. As previously noted, the language of the Act is very broad and covers all contracts the principal purpose of which is furnishing services. The Act's language makes no distinction based on the beneficiary of the contract services. In addition, the legislative history of the statute provides no evidence of a Congressional intent to limit coverage to service contracts of direct benefit to the Government. Comments by members of Congress that the Act should not be applied to certain concession contracts providing services to the general public were made after the passage of the Act, and do not constitute part of the statute's legislative history.

GSA and the National Council of Technical Service Industries submitted comments questioning whether there was a sufficient basis to exempt concession contracts in National Parks while not exempting similar concession contracts involving other Federal agencies. As a consequence of these comments, the Department of Labor proposed additional revisions to the regulation, which were published in the **Federal Register** (45 FR 81785) on December 12, 1980. Under this further proposed revision, subsection (b) was modified and clarified to specifically list which types of concession contracts were exempt, and to indicate that the exemption is not limited to National Park Service concession contracts but applies to qualifying concession contracts of other government agencies as well.

FAA and NASA submitted additional comments concerning these further proposed revisions. FAA generally approved of the revisions, but recommended that the list of exempt concession contracts be expanded to include those involving taxicabs, barber shops, commercial advertising displays and aircraft fuel sales. This recommendation is rejected as not being appropriate for incorporation in the regulation at this time. Further information is needed to establish both the basis for and the precise scope of these additionally suggested exemptions.

NASA submitted additional comments again contesting the interpretation of the Act found in § 4.133 that concession contracts which provide services of indirect or remote benefit to the Government are covered by the Act. NASA expressed concern with the possible effect this proposed regulation might have on the status of a pending lawsuit, and recommended that the proposed regulation be held in abeyance until the court rules in the case. However, in light of the real need for clarification of the position of the Department of Labor concerning the application of the Service Contract Act to government concession contracts, and the fact that it has been over a year since publication of the proposed revision of the regulation, the Department of Labor feels it would not be in the public interest to further delay publication of the regulation as a final rule.

The Secretary of Labor has determined, based on the information available, that because the proposed exemption is supported by statements of members of Congress, it is necessary and proper in the public interest; and further that because the proposed regulation will clarify the limits and make clear the basis of the previous exemption, it is therefore in accord with its remedial purpose to protect prevailing labor standards.

It has been determined that the amendments to this Regulation do not meet the criteria of Executive Order 12044 and the Department of Labor Guidelines (44 FR 5570) for a regulatory analysis. The revised regulation essentially clarifies interpretations and policies, and will not, in any event, cause major cost/price increases.

Accordingly, 29 CFR § 4.133 is revised as set forth below:

§ 4.133 Beneficiary of contract services.

(a) The Act does not say to whom the services under a covered contract must be furnished. So far as its language is concerned, it is enough if the contract is "entered into" by and with the government and if its principal purpose is "to furnish services in the United States through the use of service employees". It is clear that Congress intended to cover at least contracts for services of direct benefit to the Government, its property, or its civilian or military personnel for whose needs it is necessary or desirable for the government to make provision for such services. For example, the legislative history makes specific reference to such contracts as those for furnishing food service and laundry and dry cleaning service for personnel at military installations. Furthermore, there is no limitation in the Act regarding the beneficiary of the services, nor is there any indication that only contracts for services of direct benefit to the Government, as distinguished from the general public, are subject to the Act. Therefore, where the principal purpose of the Government contract or any bid specification therefor is to provide services through the use of service employees, the contract is covered by the Act, regardless of the direct beneficiary of the services or the source of the funds from which the contractor is paid for the service, and irrespective of whether the contractor performs the work in its own establishment, on a Government installation, or elsewhere. The fact that the contract requires or permits the contractor to provide the services directly to individual personnel as a concessionaire, rather than through the contracting agency, does not negate coverage by the Act.

(b) Because of comments made shortly after the Act's passage by some members of Congress that the Act's requirements should not be imposed on certain concession contracts providing services to the general public, the Department of Labor, pursuant to Section 4(b) of the Act, exempts from the provisions of the Act certain kinds of concession contracts as provided herein. Specifically, concession contracts (such as those entered into by the National Park Service) for the furnishing of food, lodging, automobile fuel, souvenirs, newspaper stands, and recreational equipment to the general public, as distinguished from the United States Government or its personnel, are exempt. Where concession contracts, however, include specifications for services other than those stated, such as the maintenance of government buildings and grounds, and the dissemination of information about government programs or facilities, those services are not exempt. Exemption of additional recreational or similar

services under concession contract will be determined in the discretion of the Secretary on a case-by-case basis in accordance with 29 CFR 4.123 and section 4(b) of the Act. The exemption provided does not affect a concession contractor's obligation to comply with the labor standards provisions of any other statutes such as the Contract Work Hours and Safety Standards Act, the Davis-Bacon Act (40 U.S.C 276 *et seq.;* see Part 5 of this title) and the Fair Labor Standards Act (29 U.S.C. 201 *et seq.*). This clarification and limitation of the exemption previously granted (33 FR 9880, July 10, 1968) is necessary and proper in the public interest and is in accord with the remedial purpose of the Act.

(Secs. 2(a) and 4, 79 Stat. 1034, 1035; 41 U.S.C. 351, 353, and under 5 U.S.C. 301)

Signed at Washington, D.C. this 14th day of January, 1981.

Donald Elisburg,

Assistant Secretary of Labor, Employment Standards Administration.

[FR Doc. 81-1927 Filed 1-15-81; 9:54 am]

BILLING CODE 4510-27-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1620

Equal Pay Act; Final Recordkeeping and Administrative Regulations

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final recordkeeping and administrative regulations.

SUMMARY: The Equal Employment Opportunity Commission publishes regulations to codify its previously adopted policy regarding investigation, enforcement, and record-keeping under the Equal Pay Act. These sections supercede the administrative portions of a document published July 2, 1979. (*See* 44 FR 38670.)

DATE: The regulations are effective January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Anthony J. De Marco (tele: 202-634-6595) or Clement Hyland (tele: 202-653-5490), Legal Counsel Division, EEOC, 2401 E Street, NW., Washington, D.C. 20506.

SUPPLEMENTARY INFORMATION: Pursuant to Reorganization Plan No. 1 of 1978, 43 FR 19807 (May 9, 1978), and E.O. 12144, 44 FR 37193 (June 26, 1979), responsibility and authority for enforcement of the Equal Pay Act of 1963, 29 U.S.C. 206(d), was transferred from the Department of Labor (DOL) to the Equal Employment Opportunity Commission (EEOC) on July 1, 1979. Effective July 1, 1979, the Commission adopted the Department of Labor's administrative procedures for investigation and enforcement under the Equal Pay Act and the Department of Labor's record-keeping regulations. 44 FR 38670 (July 2, 1979).

The Department of Labor's regulations regarding investigation, enforcement and record-keeping under the Equal Pay Act were set forth in 29 CFR Parts 516 and 800. The Commission's regulations, §§ 1620.19-1620.23, will appear at new Part 1620 of Title 29 of the CFR. (It is expected that §§ 1620.1-1620.18 will consist of Equal Pay Act interpretations.) Sections 1620.19, 1620.20 and 1620.21 cover the subject matter formerly included in § 800.164, § 800.165 and codify what the Commission had previously adopted regarding investigation, enforcement and record-keeping under the Equal Pay Act. *See* 44 FR 38670 (July 2, 1979). These sections supercede the administrative portions of the July 2nd notice. The difference between the new administrative regulations and the July 2nd notice are explained below.

Section 1620.19(b) reflects the action taken by the Commission at the May 13, 1980, Commission meeting where the Commission delegated authority to the General Counsel to seek preliminary relief under the Act. Section 1620.20 provides that any member of the Commission may sign a subpoena and that there is not right of appeal from the issuance of such a subpoena. In § 1620.21, the Commission has adopted the recordkeeping regulations of the Department of Labor found at 29 CFR Part 516. Sections 1620.21 (b) and (c) set forth the specific recordkeeping requirements applicable to the Equal Pay Act which formerly appeared at 29 CFR 516.66(d) and 516.32. The Commission has not made any substantive changes to the DOL regulations. Section 1620.22 covers the subject matter formerly included in § 800.16. Section 1620.22(b) contains different language from § 800.166(b) because of statutory amendments.

Section 1620.23 has been added to provide that rules and regulations should be liberally construed. Paragraphs (b) and (c) of § 1620.23 modify the language set forth in paragraph (e) of the notice previously published in the **Federal Register** at 44 FR 38670 (July 2, 1979) so that an aggrieved person desiring to make an allegation of an employment violation under one of the laws administered by the Commission may specify such law or, if no law is specified, will allow Commission staff to contact the aggrieved person and ascertain the appropriate law. By considering the allegation under all laws administered by the Commission as the July 2, 1979, notice stated, the identity of the aggrieved person could unnecessarily be disclosed.

Accordingly, a new Part 1620 is added to Chapter XIV of 29 CFR. The regulations appear below. Signed at Washington, D.C., this 9th day of January 1981.

For the Commission.

Eleanor Holmes Norton,

Chair, Equal Employment Opportunity Commission.

PART 1620—THE EQUAL PAY ACT

Sec.

1620.1–1620.18 [Reserved]
1620.19 Investigation and compliance assistance.
1620.20 Issuance of Subpoenas.
1620.21 Recordkeeping requirements.
1620.22 Recovery of wages due; injunctions; penalties for willful violations.
1620.23 Rules to be liberally construed.

Authority: Sec. 1–19, 52 Stat. 1060, as amended; Sec. 10, 61 Stat. 84; Pub. L. 88-38, 77 Stat. 56 (29 U.S.C. 201 et seq.); sec. 1, Reorg. Plan No. 1 of 1978, 43 FR 19807; Executive Order No. 12144, 44 FR 37193.

§§ 1620.1–1620.18 [Reserved]

§ 1620.19 Investigations and compliance assistance.

(a) As provided in sections 9, 11, 16, and 17 of the FLSA, the Commission and its authorized representatives under the Act may (1) investigate and gather data; (2) enter and inspect establishments and records, and make transcriptions thereof, and interview individuals; (3) advise employers regarding any changes necessary or desirable to comply with the Act; (4) subpoena witnesses and order production of documents and other evidence; (5) supervise the payment of amounts owing pursuant to section 16(c) of the FLSA; (6) initiate and conduct litigation.

(b) The General Counsel, District Directors, the Director of Field Services, and the Director of Systemic Programs, or the designees of any of them are hereby delegated authority to exercise the powers enumerated in paragraphs (a) (1), (2), (3), and (5) of this section and to serve subpoenas. The General Counsel is delegated authority to seek preliminary relief under the Act. The General Counsel is hereby delegated authority to initiate other litigation at the direction of the Commission and to conduct such litigation.

(c) The identity or identifying details of persons giving information as to violations of the Act shall not be

disclosed unless necessary in a court proceeding.

§ 1620.20 Issuance of subpoenas.

(a) With respect to the enforcement of the Equal Pay Act, any member of the Commission shall have the authority to sign a subpoena requiring:

(1) The attendance and testimony of witnesses;

(2) The production of evidence including, but not limited to, books, records, correspondence, or documents, in the possession or under the control of the person subpoenaed; and

(3) Access to evidence for the purposes of examination and the right to copy.

(b) There is no right of appeal to the Commission from the issuance of such a subpoena.

(c) Upon the failure of any person to comply with a subpoena issued under this section, the Commission may utilize the provisions of sections 49 and 50 of Title 15 of the United States Code to compel enforcement of the subpoena.

§ 1620.21 Recordkeeping requirements.

(a) Employers having employees subject to the Act are required to keep records in accordance with U.S. Department of Labor regulations found at 29 CFR Part 516 (Records To Be Kept by Employers Under the FLSA). The regulations of that Part are adopted herein by reference.

(b) Every employer subject to the equal pay provisions of the Act shall maintain and preserve all records required by the applicable sections of 29 CFR Part 516 and in addition, shall preserve any records which he makes in the regular course of his business operation which relate to the payment of wages, wage rates, job evaluations, job descriptions, merit systems, seniority systems, collective bargaining agreements, description of practices or other matters which describe or explain the basis for payment of any wage differential to employees of the opposite sex in the same establishment, and which may be pertinent to a determination whether such differential is based on a factor other than sex.

(c) Each employer shall preserve for at least two years the records he makes of the kind described in § 1620.21(b) which explain the basis for payment of any wage differential to employees of the opposite sex in the same establishment.

§ 1620.22 Recovery of wages due; injunctions; penalties for willful violations.

(a) Wages withheld in violation of the Act have the status of unpaid minimum wages or unpaid overtime compensation under the FLSA. This is true both of the additional wages required by the Act to be paid to an employee to meet the equal pay standard, and of any wages that the employer should have paid an employee whose wages he reduced in violation of the Act in an attempt to equalize his or her pay with that of an employee of the opposite sex performing equal work, on jobs subject to the Act.

(b) The following methods are provided under sections 16 and 17 of the FLSA for recovery of unpaid wages: The Commission may supervise payment of the back wages and may bring suit for back pay and an equal amount as liquidated damages. The employee may sue for back pay and an additional sum, up to the amount of back pay, as liquidated damages, plus attorney's fees and court costs. The employee may not bring suit if he or she has been paid back wages in full under supervision of the Commission, or if the Commission has filed suit under the Act to collect the wages due the employee. The Commission may also obtain a court injunction to restrain any person from violating the law, including the unlawful withholding by an employer of proper compensation. A 2-year statute of limitations applies to the recovery of unpaid wages, except that an action on a cause of action arising out of a willful violation may be commenced within 3 years after the cause of action accrued.

(c) Willful violations of the Act may be prosecuted criminally and the violator fined up to $10,000. A second conviction for such a violation may result in imprisonment.

(d) Violation of any provision of the Act by any person, including any labor organization or agent thereof, is unlawful, as provided in section 15(a) of the FLSA. Accordingly, any labor organization, or agent thereof, who violates any provision of the Act is subject to injunction proceedings in accordance with the applicable provisions of section 17 of the FLSA. Any such labor organization, or agent thereof, who willfully violates the provisions of section 15 is liable to the penalties set forth in section 16(a) of the FLSA.

§ 1620.23 Rules to be liberally construed.

(a) These rules and regulations shall be liberally construed to effectuate the purpose and provisions of this Act and any other Act administered by the Commission.

(b) Any person claiming to be aggrieved or the agent for such person may advise the Commission of the statute or statutes under which he or she wishes the Commission to commence its inquiry.

(c) Whenever the Commission is investigating a charge or allegation relating to a possible violation of one of the statutes which it administers and finds a violation of one or more of the other statutes which it administers, the Commission may seek to remedy such violation in accordance with the procedures of all relevant statutes.

[FR Doc. 81-1590 Filed 1-16-81; 8:45 am]
BILLING CODE 6570-06-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1990

Identification, Classification and Regulation of Potential Occupational Carcinogens; Conforming Deletions

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final Rule.

SUMMARY: Deletions are made to the permanent standard for the Identification, Classification and Regulation of Potential Occupational Carcinogens ("Cancer Policy" standard, 45 FR 5002, Jan. 22, 1980) to conform it to the recent Supreme Court decision on OSHA's benzene standard, *Industrial Union Department, AFL-CIO* v. *American Petroleum Institute, et al.* 65 L. Ed. 2d 1010, 100 S. Ct. 2844 (July 2, 1980). The deletions carry out the Court's interpretation of the Occupational Safety and Health Act of 1970 that consideration must be given to the significance of the risk in the issuance of a carcinogen standard and that OSHA must consider all relevant evidence in making these determinations.

EFFECTIVE DATE: February 18, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA Office of Public Affairs, Room N-3641, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Washington, D.C. 20210, telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION:

1. Introduction

On January 22, 1980, the Occuaptional Safety and Health Administration published a final standard (29 CFR Part 1990) for the Identification, Classification and Regulation of Potential Occupational Carcinogens (the "Cancer Policy") at 45 FR 5002. On June 27, 1980, OSHA issued a correction document at 45 FR 43403. The Cancer Policy included scientific policies,

regulatory policies and procedures designed to lead to the more effective regulation of occupational carcinogens. Among the regulatory policies was the provision that exposures to Category I Occupational Carcinogens be reduced to the lowest feasible level taking into account economic and technical considerations. Limitations on the consideration of some types of evidence already considered in the cancer Policy were also included.

On July 2, 1980, the Supreme Court issued its decision on the OSHA benzene standard, *Industrial Union Department, AFL-CIO* v. *American Petroleum Institute et al.*, 65 L. Ed. 2d 1010, 100 S. Ct. 2844 (the "benzene decision" or *"I.U.D.* v. *A.P.I."*). The Court held that OSHA must consider the significance of the risk before regulating toxic substances and that OSHA had the burden of demonstrating the significance of the risk.

The Cancer Policy shares certain policies with the benzene standard.

Therefore to conform the Cancer Policy to the benzene decision, OSHA is deleting the provisions of the Cancer Policy which required the automatic setting of the lowest feasible level for Category I Potential Carcinogens. Also deleted are limitations on the evidence which OSHA may consider in determining the exposure limit for carcinogens. The results of these deletions are that in setting exposure limits for carcinogens on a substance by substance basis, OSHA will take into account significance of the risk, feasibility, all relevant provisions of the Act, court interpretations, all relevant evidence, prudent occupational health policy and its experience in regulating toxic substances. No automatic setting of exposures at the lowest feasible level will occur.

Most provisions of the Cancer Policy are not affected by the benzene decision. These include scientific policies, priority setting, identification criteria and classification criteria. OSHA is, of course, not deleting them and they remain in force.

2. OSHA's Cancer Policy

The Cancer Policy preamble discusses the basis for the policy at great length. Very briefly occupational carcinogens pose a serious health problem. OSHA had regulated a number of such chemicals, (asbestos, vinyl chloride, coke oven emissions, arsenic, etc.), but discovered that it was a slow process, in part because it was necessary to reevaluate the scientific basis for identifying potential human carcinogens in each rulemaking. Therefore there were a significant number of likely occupational carcinogens which OSHA would not be able to regulate for a substantial period of time. However, during the course of the earlier rulemakings, it became clear that there was a significant body of well established scientific data to provide the basis for identifying and regulating carcinogenic substances.

In the Cancer Policy proposal, OSHA proposed to make use of this scientific data and its regulatory experience, to lead to a more efficient regulatory process and better protection for employees exposed to carcinogens. The proposal was intensively and extensively explored in a 10 week hearing during which many scientific and policy experts testified, and literally hundreds of scientific articles were submitted. That record and the final standard are analyzed in a 300 page **Federal Register** preamble.

The final Cancer Policy modified the proposal in a number of ways to meet suggestions and criticism made in the record and the scientific evidence. The final standard includes provisions for setting priorities (see §§ 1990.131, .132). There are provisions to amend the policies to reflect advances in science and changes in policy (see §§ 1990.104 and .145).

The Cancer Policy sets forth scientific principles for the identification and classification of carcinogenic chemicals. These principles are primarily stated in §§ 1990.111, .112 and .143. They deal with the relevance of animal data to humans, the appropriateness of high dose testing, the relevance of various routes of exposure to the chemical in test animals, the uses and abuses of human data, the relevance of benign tumors in test animals, and other scientific principles. These scientific principles are based on an extensive scientific record and are analyzed in depth in the preamble.

The Cancer Policy treats these scientific policies as binding on the Agency and the public. Inconsistent evidence may not be considered, unless it is substantial and new and forms the basis for amending the Cancer Policy (see § 1990.145).

The Supreme Court's benzene decision is fully consistent with the aspects of the Cancer Policy just discussed, including the scientific principles and all the identification and classification provisions of the Cancer Policy. Therefore, there is no need to change any of these provisions of the Cancer Policy based on the benzene decision. It should also be noted that all these provisions and specifically the identification and classification provisions of the Cancer Policy are readily severable from the regulatory policies, and it is OSHA's intention that they be considered severable.

3. Conforming Changes to Regulatory Sections

The following paragraphs discuss those sections of the Cancer Policy standard required to be deleted by the Supreme Court's decision in *I.U.D.* v. *A.P.I.* and explain why the Court's decision compels the changes made.

Section 1990.111(h)

This paragraph states that for Category I Potential Carcinogens, exposures will be reduced to the lowest feasible level primarily through engineering and work practice controls. The words "to the lowest feasible level" are deleted. In consequence no binding requirement for exposure level is included in the Cancer Policy and the level will be set on a substance by substance basis taking into account all relevant evidence and statutory provisions. Obviously included within this would be consideration of the significance of the risk present by each substance.

The last sentence in § 1990.111(h) is deleted to avoid the inappropriate inference that the significance of the risk should be ignored. However, the general scientific principle concerning thresholds is already included in § 1990.143(h) and it remains one of those principles adopted by OSHA based on the record evidence in the Cancer Policy rulemaking.

No change is made in the regulatory policy of primary reliance on engineering and work practice controls. That policy was adopted by OSHA based on an extensive analysis of the record (see the discussion at 45 FR 5222) and was not affected by the Supreme Court's decision.

Section 1990.111(i)

This paragraph provided that exposures to Category II Potential Carcinogens "will be reduced as appropriate and consistent with the statutory requirements on a case-by-case basis." No changes are needed, since the formulation of the criterion for setting the exposure limit is "as appropriate and consistent with statutory requirements." the existing language therefore automatically incorporates the Supreme Court's interpretation in *I.U.D.* v. *A.P.I.* and consideration of the significance of the risk becomes an issue.

Section 1990.111(j)

This paragraph states that risk assessments will be performed based on

the available data utilizing cautious and prudent assumptions and that they will depend on the Secretary's judgment. The last sentence has been deleted to eliminate the possible interpretation that the risk assessments would depend solely on the Secretary's judgment. The assessment of risk and its significance have become regulatory issues as a result of the Supreme Court's decision. In consequence, determinations by the Secretary are to be based on the evidence in the record as to factual matters, and appropriate reasonable policies.

The clause that "cautious and prudent assumptions" are to be used remains. The Supreme Court held this was appropriate, stating that,

> So long as they are supported by a body of reputable scientific thought, the agency is free to use conservative assumptions in interpreting the data with respect to carcinogens, risking error on the side of over protection, rather than under-protection, (slip. op. p. 45)

Section 1990.111(k)

This paragraph provides that when suitable substitutes exists for a use of a chemical, a no occupational exposure limit should be set for that use to encourage substitution. Criteria are set for the determination of the suitability of substitutes including consideration of "regulatory requirements".

That terminology, of course, automatically incorporates into the determination of suitability, the regulatory requirements of the Supreme Court that OSHA consider the significance of the risk. Therefore there is no need to change the language of the paragraph to conform to the benzene decision. OSHA, before it encourages substitution, must consider whether the significance of the risk presented by the carcinogen makes it appropriate to encourage substitution.

Section 1990.142(a)(2)(iii)

This paragraph provided that exposure limits for Category I Carcinogens be set at the lowest feasible level achieved through engineering and work practice controls. For the reasons stated in the discussion of § 1990.111(h), the deletion of the reference to the lowest feasible level conforms the paragraph to *I.U.D.* v. *A.P.I.* No change in the suitable substitute language is required because as stated in the discussion of § 1990.111(k), the language of that section automatically incorporates into the suitability determination the significant risk question.

Section 1990.142(b)(2)

This paragraph stated that Category I Potential Carcinogens automatically create a "grave danger" for purposes of determining whether an Emergency Temporary Standard may be issued pursuant to section 6(c) of the OSH Act. (29 U.S.C. 655(c)). The Supreme Court's decision interpreted the Act to require non-emergency regulation of carcinogens to be based on consideration of the significance of the risk as well as qualitative evidence of their carcinogenicity. Clearly then, qualitative evidence of carcinogenicity must be accompanied by consideration of the gravity of the danger before the issuance of an ETS. (See sl. op. p. 30, n. 45). Therefore, this interpretation of the Court requires the deletion of § 1990.142(b)(2). In consequence, the issuance of an ETS under the Cancer Policy requires that the agency determine that a "grave danger" exists and that an "emergency standard is necessary to protect employees from such danger" as provided by § 6(c) of the Act. Conforming changes in numeration are also made.

Section 1990.142(b)(3)(iii) (Renumbered to § 1990.142(b)(2)(iii))

This section provided that the exposure limit for Emergency Temporary Standards shall be set at the lowest feasible level through any practical combination of engineering and work practice controls and respiratory protection. The deletion of the words "set as low as feasible," conforms the paragraph to *I.U.D.* v. *A.P.I.* for the same reasons specified in the discussion of § 1990.111(h).

Section 1990.143

This section sets forth scientific principles to be utilized in the identification of carcinogenic chemicals. They are based on an extensive scientific record including review of many hundreds of scientific articles, testimony of more than 100 scientific witnesses and extensive OSHA experience in earlier rulemaking proceedings. They are discussed in over 200 pages of Federal Register preamble. The agency is to apply these principles unless contrary arguments are based on substantial new evidence not considered by the agency, substantial new issues (§ 1990.145), or upon evidence which meets certain threshold criteria (§ 1990.144).

The Supreme Court's decision is consistent with OSHA's recognizing scientific principles and policies based on a substantial evidentiary record. Several Supreme Court cases have recognized the appropriateness of generic policies in those areas so that the same issues need not be constantly repeated.

> To require the Commission to proceed only on a case-by-case basis would require it, so long as its policy outlawed indefinite price changing provisions, to repeat in hearing after hearing its conclusions that condemn all of them. There would be a vast proliferation of hearings * * *. We see no reason why under the statutory scheme the process of regulation need be so prolonged and so crippled. (*F.P.C.* v. *Texaco*, 377 U.S. 33, 112 (1964).)

See also *United States* v. *Storer Broadcasting*, 351 U.S. 199 (1956) and *Weinberger* v. *Hynson*, 412 U.S. 609 (1973). Therefore these scientific principles remain established for the identification of carcinogens and the language of the introductory paragraph of the section indicates that their purpose is for the identification of carcinogens.

However, arguments based on evidence which would not be relevant for identification (such as the dose levels in animal testing) could be relevant in assessing the significance of the risk. Since § 1990.143 only refers to identification, arguments and evidence inconsistent with the principles may be introduced and considered on their merits for purposes of setting exposure limits. Therefore, no changes are made in § 1990.143.

Section 1990.144

This section sets minimum quality standards for the consideration of certain types of evidence for the identification, classification and regulation of carcinogens. As discussed in regard to § 1990.143, the criteria are based on an extensive scientific record and are consistent with the Supreme Court's decision when utilizing the criteria for the identification and classification of carcinogens. However, data which do not meet those criteria may be relevant to assessing the significance of the risk pursuant to the Supreme Court's decision. Therefore, the word "regulating" is deleted from the third line, to indicate that evidence not meeting the quality criteria will nonetheless be considered for purposes of assessing the significance of the risk.

Section 1990.146

This section lists the issues to be considered during the rulemaking proceeding on a carcinogen. Paragraph (h) provides for the consideration of "issues required by statute or executive order." The preamble discussion at 45 FR 5114 states that "this issue recognizes that future court decisions

interpreting the Act and amendments to the Act may require OSHA to consider additional issues". Clearly then, the issues required to be considered by the benzene decision such as the significance of the risk and its assessment become germane to the proceeding. Evidence and arguments on each issue may be introduced in the proceeding and will be considered by the Secretary in his decision.

Paragraph (i) of this section provided for the consideration of the "lowest feasible level to control exposure to Category I Potential Carcinogens * * *." The words "lowest feasible" are deleted to conform the paragraph to the benzene decision for the reasons stated in the discussion of § 1990.111(h). As a result of the deletion all evidence and arguments as to the setting of exposure levels consistent with the statute and the benzene decision are relevant.

Sections 1990.151(c) and .152(c)

Sections 1990.151 and .152 are the model standards for permanent and emergency temporary standards setting forth guidelines for monitoring, exposure limit format, control strategy, medical protection, housekeeping and other provisions. Conforming deletions are made by striking the lowest feasible terminology from the time weighted average limit, ceiling limit, eye exposure limit and dermal limit. The reasons are explained in the discussion of § 1990.111(h). The suitable substitutes provisions automatically pick up the significant risk requirements of *I.U.D.* v. *A.P.I.* as discussed above. Certain minor typographical errors are also corrected.

5. The Process for Conforming the Cancer Policy to the Benzene Decision

As this discussion indicates, the Supreme Court's interpretation of the OSHA Act is clear and the deletions necessary to make the Cancer Policy standard consistent with the Act as interpreted are relatively simple. The deletions merely incorporate the law, as stated by the Supreme Court, into the language of the Cancer Policy, where the Court found OSHA's policy inconsistent with the OSHA Act. Indeed the Supreme Court's benzene decision has already legally nullified those sections of the Cancer Policy inconsistent with the decision, and these changes merely conform the regulations to the law. The agency has not changed any of the factual determinations and has not changed any policies except as required by the Supreme Court's holding in interpreting the OSHA Act.

It is true that the determination of what constitutes significant risk and the role of risk assessment in making these determinations may include many difficult policy and factual questions. However, the agency, by these changes, is not determining those policy or factual questions or setting criteria for those determinations. Rather, those determinations will be made in the regulatory proceedings on specific substances.

It should be noted that the Supreme Court required consideration of the significance of the risk including risk assessments when they could be appropriately performed. The Court stated this requirement was not to be a "mathematical straitjacket"; "OSHA is not required to support its finding that significant risk exists with anything approaching scientific certainty." The agency can utilize the "best available evidence" and "there are a number of ways in which the agency can make a rational judgment about the relative significance of the risks * * *" (sl. op. pp. 44, 45, 46). Therefore, when data are not available to perform a formal quantitative risk assessment, qualitative evidence, expert testimony and other evidence may be appropriately utilized to base a determination of significance of risk.

OSHA has therefore concluded that notice and comment is unnecessary in the process of conforming the Cancer Policy to the holding of the Supreme Court in the benzene decision. The deletions of certain Cancer Policy provisions are compelled by the Supreme Court's benzene decision. They concern only matters of law and they do not involve the reconsideration of evidentiary issues. OSHA's decision would be neither enhanced nor assisted by the receipt of evidence on the issue of what changes are compelled.

In addition, as also discussed above, OSHA recognized when it issued the Cancer Policy that changes in the issues considered may become necessary because of changes in law and provided that such issues would be automatically considered without the need to amend the Cancer Policy. Section 1990.146(h) provides for the consideration of "any issues required by statute or executive order." The preamble discussion at 45 FR 5214 states that "this issue recognizes that future court decisions interpreting the Act and amendments to the Act may require OSHA to consider additional issues." The requirement for consideration of additional issues required by court decision clearly implies that those issues become relevant to the Secretary's decisions. Therefore the conforming deletions from the Cancer Policy merely make explicit the issues which have already become relevant to the Cancer Policy as a result of the Supreme Court's decision.

This document was prepared under the direction and supervision of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health.

Accordingly, pursuant to sections 4(b), 6(b), 8(c) and 8(g) of the Occupational Safety and Health Act of 1970 (84 Stat. 1592, 1593, 1599; 29 U.S.C. 653, 655, 657), the Secretary of Labor's Order 8–76 (41 FR 25059), and section 4 of the Administrative Procedure Act (5 U.S.C. 553), Part 1990, of Title 29, of the Code of Federal Regulations is hereby amended as set forth below.

Signed at Washington, D.C. this 14th day of January, 1981. This amendment is effective on February 18, 1981.

Eula Bingham,

Assistant Secretary of Labor.

Part 1990 of Title 29, Code of Federal Regulations, is amended as follows:

1. Section 1990.111 is amended by revising paragraphs (h) and (j) to read as follows:

§ 1990.111 General statement of regulatory policy.

* * * * *

(h) Worker exposure to Category I Potential Carcinogens will be reduced primarily through the use of engieering and work practice controls.

* * * * *

(j) The assessment of cancer risk to workers resulting from exposure to a potential occupational carcinogen will be made on the basis of available data. Because of the uncertainties and serious consequences to workers if the estimated risk is understated, cautious and prudent assumptions will be utilized to perform risk assessments.

* * * * *

2. Section 1990.142 is amended by revising paragraph (a)(2)(iii), removing paragraph (b)(2) and renumbering paragraph (b)(3) as new paragraph (b)(2) and by revising newly redesignated paragraph (b)(2)(iii) as follows:

§ 1990.142 Initiation of rulemaking.

* * * * *

(a) * * *

(2) * * *

(iii) The permissible exposure limit shall be achieved primarily through engineering and work practice controls except that if a suitable substitute is available for one or more uses no occupational exposure shall be permitted for those uses.

* * * * *

(b) * * *

(2) * * *

(iii) The permissible exposure limit shall be achieved through any practicable combination of engineering controls, work practice controls and respiratory protection.

3. Section 1990.144 is amended by revising the introductory paragraph as follows:

§ 1990.144 Criteria for consideration of arguments on certain issues.

Arguments on the following issues will be considered by the Secretary in identifying or classifying any substance pursuant to this Part, if evidence for the specific substance subject to the rulemaking conforms to the following criteria. Such arguments and evidence will be evaluated based upon scientific and policy judgments.

* * * * *

4. Section 1990.146 is amended by revising paragraph (i) as follows:

§ 1990.146 Issues to be considered in the rulemaking.

* * * * *

(i) The determination of the level to control exposures to Category I Potential Carcinogens primarily through the use of engineering and work practice controls including technological and economic considerations.

* * * * *

5. Section 1990.151 is amended by revising paragraph (c) as follows:

§ 1990.151 Model standard pursuant to section 6(h) of the Act.

* * * * *

(c) Permissible exposure limits provisions. (1) Inhalation. (i) Time weighted average limit (TWA). Within (insert appropriate time period) of the effective date of this section, the employer shall assure that no employee is exposed to an airborne concentration of———in excess of: (insert appropriate exposure limit or when it is determined by the Secretary that there are available suitable substitutes for uses or classes of uses that are less hazardous to humans, the proposal shall permit no occupational exposure) as an eight (8)-hour-time-weighted average.

(Where the Secretary finds that suitable substitutes for———may exist, the determination of the ———level shall include consideration of the availability, practicability, relative degree of hazard, and economic consequences of the substitutes.)

(ii) Ceiling limit. (If appropriate.) Within (insert appropriate time period) of the effective date of this section, the employer shall assure that no employee is exposed to an airborne concentration of———in excess of: (insert exposure limit) as averaged over any: (insert appropriate time period) during the working day.

(2) Dermal and eye exposure. (As appropriate.) (i) Within (insert appropriate time period) of the effective date of this section, the employer shall (If eye exposure to———does not create a risk of cancer, insert exposure level or criteria which will prevent other adverse health affects of eye exposure to———if any. If eye exposure creates a risk of cancer, insert exposure level or criteria which represents the level of eye exposure to———).

(ii) Within (insert appropriate time period) of the effective date of this section, the employer shall (If skin exposure to———does not create a risk of cancer, insert exposure level or criteria which will prevent other adverse health effects of skin exposure to——— if any. If skin exposure creates a risk of cancer, insert exposure level or criteria which represents the level of skin exposure to———).

6. Section 1990.152 is amended by revising paragraph (c) as follows:

§ 1990.151 Model emergency temporary standard pursuant to section 6(c) of the Act.

* * * * *

(c) Permissible exposure limits—(1) Inhalation. (i) Time-weighted average limit (TWA). Within (insert appropriate time) from the effective date of this emergency temporary standard, the employer shall assure that no employee is exposed to an airborne concentration of———in excess of: (insert appropriate exposure limit representing a level that can be complied with immediately) as an eight (8)-hour-time-weighted average.

(ii) Ceiling limit. (If appropriate.) The employer shall assure that no employee is exposed to an airborne concentration of———in excess of: (insert appropriate exposure limit representing a level that can be complied with immediately) as averaged over any: (insert appropriate time period) during the working day.

(2) Dermal and eye exposure. (As appropriate.)

(i) Within (insert appropriate time period) of the effective date of this section, the employer shall (If eye exposure to———does not create a risk of cancer, insert exposure level or criteria which will prevent other adverse effects of eye exposure to———, if any. If eye exposure creates a risk of cancer, insert exposure level or criteria which represent the level of eye exposure to———.)

(ii) Within (insert appropriate time period) of the effective date of this section, the employer shall (If skin exposure to———does not create a risk of cancer, insert exposure level or criteria which will prevent other adverse health affects of skin exposure to——— if any. If skin exposure creates a risk of cancer, insert exposure level or criteria which represents the level of skin exposure to———).

[FR Doc. 81-1944 Filed 1-16-81; 8:45 am]
BILLING CODE 4510-26-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2604

Intent to Terminate; Amendment Changing Mailing Address

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: Plan administrators of terminating defined benefit pension plans covered under the plan termination insurance program of Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA") must submit to the Pension Benefit Guaranty Corporation ("PBGC") a Notice of Intent to Terminate the plan at least 10 days prior to the proposed date of termination. This document changes the address to which the required notice must be submitted. The new address will insure a more timely receipt by the PBGC of these notices.

EFFECTIVE DATE: January 19, 1981.

FOR FURTHER INFORMATION CONTACT: William E. Seals, Deputy Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006, 202-254-4895. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 4041(a) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. 1341(a), requires the plan administrator of a terminating defined benefit pension plan covered under the plan termination insurance program of Title IV of ERISA, to file with the Pension Benefit Guaranty Corporation ("PBGC") at least 10 days prior to the proposed date of termination, a notice that the plan is to be terminated. The PBGC Notice of Intent to Terminate regulation ("regulation"), 29 CFR Part 2604, contains a Post Office Box address for receipt of those notices.

In order to insure timely receipt of the notices, the PBGC has discontinued use of the Post Office Box address and now requires that on or after the effective date of this amendment, all Notices of Intent to Terminate covered plans must be mailed or delivered to PBGC's Office

of Program Operations, Room 5300A, 2020 K Street, N.W., Washington, D.C. 20006.

Because this amendment is a non-substantive technical change to the regulation and is necessary because the PBGC has changed its mailing address, the PBGC finds that notice of and public comment on this amendment are impracticable and unnecessary. Moreover, because of the need to insure timely receipt of the statutory Notice of Intent to Terminate a covered plan, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making this amendment to the final regulation effective immediately.

The PBGC has determined that this amendment to the Notice of Intent to Terminate regulation is not "significant" under the criteria prescribed by Executive Order 12044, "Improving Government Regulations," 43 FR 12661 (March 24, 1978), and the PBGC's Statement of Policy and Procedures implementing the Order, 43 FR 58237 (December 13, 1978). The reasons for this determination are that this amendment is not likely to engender substantial public interest or controversy, does not affect another Federal agency, and will not have a major economic impact.

In consideration of the foregoing, Part 2604 of Chapter XXVI of Title 29, Code of Federal Regulations is hereby amended by revising paragraph (d) of § 2604.3 to read as follows:

§ 2604.3 Requirement of Notice.

* * * * *

(d) *Where to file.* A Notice or supplemental information required to be filed with the PBGC under the provisions of this part may be sent by mail or submitted by hand to the Office of Program Operations, Pension Benefit Guaranty Corporation, Room 5300A, 2020 K Street, N.W., Washington, D.C. 20006.

* * * * *

(Secs. 4002, 4041, Pub. L. 93–406, 88 Stat. 1004, 1020 (29 U.S.C. 1302, 1341))

Issued at Washington, D.C. this 12th day of January, 1981.

Robert E. Nagle,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 81-1848 Filed 1-16-81; 8:45 am]

BILLING CODE 7708-01-M

---

29 CFR Part 2652

Allocating Unfunded Vested Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Interim rule.

SUMMARY: This interim regulation prescribes modifications to the statutory methods for allocating unfunded vested benefits in determining the withdrawal liability of an employer that withdraws from a multiemployer pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980. These modifications may be adopted by plan amendment. The interim regulation also establishes the procedure under which the plan sponsor of a multiemployer plan may submit an alternative allocation method to the Pension Benefit Guaranty Corporation for approval.

Multiemployer plans that are not amended to adopt another allocation method must use the presumptive method, which is one of four allocation methods contained in the Act. Until October 1, 1983, a plan may adopt one of the other statutory allocation methods, with or without any of the modifications prescribed in this regulation, without PBGC approval. In addition, a plan may adopt a non-statutory allocation method subject to approval by PBGC. Amendments adopted before February 1, 1981 may be used to determine the withdrawal liability of all employers that withdraw from the plan both before and after that date. Amendments adopted after January 31, 1981 may not be used to determine liability for a complete or partial withdrawal which occurred before the amendment was adopted, unless the employer consents.

The effect of the interim regulation is to permit plans to adopt certain modifications to the statutory allocation methods without PBGC approval, and to provide procedures for obtaining PBGC's approval of non-statutory allocation methods.

EFFECTIVE DATE: January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Ellen A. Hennessy, Office of the Executive Director, Policy and Planning, Suite 7100, 2020 K Street, N.W., Washington, D.C. 20006; 202–254–4856.

SUPPLEMENTARY INFORMATION: The Multiemployer Pension Plan Amendments Act of 1980, Pub. L. No. 96–364, 94 Stat. 1208, (the "Multiemployer Act"), became law on September 26, 1980 and amended the Employee Retirement Income Security Act of 1974. Under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), an employer that withdraws from a multiemployer plan may be liable to the plan for a portion of the plan's unfunded vested benefits. The withdrawal liability rules generally apply to withdrawals after April 28, 1980 (May 2, 1979 for certain employers in the seagoing industry).

Determining an Employer's Withdrawal Liability

The plan sponsor of a multiemployer plan must make a determination as to the withdrawal liability of each employer that withdraws from a multiemployer plan after April 28, 1980. In calculating an employer's withdrawal liability, the plan sponsor first allocates to the withdrawing employer a portion of the plan's unfunded vested benefits. The amount of a plan's unfunded vested benefits is determined by subtracting the value of plan assets from the value of all nonforfeitable benefits.

Section 4211 of ERISA prescribes four methods for determining an employer's allocable share of the plan's unfunded vested benefits: the presumptive method, the modified presumptive method, the rolling-5 method and the direct attribution method. In addition, the Pension Benefit Guaranty Corporation ("PBGC") may prescribe modifications to these methods or approve other alternative allocation methods. Any multiemployer plan that is not amended to adopt an alternative method is required under the statute to allocate unfunded vested benefits using the presumptive method.

Under section 4214 of ERISA, plan amendments adopted before February 1, 1981, may be applied to all withdrawals occurring after April 28, 1980. Plan amendments adopted after January 31, 1981 may not be applied to determine an employer's withdrawal liability for a withdrawal before adoption of the amendment without that employer's consent.

The presumptive method may not be a suitable allocation method for all plans. For this reason, Congress provided three statutory alternatives, set forth in section 4211(c)(2), (3) and (4), which may be adopted by plans without PBGC approval. Congress recognized, however, that some plans may not have adequate records to perform the computations necessary under the statutory methods, and that such computations may involve unreasonable administrative burdens. Sections 4211(c)(2)(D) and (c)(5)(D) authorize the PBGC to prescribe by regulation various adjustments to the statutory allocation rules that a plan may adopt without seeking approval from PBGC. In addition, section 4211(c)(5)(A) permits plans to adopt other alternative allocations subject to the approval of PBGC.

Under section 4220(a) of ERISA, no plan amendments relating to withdrawal liability may be adopted more than 36 months after enactment of the Multiemployer Act without PBGC approval. Section 2652.5(a) and (b) of this regulation permits plans to adopt specified amendments without PBGC approval at any time before October 1, 1983 (36 whole calendar months after enactment).

Subpart B of this interim regulation (§§ 2652.5–2652.7) prescribes adjustments to the statutory methods that may be adopted without PBGC approval prior to October 1, 1983. These modifications can be adopted only by plan amendment. Subpart C of the interim regulation (§§ 2652.11–2652.16) establishes a procedure under which plan sponsors may submit other alternative allocation methods for PBGC approval. These other alternative allocation methods must be adopted by plan amendment before submission to PBGC for approval. A plan amendment adopted before February 1, 1981 may be applied to all withdrawals after April 28, 1980, even though PBGC's approval is not received before February 1.

Modifications to the Presumptive, Modified Presumptive and Rolling-5 Methods

Under the presumptive method, a withdrawing employer's liability consists of three elements. The first element is the unfunded vested benefits under the plan for the last plan year ending before April 29, 1980 ("the plan's pre-1980 liability"). The second element is the change in unfunded vested benefits for plan years ending on or after April 29, 1980, in which the employer was obligated to contribute under the plan. The third element is a share of the liabilities that became uncollectible in that plan year as a result of the insolvency of previously withdrawn employers or as a result of statutory provisions, such as the *de minimis* rule of section 4209, that relieve withdrawn employers of all or a portion of their withdrawal liability.

The withdrawing employer's share of each element of liability is based on its proportion of contributions to the plan during the five year plan years preceding the plan year in which the element arose. In determining the employer's share of the plan's pre-1980 liability, the plan's pre-1980 liability is multiplied by a fraction ("the pre-1980 fraction"), the numerator of which is the employer's total required contributions to the plan for the five plan years ending before April 29, 1980, and the denominator of which is the total contributions received from all employers for the same period (excluding contributions of employers that withdrew before April 29, 1980). The employer's shares of the annual change in unfunded vested benefits and of the amounts that became uncollectible during a plan year ending after April 28, 1980 are determined by a similar fraction using contributions over a five-plan-year period ("the annual fraction").

Under the modified presumptive method, the employer's share of the plan's pre-1980 liability is allocated using the same pre-1980 fraction as under the presumptive method. For plan years ending after April 29, 1980, however, the plan sponsor determines the change in unfunded vested benefits from the date for determining the pre-1980 liability (the last day of the last plan year ending before April 29, 1980) to the end of the plan year preceding withdrawal, rather than determining a separate change for each plan year as under the presumptive method. The employer's share of this post-1980 liability is determined using a fraction ("the post-1980 fraction"), the numerator of which is the employer's total required contributions for the five plan years preceding the employer's withdrawal, and the denominator of which includes the contributions made by all employers for the same period (excluding contributions of employers who withdrew during that period).

Under the rolling-5 method, a share of the plan's unfunded vested benefits as of the end of the plan year preceding withdrawal is allocated to the employer using the same post-1980 fraction as under the modified presumptive rule. The plan's pre-1980 liabilities are not separately allocated to pre-1980 employers under this method.

Sections 4211(c)(2)(D) and (c)(5)(D) permit the PBGC to prescribe adjustments for the denominators of any fractions "to ease administrative burdens of plan sponsors in calculating such denominators." Each denominator in the first three statutory methods is based on "the sum of all contributions made" or "total amount contributed" for a period of five plan years. As indicated in § 2652.6(a) of this interim regulation, this means the amount considered contributed to the plan for those plan years for purposes of the minimum funding standard of section 412 of the Internal Revenue Code.* Plans are currently required to report this figure on Schedule B of the Form 5500. For plan years in which the plan was not subject to the minimum funding requirements of ERISA, plans should use the amount reported on line 14(c) of the Form 5500. For plan years occurring before the Form 5500 was required, plans should use the total contribution figure reported to the Internal Revenue Service or the Department of Labor on predecessor forms to the Form 5500.

Under section 412(c)(10) of the Internal Revenue Code and Treasury Regulation § 11.412(c)–12, certain contributions for a plan year made within 8½ months after the end of the plan year may be treated as made for that plan year. Plans that treat such contributions received during this 8½-month period as contributions for the prior year for funding purposes may not want to delay that long in assessing withdrawal liability. Section 2652.6(b) of this regulation provides, therefore, that plan sponsors may amend their plans to provide that the denominator of each of the fractions under any of the three methods will be based on (1) contributions actually received during the plan year, or (2) contributions actually received during the plan year and contributions received after the close of the plan year within a specified period, which may not be longer than the period described in section 412(c)(10) of the Internal Revenue Code and the regulations thereunder, or (3) contributions actually received during the plan year and contributions accrued during the plan year and received after the close of the plan year within a specified period, as described in (2). If the 8½-month period currently permitted under the Treasury regulations is changed, the maximum period allowed under this regulation is automatically adjusted to the new funding period. Except as noted below, no contribution may be counted for more than one plan year.

Plans are currently required to report contributions on a month-by-month basis on Schedule B of the Form 5500. Therefore, adoption of one of these modifications will not require additional record-keeping. However, some plans may wish to allocate pre-1980 liabilities using the total contributions reported on line 14(c) of the Form 5500 for the five years ending before April 29, 1980, while adopting a different period for allocating post-1980 liabilities. Section 2652.6 of this interim regulation permits plans to do so, even if the plan was subject to the minimum funding standard for some of those years.

*The denominator of the post-1980 fraction used in the modified presumptive and rolling-5 methods includes certain delinquent contributions. If these delinquent contributions have already been included for purposes of the minimum funding standard, they should not be added again in determining the denominator.

Excluding Contributions of Withdrawn Employers

As discussed above, under the presumptive, modified presumptive and rolling-5 methods, contributions of employers that have previously withdrawn must be excluded from all denominators in the allocation fraction. Thus, contributions of employers that withdrew before April 29, 1980 must be excluded from all fractions. In addition, contributions of certain employers that withdraw after April 28, 1980 must be excluded from the annual fractions under the presumptive method and from the post-1980 fraction under the modified presumptive and rolling-5 methods. Specifically, plans must exclude contributions of all employers that have ceased to contribute to the plan or ceased covered operations, even if those employers have no liability to the plan, unless the employer's obligation to contribute is assumed by a successor employer. Therefore, plans required to use a narrower definition of complete withdrawal (under the building and contruction industry rule of section 4203(b) of ERISA, for example) must exclude contributions of employers who have ceased to contribute or ceased covered operations, even if those employers have not withdrawn in a "complete withdrawal" under the narrower definition.

Plans with many employers may find it costly to maintain records on all previously withdrawn employers. For years prior to 1980, plans may lack adequate records to determine which employers had withdrawn and the amount of their contributions. Therefore, § 2652.6(c) of this interim regulation permits a plan to modify, by amendment to the plan, the denominators in the first three statutory allocation methods to exclude fewer than all employers that have ceased to contribute to the plan. Instead of excluding all employers that have left the plan, where required by any of the fractions, the plan may provide that only contributions of significant employers that have left the plan shall be excluded from the denominator. "Significant withdrawn employer" is defined in § 2652.6(c)(2) as an employer to whom the plan has sent a notice of withdrawal liability or any other withdrawn employer required to contribute the lesser of $250,000 or 1% of total contributions for any plan year included in the denominator. Any plan amendment adopting this modification must use this definition of "significant withdrawn employer". If a group of employers (such as members of a trade association) withdraws in the same year in a concerted withdrawal, as defined in § 2652.6(c)(3), and the group's contributions equal or exceed the 1% or $250,000 limit for any plan year included in the denominator, all contributions made by members of the group must be excluded under this modification.

Direct Attribution Method

Under the direct attribution method (the fourth statutory allocation method), an employer is allocated (1) the share of unfunded vested benefits attributable to participants' service with the employer and (2) a share of the plan's unattributable liabilities. The plan's unattributable liabilities should be allocated to employers in proportion to each employer's share of the plan's attributable liabilities. However, section 4211 (c) (4) (F) of the Act, which describes the allocation of unattributable liabilities, contains a typographical error. In the phrase "as the amount determined under subparagraph (C) for the employer bears to the sum of the amounts determined under subparagraph (C) for all employers under the plan", the reference to subparagraph (C) is meaningless. Therefore, § 2652.7(a) of the interim regulation provides that plans adopting the direct attribution method should substitute "subparagraph (B)" for "subparagraph (C)" in both places that it appears in section 4211(c) (4) (F).

As an alternative, § 2652.7(b) of this interim regulation permits a plan adopting the direct attribution method to allocate unattributable liabilities on the basis of the employer's share of contributions over a period of plan years. The fraction set forth in § 2652.7(b) is based on the fraction used in the rolling-5 method to allocate all unfunded vested benefits under section 4211(c) (3) (B) of ERISA. The plan may choose any period of years not less than 5 plan years. This period may be stated as a fixed number of years (such as 5), or as all plan years after a certain date (for example, all plan years since adoption of the plan).

Combining Modifications

Combinations of the modifications set forth in this interim regulation may be adopted without PBGC approval. For example, a plan that adopts the denominators set forth in § 2652.6(d) may define contributions made for a plan year in accordance with one of the modifications set forth in § 2652.6(b). Similarly, a plan that adopts the direct attribution method as modified by § 2652.7(b) may further modify the fraction described in § 2652.7(b) using any modification permitted under § 2652.6(b) or (c).

Alternative Methods for Allocating Unfunded Vested Benefits

Section 4211(c)(5) (A) of ERISA provides that a multiemployer plan may adopt by plan amendment alternative methods for allocating unfunded vested benefits. However, any such alternative method is subject to PBGC approval based on a determination that use of the alternative method would not "significantly increase" the risk of financial loss to plan participants, beneficiaries or the PBGC.

The PBGC recognizes that use of the allocation methods described in section 4211 of ERISA may be administratively cumbersome for some multiemployer plans, and that a literal application of the statutory allocation rules could result in an inequitable allocation in some cases. PBGC anticipates that the procedures described herein will enable such plans to develop and obtain PBGC approval of allocation rules which meet their particular needs and circumstances.

Section 2652.11 of the interim regulation prescribes the procedure under which multiemployer plans may seek approval of an alternative allocation method from the PBGC. Under the interim regulation, all requests for approval must be in writing, and must be filed with the PBGC. Section 2652.13(a) provides that generally a request must be filed with PBGC as soon as practicable after adoption of the amendment. However, for amendments adopted prior to February 1, the request for approval must be submitted on or before March 16, 1981. This deadline is included because of the importance of ascertaining what allocation method will be used to determine the withdrawal liability of employers who withdrew from a plan after April 28, 1980 and before the adoption of the alternative allocation method. A method submitted for approval must actually have been adopted by a plan; PBGC will not consider requests for approval of proposed allocation methods.

Plan sponsors should note that there are restrictions on the implementation of an amendment adopting an alternative allocation method prior to approval of the method by the PBGC. A plan amendment adopting an alternative method may provide that the method shall be applied against any employer that withdraws from the plan after the date the amendment is adopted. Section 2652.11 of the interim regulation provides that the plan may use the method as a basis for calculating an employer's withdrawal liability prior to obtaining PBGC's approval of the

method. However, until the PBGC actually approves the method, the plan may issue a demand for withdrawal liability pursuant to section 4219 of the Act only for the lesser of (1) the amount calculated under the alternative method or (2) the amount calculated under the allocation method that would have to be used by the plan if the alternative method is not approved by PBGC. Once the alternative method has been approved by the PBGC, the plan may adjust the amount demanded from the withdrawn employer.

Section 2652.11(c) of the interim regulation contains a special rule concerning the effective date of plan amendments adopted on or before January 31, 1981. Section 4214 of ERISA provides that an alternative allocation method that is adopted on or before January 31, 1981 may, if the PBGC approves the method, be applied to employers that withdrew before the date the method was adopted. However, that section does not require that the PBGC approve such an amendment before February 1, 1981. Accordingly, § 2652.11(c) of the interim regulation specifies that an alternative method that was adopted on or before January 31, 1981 may be applied to all employers withdrawing before that date, even though PBGC approval does not occur until after January 31, 1981.

Section 2652.12 of the interim regulation contains a separate rule applicable to plans which are primarily composed of employees in the building and construction industry. Such plans are required to use the presumptive method to allocate unfunded vested benefits to construction industry employers. However, section 4211(c)(1) of ERISA provides that a construction industry plan may, to the extent provided by PBGC regulations, adopt a different allocation method for non-construction industry employers who contribute to the plan. Under § 2652.12 of the interim regulation, a construction industry plan may adopt a different rule for non-construction employers. Use of any such method, including an allocation method described in section 4211 of ERISA, is subject to PBGC approval. However, a construction industry plan may adopt the modifications to the presumptive rule set forth in § 2652.6 without PBGC approval.

As noted above, the PBGC will approve an alternative allocation method only if it determines that use of the alternative method does not significantly increase the risk of financial loss to plan participants or the PBGC. In general, an alternative method will not significantly increase the risk of financial loss if the method satisfies three conditions. First, the method must allocate a plan's total unfunded vested benefits, on both a current and prospective basis, to the same extent as any of the statutory allocation methods. The statutory methods provide a basis for allocating substantially all of a plan's unfunded vested benefits among employers. Therefore, a method that satisfies this test ensures that withdrawing employers will not avoid their obligation to fund a share of the plan's liability for unfunded vested benefits.

Second, the alternative method must calculate the amount allocated to an employer either on the basis of that employer's share of total contributions to the plan over a specified period, or on the basis of the plan benefits attributable to employees of that employer. This test is designed to ensure that an alternative method is not used to shift plan liabilities in order to penalize certain employers or to increase the burdens on the insurance system. An allocation method that does shift liability in this manner might create incentives for favored employers to withdraw. An allocation method that allocates plan liabilities on the basis of contributions or benefits is neutral, and ensures that withdrawal liability will be allocated on the same basis as under one of the statutory methods.

Finally, the alternative method must provide a procedure for fully allocating amounts of uncollectible employer withdrawal liability among other employers. This is necessary to protect plans from being saddled with unfunded liabilities when withdrawn employers are unable to pay their withdrawal liability because of bankruptcy or insolvency.

In order to ascertain whether an allocation method meets these three conditions, the PBGC must be able to examine the application of the alternative method. Consequently, § 2652.13(d)(6) of the interim regulation requires that a request for approval of an alternative method contain an example demonstrating the application of the method in various circumstances.

This requirement may be satisfied in one of two ways, set forth in §§ 2652.14 and 2652.15 of the interim regulation. Under § 2652.14, a plan may demonstrate how the alternative method would allocate unfunded vested benefits among employers contributing to the plan. The example must also show how the method would allocate unfunded vested benefits to an employer that enters the plan after the method is adopted. In order to satisfy this requirement, the plan must posit the entry of a hypothetical employer in the third plan year after the method is adopted. In addition, the plan must demonstrate the treatment of outstanding claims for withdrawal liability against all employers who withdrew before the method was adopted. The plan will satisfy this requirement by showing the amount of each withdrawn employer's annual withdrawal liability payment and, for each of the five plan years, the unpaid balance of the employer's liability, assuming that the employer makes each required annual payment. The plan must also demonstrate the treatment of a liability claim against an employer that is hypothesized to withdraw from the plan in the third plan year after the method was adopted. Any employer who would have withdrawal liability (*e.g.*, who not qualify for total relief under the *de minimis* rule of section 4209 of ERISA) may be selected to illustrate this example. Finally, for purposes of the required example the plan should assume that no employer qualifies for relief under the so-called "free look" rule of section 4210 of ERISA.

Alternatively, under § 2652.15, the plan may submit an example showing the operation of the alternative method on a group of hypothetical employers who contribute to a hypothetical plan. The interim regulation provides that the hypothetical plan must have specific characteristics, which are enumerated in § 2652.15(b). For example, the hypothetical plan must contain at least five employers, and at least one of the employers must make over 20% of the contributions under the plan. The example must demonstrate, among other things, how the method allocates unfunded benefits to an employer that withdraws from the plan in the third year after the method is adopted, and how benefits are allocated to another employer that enters the plan that same year and subsequently withdraws. Finally, the example must demonstrate the treatment of outstanding claims for withdrawal liability against two employers, one of whom withdrew from the plan before the method was adopted, and one who withdrew three years after the method is adopted.

Construction industry plans must furnish a different example, described in § 2652.14(b) and § 2652.15(d) and (e), which illustrates the application of the presumptive method to construction employers and the alternative method to non-construction employers. This is needed because of the statutory requirement that construction industry

plans use the presumptive method for construction employers. The example will enable PBGC to determine whether the use of the two allocation methods together will significantly increase the risk of financial loss to the PBGC.

Section 2652.16(c) of the interim regulation sets forth the procedure whereby the PBGC will approve an alternative allocation method. The PBGC will either approve or disapprove the method within 120 days after receipt of a complete request for approval. The 120-day period does not begin until PBGC receives all the information required under § 2652.13; the PBGC will notify the plan sponsor of the date on which the 120-day period begins. Further, the PBGC may extend the 120-day period for good cause. The PBGC will notify the plan sponsor if an extension is necessary, and the notice will specify the additional time required to process the request for approval.

The PBGC will issue a written decision on a plan's request for approval of an alternative method. If the PBGC disapproves a request, the decision will state the grounds on which the PBGC based its determination, and will advise the plan sponsor of the right to request reconsideration of the determination pursuant to Part 2618 of this chapter. Under § 2652.16(c) of the interim regulation, an alternative method is approved if the PBGC either does not disapprove the method within 120 days after receipt of the complete request, or if the PBGC fails to extend the 120-day period.

Because of the need to provide immediate guidance to plan sponsors who wish to amend plans before February 1, 1981, to come within the special rule in section 4214 of ERISA, and because the effect of this regulation is to relieve administrative burdens that may be imposed by the statute on certain plans, the PBGC finds that notice of and public comment on this interim regulation prior to issuance are impractical and contrary to the public interest. For these same reasons and because this regulation does not require any actions by plans, the PBGC finds that good cause exists for making this interim regulation effective immediately.

Interested parties are invited to submit comments on this interim regulation. Comments should be addressed to: Assistant Executive Director for Policy and Planning, Suite 7100, 2020 K Street, N.W., Washington, D.C. 20006. Written comments will be available for public inspection at the above address between the hours of 9:00 a.m. and 4:30 p.m. Each person submitting comments should include his or her name and address, identify this interim regulation, and give reasons for any recommendation. Comments received will be considered in preparation of a regulation on alternate allocation of unfunded vested benefits, which, when issued, will supersede this interim regulation. The public will have an opportunity to comment on a proposed version of that regulation before it is adopted.

In consideration of the foregoing, Chapter XXVI of Title 29, Code of Federal Regulations, is amended by adding a new Part 2652 as follows:

PART 2652—INTERIM REGULATION ON ALLOCATING UNFUNDED VESTED BENEFITS

Subpart A—General

Sec.
2652.1 Purpose and scope.
2652.2 Definitions.

Subpart B—Modifications to the Statutory Allocation Methods

2652.5 Statutory allocation methods.
2652.6 Modifications to the presumptive, modified presumptive and rolling-5 methods.
2652.7 Modifications to the direct attribution method.

Subpart C—Approval of Alternative Allocation Methods

2652.11 Requirement of approval.
2652.12 Building and construction industry plans.
2652.13 Requests for PBGC approval.
2652.14 Application of alternative method to the plan.
2652.15 Application of alternative method to a hypothetical plan.
2652.16 Approval of alternative method.

Authority: Sections 4002(b)(3) 29 U.S.C. 1302 and 4211(c)(1), 29 U.S.C. 1391 (c)(2)(D), (c)(5)(A) and (c)(5)(D), Pub. L. 93-406, 88 Stat. 1004, (1974), as amended by Sections 403(1), 29 U.S.C. 1305 and 104 (respectively), Pub. L. 96-364, 94 Stat. 1208 (1980).

Subpart A—General

§ 2652.1 Purpose and scope.

(a) *Purpose.* The purposes of this part are—

(1) to prescribe permissible modifications to the methods in section 4211 of the Act for allocating unfunded vested benefits to a withdrawing employer; and

(2) to establish procedures under which a multiemployer plan may adopt a method for allocating unfunded vested benefits to a withdrawing employer other than one of the allocation methods described in section 4211 of the Act.

(b) *Scope.* This part applies to multiemployer plans covered by section 4021 of the Act.

§ 2652.2 Definitions.

For purposes of this part:

"Act" means the Employee Retirement Income Security Act of 1974, as amended.

"Internal Revenue Code" means the Internal Revenue Code of 1954, as amended.

"Multiemployer plan" means a pension plan described in section 4001(a)(3) of the Act.

"Nonforfeitable benefit" means a benefit described in section 4001(a)(8) of the Act.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Plan" means a multiemployer plan.

"Plan year" means the calendar, policy or fiscal year on which the records of the plan are kept.

"Post-1980 fraction" means the fraction described in section 4211(c)(2)(C)(ii) or (c)(3)(B) of the Act.

"Pre-1980 fraction" means the fraction described in section 4211(b)(3)(B) or (c)(2)(B)(ii) of the Act.

"Unfunded vested benefits" means an amount by which the value of nonforfeitable benefits under the plan exceeds the value of the assets of the plan.

"Withdrawing employer" means the employer for whom withdrawal liability is being calculated under section 4201 of the Act.

"Withdrawn employer" means an employer who, prior to the withdrawing employer, has discontinued contributions to the plan or covered operations under the plan and whose obligation to contribute has not been assumed by a successor employer within the meaning of section 4204 of the Act. A temporary suspension of contributions, including a suspension described in section 4218(2) of the Act, is not considered a discontinuance of contributions.

Subpart B—Modifications to the Statutory Allocation Methods

§ 2652.5 Statutory allocation methods.

(a) *General rule.* The Act provides four methods for allocating unfunded vested benefits to a withdrawing employer:

(1) The presumptive method, described in section 4211(b).

(2) The modified presumptive method, described in section 4211(c)(2).

(3) The rolling-5 method, described in section 4211(c)(3).

(4) The direct attribution method, described in section 4211(c)(4).

Except as provided in paragraph (c) of this section, the amount of unfunded vested benefits allocable to an employer is determined in accordance with the presumptive method unless the plan is amended to adopt an alternative

allocation method. Any of the alternative methods listed in paragraphs (a)(2) through (4) of this section may be adopted before October 1, 1983 without the approval of the PBGC, except as provided in § 2652.12 (relating to the building and construction industry plans).

(b) *Modifications to the statutory methods.* Before October 1, 1983, a plan may be amended to adopt any of the modifications set forth in §§ 2652.6 and 2652.7 without the approval of the PBGC.

(c) *Special rule.* A plan described in section 404(c) of the Internal Revenue Code (a plan established prior to January 1, 1954 as a result of an agreement between employer representatives and the United States during a period of government operation, under seizure powers, of a major part of the productive facilities of an industry) or a continuation of such a plan must allocate unfunded vested benefits in accordance with the rolling-5 method unless an alternative method is adopted by plan amendment.

§ 2652.6 Modifications to the presumptive, modified presumptive and rolling-5 methods.

(a) *"Contributions made" and "total amount contributed".* Each of the allocation fractions used in the presumptive, modified presumptive and rolling-5 methods is based on contributions made by certain employers to the plan over a five-year period. For purposes of these methods, and except as provided in paragraph (b) of this section, "the sum of all contributions made" and "total amount contributed" by employers for a plan year means the amounts considered contributed to the plan for the plan year for purposes of section 412(b)(3)(A) of the Internal Revenue Code. For plan years before section 412 applies to the plan, "the sum of all contributions made" and "total amount contributed" means the amount reported to the Internal Revenue Service or the Department of Labor as total contributions for the plan year; for example, for plan years in which the plan filed the Form 5500, the amount reported as total contributions on line 14(c) of that form.

(b) *Changing the period for counting contributions.* A plan may be amended to modify the denominators in the presumptive, modified presumptive and rolling-5 methods in accordance with one of the alternatives described in this paragraph. Except as provided in paragraph (b)(4) of this section, any amendment adopted under this paragraph must be applied consistently to all plan years. Contributions counted for one plan year may not be counted for any other plan year.

(1) The plan may be amended to provide that "the sum of all contributions made" and "total amount contributed" for a plan year means the amount of contributions actually received during the plan year, without regard to whether the contributions are treated as made for that plan year under section 412(b)(3)(A) of the Internal Revenue Code.

(2) The plan may be amended to provide that "the sum of all contributions made" and "total amount contributed" for a plan year includes contributions received during a specified period of time after the close of the plan year, not to exceed the period described in section 412(c)(10) of the Internal Revenue Code and regulations thereunder.

(3) The plan may be amended to provide that "the sum of all contributions made" and "total amounts contributed" for a plan year includes the amount of contributions accrued during the plan year and received during a specified period of time after the close of the plan year, not to exceed the period described in section 412(c)(10) of the Internal Revenue Code and the regulations thereunder.

(4) The plan may be amended to provide that—

(i) for plan years ending before April 29, 1980, "the sum of all contributions made" or "total amount contributed" means the amount reported on line 14(c) of Form 5500 and for years before the plan was required to file the Form 5500, the amount of total contributions reported on any predecessor reporting form required by the Department of Labor or the Internal Revenue Service; and

(ii) for subsequent plan years, "the sum of all contributions made" or "total amount contributed" is determined in accordance with the statutory language or one of the modifications described in paragraph (b)(1), (b)(2) or (b)(3).

(c) *Excluding contributions of significant withdrawn employers.* Contributions of certain withdrawn employers are excluded from the denominator in each of the fractions used to determine the withdrawing employer's share of unfunded vested benefits under the presumptive, modified presumptive and rolling-5 methods. Except as provided in paragraph (c)(1) of this section, contributions of all employers that cease to have an obligation to contribute to the plan or cease covered operations before the end of the plan year preceding the plan year in which the withdrawing employer withdraws (and contributions of all employers that withdrew before April 29, 1980) are excluded from the denominators of the fractions used to allocate unfunded vested benefits under the presumptive, modified presumptive and rolling-5 methods.

(1) A plan using the presumptive, modified presumptive or rolling-5 method may be amended to provide that only the contributions of significant withdrawn employers shall be excluded from the denominators of fractions described in section 4211(b) or (c) of the Act.

(2) For purposes of this paragraph (c), "significant withdrawn employer" means—

(i) an employer to whom the plan has sent a notice of withdrawal liability under section 4219 of the Act; or

(ii) a withdrawn employer that in any plan year used to determine the denominator of a fraction contributed at least $250,000 or, if less, 1% of all contributions made by employers for that year.

(3) A group of employers shall be treated as a single employer for determining whether they are a significant withdrawn employer under paragraph (c)(2) of this section if they withdraw in a concerted withdrawal. A "concerted withdrawal" means a discontinuance of contributions to the plan during a single plan year—

(i) by an employer association;

(ii) by all or substantially all of the employers covered by a single collective bargaining agreement; or

(iii) by all or substantially all of the employers covered by agreements with a single labor organization.

(d) *Examples.* The following examples illustrate the adjustments described in paragraph (c) of this section. Plans that adopt the adjustments must also adopt the definition of significant withdrawn employer in paragraph (c)(2).

Example (1)—Pre-1980 fraction. Under the presumptive and modified presumptive methods, the following language may be substituted for the denominator of the pre-1980 fraction (section 4211(b)(3)(B)(ii) for the presumptive method and section 4211(c)(2)(B)(ii)(II) for the modified presumptive method): "the denominator of which is the total amount contributed by all employers for the most recent 5 plan years ending before April 29, 1980, reduced by the contributions made in those years by significant withdrawn employers that withdrew from the plan before April 29, 1980".

Example (2)—Annual fraction. Under the presumptive method, the following language may be substituted for denominator of the annual fraction described in section 4211(b)(2)(E)(ii)(II): "the denominator of which is the sum of all contributions made by

all employers for the plan year in which such change arose and the 4 preceding plan years, reduced by the contributions made in those years by significant withdrawn employers that withdrew from the plan in or before the year in which the change arose".

Examples (3)—Post-1980 fraction. Under the modified presumptive method and the rolling-5 method, the following language may be substituted for the denominator of the post-1980 fraction (described in section 4211(c)(2)(C)(ii)(II) of the Act for the modified presumptive method and in section 4211(c)(3)(B)(ii) for the rolling-5 method): "the denominator of which is the total amount contributed under the plan by all employers for the last 5 plan years ending before the date on which the employer withdraws, reduced by the contributions made in those plan years by significant withdrawn employers that withdrew from the plan during those plan years".

§ 2652.7 Modifications to the direct attribution method.

(a) *Direct attribution method.* The direct attribution method allocates to a withdrawing employer two portions of the plan's unfunded vested benefits:

(1) The employer's attributable liability, determined under section 4211(c)(4)(A)(i) and (c)(4)(B).

(2) The employer's share of the plan's unattributable liability, determined under section 4211(c)(4)(E), allocated to the employer under section 4211(c)(4)(F). Unattributable liabilities should be allocated on the basis of the employer's share of the attributable liabilities. However, section 4211(c)(4)(F) of the Act, which describes the allocation of unattributable liabilities, contains a typographical error. Therefore, plans adopting the direct attribution method should modify the phrase "as the amount determined under subparagraph (C) for the employer bears to the sum of the amounts determined under subparagraph (C) for all employers under the plan" in section 4211(c)(4)(F) by substituting "subparagraph (B)" for "subparagraph (C)" in both places it appears.

(b) *Allocating unattributable liability based on contributions in period before withdrawal.* A plan that is amended to adopt the direct attribution method may provide that instead of allocating the unattributable liability in accordance with section 4211(c)(4)(F) of the Act, the employer's share of the plan's unattributable liability shall be determined by multiplying the plan's unattributable liability determined under section 4211(c)(4)(E) by a fraction—

(1) the numerator of which is the total amount of contributions required to be made by the withdrawing employer over a period of consecutive plan years (not less than five) ending before the withdrawal; and

(2) the denominator of which is the total amount contributed under the plan by all employers for the same period of years used in paragraph (b)(1) of this section, decreased by any amount contributed by an employer who withdrew from the plan during those plan years.

(c) *Contributions received reduced by significant withdrawn employers.* The denominator used in the modification described in paragraph (b) and the denominators used under two of the alternatives for allocating plan assets under the direct attribution method (the fractions described in section 4211(c)(4)(D)(ii) and (iii)) are similar to the denominators used in the presumptive, modified presumptive, and rolling-5 methods. Therefore, plans may modify these denominators under the direct attribution method using any of the modifications described in § 2652.6.

Subpart C—Approval of Alternative Allocation Methods

§ 2652.11 Requirement of approval.

(a) *General.* A multiemployer plan may adopt, by plan amendment and subject to approval of the PBGC, an alternative allocation method in lieu of the allocation methods described in section 4211 of the Act and § 2652.5(a) of this regulation.

(b) *Use of method prior to approval.* A plan may implement an alternative allocation method adopted pursuant to this subpart in accordance with its terms before the PBGC approves the method. However, until the PBGC approves the method, the plan may not demand withdrawal liability under section 4219 of the Act in an amount that exceeds the lesser of—

(1) the amount calculated under the alternative allocation method; or

(2) the amount calculated under the allocation method that the plan would be required to use if the alternative method is not approved by the PBGC. When necessary, the plan shall adjust the amount demanded from the employer after the alternative method has been approved by PBGC.

(c) *Effect of approval.* An alternative method adopted on or before January 31, 1981, may be applied to an employer that withdraws from a multiemployer plan before the method was adopted, even though PBGC does not approve the method by January 31, 1981.

§ 2652.12 Building and construction industry plans.

A multiemployer plan which primarily covers employees in the building and construction industry ("construction industry plan") must use the presumptive method to allocate unfunded vested benefits. However, such a plan may be amended to provide for the use of an alternative allocation method with respect to employers that are not construction industry employers within the meaning of section 4203(b)(1)(A) of the Act. Use of any alternative allocation method for non-construction employers, including a method described in section 4211 of the Act, must be approved by the PBGC under this subpart. However, a construction industry plan may adopt the modifications to the presumptive rule set forth in § 2652.6 without PBGC approval.

§ 2652.13 Requests for PBGC approval.

(a) *General.* A request for approval of an alternative allocation method shall be filed with the PBGC. A request for approval of a method that is adopted before February 1, 1981 must be filed with the PBGC no later than March 16, 1981. A method adopted on or after February 1, 1981 should be filed as soon as practicable after its adoption date. The request is deemed to be filed on the date it is received by PBGC.

(b) *Who shall file.* The plan sponsor, or a duly authorized representative acting on behalf of the plan sponsor, shall sign the request.

(c) *Where to file.* The request shall be delivered by mail or submitted by hand to the Office of Program Operations, Pension Benefit Guaranty Corporation, Room 5300A, 2020 K Street, N.W., Washington, D.C. 20006.

(d) *Content.* Each request shall contain the following information:

(1) The name, address and telephone number of the plan sponsor, and of the duly authorized representative, if any, of the plan sponsor.

(2) The name of the plan.

(3) The nine-digit Employer Identification Number (EIN) assigned by the Internal Revenue Service to the plan sponsor and the three-digit Plan Identification Number (PIN) assigned by the plan sponsor to the plan, and, if different, also the EIN–PIN last filed with the PBGC. If EIN–PIN has not been assigned, that must be indicated.

(4) The date the amendment was adopted.

(5) A copy of the amendment, which must set forth the full text of the alternative allocation method.

(6) An example demonstrating the operation of the alternative allocation method that meets the requirements of either § 2652.14, or, if the plan sponsor chooses, § 2652.15.

(7) Copies of any previous plan amendment adopting an alternative allocation method or modification of a statutory allocation method.

(e) *Additional information.* In addition to the information described in paragraph (d) of this section, the PBGC may require the plan sponsor to submit any other information the PBGC determines it needs to review an alternative allocation method.

§ 2652.14 Application of alternative method to the plan.

(a) *General.* A plan sponsor that chooses to demonstrate the application of the alternative allocation method to the plan shall provide an example in accordance with this section. The example shall assume that one employer withdraws from the plan in the third plan year beginning after the alternative method is adopted and incurs withdrawal liability. The example shall also assume that a new employer joins the plan in the same year. Except for construction industry plans covered by paragraph (b) of this section, the example shall show the following information:

(1) The amount of unfunded vested benefits allocable under the method to each employer that has an obligation to contribute to the plan, calculated as if each employer were to withdraw individually from the plan in the plan year during which the method is adopted (the "adoption year").

(2) For each of the five subsequent plan years, the amount of unfunded vested benefits (projected on the basis of reasonable assumptions) that would be allocable under the method to each employer if the employer individually withdrew from the plan in that year.

(3) For the fourth and fifth plan years beginning after the adoption year, the amount of unfunded vested benefits that would be allocable to an employer who entered the plan in the third plan year beginning after the adoption year if that employer withdrew in the fourth or fifth plan year.

(4) For each of the five plan years following the adoption date, the balance of the outstanding claims for withdrawal liability against each employer that withdrew from the plan before the adoption date and incurred withdrawal liability assuming the employer makes each required annual payment, and the amount of that employer's annual withdrawal liability payment.

(5) For the fourth and fifth plan years beginning after the adoption year, the balance of an outstanding claim for withdrawal liability against the employer that withdrew from the plan in the third plan year beginning after the adoption date and incurred withdrawal liability, and the amount of that employer's annual withdrawal liability payment.

(b) *Building and construction plans.* In the case of a construction industry plan described in § 2652.12, the information required under paragraphs (a) (1) and (2) of this section must be supplied for both construction and non-construction employers to show the amount of unfunded vested benefits allocable to each employer under the allocation method that applies to that employer. In lieu of the information required under paragraph (a)(3) of this section, the example must show the amounts allocable under the alternative method to a non-construction employer, and the amounts allocable under the presumptive method to a construction employer, each of whom entered the plan in the third plan year after the adoption year. The information under paragraph (a)(5) of this section must show the balance of outstanding claims for withdrawal liability and the amounts of annual withdrawal liability payments for both a construction employer and a non-construction employer.

§ 2652.15 Application of alternative method to a hypothetical plan.

(a) *Use of a hypothetical plan.* Except with respect to a construction industry plan, a plan sponsor that chooses to demonstrate the application of an alternative allocation method under this section shall provide an example that shows the information described in paragraph (c) of this section for a hypothetical plan having the characteristics described in paragraph (b) of this section. The sponsor of a construction industry plan shall provide an example that shows the information described in paragraph (e) of this section for a hypothetical plan having the characteristics described in paragraplh (d) of this section.

(b) *Characteristics of hypothetical plan.* The hypothetical plan used under this section shall have the following characteristics:

(1) The plan has unfunded vested benefits.

(2) One employer withdrew from the plan before the adoption date of the alternative allocation method and incurred withdrawal liability.

(3) At least five employers made contributions to the plan in the plan year during which the alternative method was adopted (the "adoption year").

(4) In the adoption year, and in each of the succeeding 5 plan years, at least one of the employers made over 20% of the contributions under the plan, three employers each made between 10% and 20% of the contributions under the plan, and at least one employer made over 1% but less than 10% of the required contributions under the plan. The sum of these employers' contributions must equal 100% of the contributions made under the plan.

(5) One of the employers described in paragraph (b)(3) of this section withdrew from the plan in the third plan year after the adoption year.

(6) All other employers described in paragraph (b)(3) of this section continued to make contributions to the plan for five plan years after the adoption year.

(7) A new employer entered the plan in the third plan year after the adoption year.

(c) *Required information.* The example of the application of the alternative method to the hypothetical plan shall show the following information:

(1) The amount of unfunded vested benefits allocable to each employer described in paragraph (b)(3) of this section, calculated as if each employer had individually withdrawn from the plan in the adoption year.

(2) For each of the five subsequent plan years, the amount of unfunded vested benefits that would be allocable to each employer described in paragraph (b)(3) of this section if the employer individually withdrew from the plan.

(3) For the new employer described in paragraph (b)(7) of this section, the amount of unfunded vested benefits that would be allocable to it for a withdrawal in the fourth plan year and a withdrawal in the fifth plan year after the adoption year.

(4) For each of the five plan years following the adoption date, the balance of the outstanding claim for withdrawal liability attributable to the employer described in paragraph (b)(2) of this section, assuming the employer makes each of the required annual payments, and the amount of the employer's annual withdrawal liability payment.

(5) For the fourth and fifth plan years after the adoption year, the balance of an outstanding claim for withdrawal liability attributable to the employer described in paragraph (b)(5) of this section and the employer's annual withdrawal liability payment.

(d) *Construction industry plans.* The sponsor of a construction industry plan who chooses to illustrate the application of an alternative method under this section shall submit an example based on a hypothetical plan that has the following characteristics:

(1) The plan has unfunded vested benefits.

(2) One non-construction employer withdrew from the plan before the adoption date of the alternative allocation method and incurred withdrawal liability.

(3) At least ten employers, an equal number of whom must be construction and non-construction employers, made contributions to the plan in the plan year during which the alternative method was adopted (the "adoption year").

(4) At least one construction employer and at least one non-construction employer each made over 10% of the required contributions under the plan, three construction and three non-construction employers each made between 5% and 10% of the contributions required under the plan, and at least one construction employer and at least one non-construction employer each made over 1% but less than 5% of the contributions required under the plan. The sum of these employers' contributions must equal 100% of the contributions made under the plan.

(5) One non-construction employer described in paragraph (d)(3) of this section withdrew from the plan in the third plan year after the adoption year, and one construction employer described in paragraph (d)(3) of this section also withdrew from the plan in that year.

(6) All other employers described in paragraph (d)(3) of this section continued to make contributions to the plan for five plan years after the adoption year.

(7) A new non-construction employer entered the plan in the third plan year after the adoption year.

(e) *Required information for construction industry plans.* The example of the application of the alternative method to the hypothetical construction industry plan shall show the information required in paragraph (c) of this section, substituting "paragraph (d)" for each reference to "paragraph (b)" in that paragraph. For example, in paragraph (c)(1), "paragraph (d)(3)" should be substituted for "paragraph (b)(3)".

§ 2652.16 Approval of alternative method.

(a) *General.* The PBGC shall approve an alternative allocation method if PBGC determines that the method and the supplementary information supplied under § 2652.14 or § 2652.15 indicate that adoption of the method would not significantly increase the risk of loss to plan participants and beneficiaries or to the PBGC.

(b) *Criteria.* An alternative allocation method satisfies the requirements of paragraph (a) of this section if it satisfies the following three conditions:

(1) The method allocates a plan's unfunded vested benefits, both for the adoption year and for the five subsequent plan years, to the same extent as any of the statutory allocation methods, or any modification to a statutory allocation method permitted under this part.

(2) The method allocates unfunded vested benefits to each employer on the basis of—

(i) The employer's share of contributions to the plan; or

(ii) The unfunded vested benefits directly attributable to each employer (the method may take into account differences in contribution rates paid by the employer and differences in benefits of the employer's employees).

(3) The method fully reallocates among employers who have not withdrawn from the plan all unfunded vested benefits—

(i) Which the plan sponsor has determined cannot be collected from withdrawn employers; or

(ii) Which are not assessed against withdrawn employers because of sections 4209, 4219(c)(1)(B) or 4225 of the Act (the *de minimis* rule, the 20-year cap, and the insolvent employer provision, respectively).

(c) *PBGC action on request.* Except as provided in paragraph (c)(2) of this section, the PBGC shall approve or disapprove an alternative allocation method within 120 days after receipt of a complete request for approval. The PBGC will notify the sponsor of the date on which the 120-day period begins. Failure of the PBGC to act within the 120-day period shall constitute approval of the request, unless PBGC extends the time pursuant to paragraph (c)(2) of this section. If the request does not contain all of the information required by § 2652.13, the 120-day period will not begin until PBGC receives all of the information.

(1) PBGC's decision on a request for approval shall be in writing. If the PBGC disapproves the request, the decision shall state the reasons therefore and will include a statement of the sponsor's right to request a reconsideration of the decision pursuant to Part 2618 of this chapter.

(2) The PBGC may, for good cause, extend the 120-day period referred to in paragraph (c) of this section. When PBGC does so, it shall notify the plan sponsor, in writing, of the amount of additional time required.

Issued at Washington, D.C. on this 15th day of January, 1981.

Ray Marshall,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above, pursuant to a resolution of the Board of Directors approving this regulation and authorizing its Chairman to issue same.

Henry Rose,

Secretary, Pension Benefit Guaranty Corporation.

[FR Doc. 81-2041 Filed 1-16-81; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Conditional Approval of the Permanent Regulatory Program Submission From the State of Oklahoma Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior.

ACTION: Final rule; conditional approval of Oklahoma's permanent regulatory program.

SUMMARY: The State of Oklahoma resubmitted to the Department of the Interior its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), following an initial approval in part and disapproval in part. The notice announcing the initial decision was published in the Federal Register, October 10, 1980 (45 FR 67361-67372). The purpose of the resubmission is to demonstrate the State's intent and capability to administer and enforce the provisions of SMCRA and the permanent regulatory program regulations, 30 CFR Chapter VII.

After providing opportunities for public comment and conducting a thorough review of the program submission, the Secretary of the Interior has determined that the Oklahoma program meets the minimum requirements of SMCRA and the Federal permanent program regulations, except for minor deficiencies discussed below under "SUPPLEMENTARY INFORMATION." Accordingly, the Secretary of the Interior has conditionally approved the Oklahoma program. A new Part 936 is being added to 30 CFR Chapter VII to implement this decision.

EFFECTIVE DATE: This approval is effective January 19, 1981. As discussed below under "State Court Litigation", there may be a delay in the States implementation of the permanent program. This conditional approval will terminate as specified in 30 CFR 936.11 unless the defiencies identified below have been corrected in accord with 30 CFR 936.11.

FOR FURTHER INFORMATION CONTACT: Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Telephone (202) 343–4225.

ADDRESSES: Copies of the Oklahoma program and the administrative record on the Oklahoma program, including the telegram from the Oklahoma Department of Mines (DOM) agreeing to correct the deficiencies which resulted in the conditional approval, are available for public inspection and copying during business hours at:

Office of Surface Mining Reclamation and Enforcement, Region IV, 5th Floor, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106, Telephone: (816) 374–3920

Office of Surface Mining Reclamation and Enforcement, Room 153, Interior South Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Telephone: (202) 343–4728

Oklahoma Department of Mines, 4040 N. Lincoln, Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521–3859

SUPPLEMENTARY INFORMATION: The general background on the permanent program, the general background on the state program approval process, and the background on the Oklahoma program submission were discussed in the **Federal Register**, October 10, 1980 (45 FR 67361–67372).

In that notice the Secretary announced his partial approval and partial disapproval of the Oklahoma program. Under 30 CFR 732.13(f), Oklahoma had 60 days from the date of partial approval and partial disapproval to resubmit a revised program.

Oklahoma resubmitted its program on December 8, 1980. Announcement of Oklahoma's resubmission was made in three newspapers of general circulation within the State of Oklahoma and published in the **Federal Register** on December 8, 1980 (45 FR 80837–80839).

A public hearing on the resubmission was announced in the December 8, 1980, **Federal Register**, and was held in Muskogee, Oklahoma on December 23, 1980. The Oklahoma program was resubmitted pursuant to 30 CFR 732.13(f). The post-resubmission public comment period ended December 24, 1980. Public disclosure of comments by Federal agencies was made on January 9, 1981 (45 FR 2369).

On January 12, 1981, the Administrator of the Environmental Protection Agency transmitted to the Secretary written concurrence with the decision on the Oklahoma program.

The Regional Director completed his program review on January 7, 1981, and forwarded the public hearing transcripts, written presentations, and copies of all comments to the Director together with a recommendation that the program be conditionally approved.

On January 8, 1981, the Director recommended to the Secretary that the Oklahoma program be approved conditionally.

In a telephone call to the Acting Chief Mine Inspector for the Oklahoma Department of Mines on January 12, 1981, OSM asked the State if they would agree to meet the proposed conditions if the Secretary were to offer conditional approval. On January 12, 1981, the State replied and accepted the conditions of approval. Copies of the documents recording these communications are available for review in the Administrative Record. (*See* Administrative Record Nos. OK–259, OK–260, and OK–261.) The Oklahoma program consists of the formal submission of February 28, 1980 (Administrative Record Nos. OK–7–8–12–13–14–16–17), as amended on June 11, 1980 (Administrative Record No. OK–98), as revised on December 8, 1980 (Administrative Record No. OK–226), and as corrected on December 22, 1980 (Administrative Record No. OK–227).

Throughout the review period, beginning with the submission of the program, OSM has had frequent contact and discussions on the State program submission with the staff of the Oklahoma Department of Mines. Minutes or notes of the discussions were placed in the Oklahoma Administrative Record and made available for public review. All contacts between officials or staffs of the Department of the Interior and the State of Oklahoma were conducted in accordance with the Department's guidelines for such contacts published September 19, 1979 (44 FR 54444–54445).

The Secretary is subject to an order requiring him to affirmatively disapprove State regulations derived from certain OSM regulations suspended by OSM or remanded by the U.S. District Court for the District of Columbia. See the discussion 45 FR 67363, October 10, 1980. A list of the suspended and remanded OSM regulations was published in the **Federal Register** on July 7, 1980 (45 FR 45604). A proposed list of 38 provisions in the Oklahoma program incorporating suspended or remanded Federal regulations was available at a public hearing in Muskogee, Oklahoma, held on July 15, 1980, and at the Region IV Office of OSM and at the Oklahoma Department of Mines Office (*See* addresses above). Although no public comments were received on the proposed list, OSM determined that the list was incomplete in that it did not include Part 845 of Oklahoma's regulations to the extent that Part 845 contains a point system for civil penalty assessment.

In the initial decision on the Oklahoma program published in the **Federal Register** on October 10, 1980 (45 FR 67361–67372), the Secretary did not affirmatively disapprove any of Oklahoma's provisions incorporating suspended or remanded Federal regulations resulting from the court orders of May 16, 1980, and August 15, 1980, because the submission did not contain fully enacted regulations.

The program resubmitted by Oklahoma on December 8, 1980, included regulations enacted on December 1, 1980. The fully-enacted regulations contain provisions which incorporate most of the Federal rules suspended or remanded by the U.S. District Court for the District of Columbia. However, in a preface to those regulations, Oklahoma lists 28 provisions to be disapproved by the Secretary of the Interior. The Secretary is affirmatively disapproving the 28 provisions requested by Oklahoma in 30 CFR 836.10(b), adopted below. The eleven provisions not specifically required to be disapproved remain a part of the conditionally approved program. Throughout the remainder of this notice, the term "Oklahoma program" or "Oklahoma submission" is used to mean the resubmission together with those parts of the original submission partially approved on October 10, 1980.

After the Secretary announced his initial decision on the Oklahoma program, OSM notified Oklahoma by letter dated October 31, 1980 (Administrative Record OK–186) of its analysis of the Oklahoma program including tentative findings on the proposed regulatory provisions not enacted by the 104th day following the initial program submission, and of the Secretary's disposition of public comments reported in the October 10,

1980, **Federal Register** notice (45 FR 67361–67372).

In the initial decision notice approving in part and disapproving in part the Oklahoma program, the Secretary made findings on the Oklahoma provisions pursuant to Section 503 of SMCRA and 30 CFR 732.15. Oklahoma's resubmission, except as noted below in the "Secretary's Findings," amends the program to correct the deficiencies identified in that notice. The contents of the October 10, 1980, notice constitute part of the basis for the following findings and for this decision.

Secretary's Findings

In reaching his decision to approve conditionally the Oklahoma program submission, the Secretary makes the following findings pursuant to Section 503 of SMCRA and 30 CFR 732.15. Also, see the paragraph below entitled "Additional Findings."

1. The Secretary makes the following findings for the provisions of Section 503(a) of SMCRA:

(a) The Oklahoma Coal Reclamation Act (OCRA) and the Oklahoma Administrative Procedures Act (OAPA) and the regulations adopted thereunder provide for the regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands in Oklahoma in accordance with SMCRA, with the exceptions noted in Findings 1d, 1g, 3, 4a, 4c, 4k, 4n, 4p, 4r.

In the **Federal Register** notice of October 10, 1980, the Secretary found two additional problems with the Oklahoma statutes which are no longer regarded as deficiencies. (*See* 45 FR 67364, Finding 1a, item Nos. 1 and 4).

Item No. 1 expressed concern for the fact that OCRA appeared to apply to "operators" instead of "persons," raising the possibility that OCRA does not regulate all entities required to be regulated by SMCRA. Based upon the resubmission, the Secretary now finds that this difference is not a program deficiency, as explained further in Finding 4a below.

Item No. 4 concerned whether Oklahoma DOM personnel would have rights of entry under Section 33.A of OCRA (45 O.S. 1979 Section 766) coextensive with the Secretary's powers under Section 517(b)(3) of SMCRA. It now appears that the DOM does have those powers as explained further in Finding 4f below.

(b) The OCRA provides sanctions for violations of Oklahoma laws, regulations or conditions of permits concerning surface coal mining and reclamation operations, and these sanctions meet the requirements of SMCRA, including civil and criminal actions, forfeiture of bonds, suspensions, revocations, withholding of permits, and the issuance of cessation orders by the Oklahoma Department of Mines or its inspectors;

(c) The Oklahoma Department of Mines (DOM) has sufficient administrative and technical personnel and sufficient funding to enable Oklahoma to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA; in the **Federal Register** notice of October 10, 1980, the Secretary was unable to find that the Oklahoma Department of Mines had sufficient administrative and technical personnel and sufficient funding because Oklahoma's initial program submission did not describe how their proposed staff would be sufficient to administer the program as required by 30 CFR 731.14(j). [(See Finding 1c (45 FR 67364); Finding 3, (45 FR 67365); and Finding 4s, (45 FR 67367)).] Oklahoma's resubmission of December 8, 1980 contained the necessary description of how the proposed staff would be adequate to administer the proposed program. Based on Section E of the resubmission the Secretary now finds that the DOM has sufficient administrative and technical personnel and necessary funding.

(d) The OCRA provides for the effective implementation, maintenance, and enforcement of a permit system that meets the requirements of SMCRA for the regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands within Oklahoma except as noted in Finding 4n;

(e) The OCRA has established a process for the designation of areas as unsuitable for surface coal mining in accordance with Section 522 of SMCRA, 30 U.S.C. 1272;

(f) Oklahoma has established, for the purpose of avoiding duplication, a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with other Federal and State permit processes applicable to a proposed operation;

(g) Oklahoma has fully enacted regulations consistent with regulations issued pursuant to SMCRA, with the exceptions noted below in Findings 3, 4a, 4c, 4k, 4n, 4p and 4r.

2. As required by Sections 503(b)(1)–(3) of SMCRA, 30 U.S.C. 1253(b)(1)–(3) and 30 CFR 732.11–732.13, the Secretary has, through OSM:

(a) Solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed Oklahoma program (45 FR 2369, January 9, 1981);

(b) Obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of the Oklahoma program that relate to air or water quality standards promulgated under the authority of the Federal Clean Water Act as amended, (33 U.S.C. 1151-1175), and the Clean Air Act as amended, (42 U.S.C. 7401 *et seq.*), and;

(c) Held a public review meeting in Oklahoma City, Oklahoma, on April 17, 1980, to discuss the completeness of the Oklahoma program submission and subsequently held public hearings in Muskogee, Oklahoma, on July 15, 1980, on the substance of the program submission, and on December 23, 1980, on the substance of the resubmitted program.

3. In accordance with Section 503(b)(4) of SMCRA (30 U.S.C. 1253 (b) (4)) the Secretary finds the State of Oklahoma has the legal authority and qualified personnel necessary for the enforcement of the environmental protection standards of SMCRA and 30 CFR Chapter VII, subject to the exceptions noted in findings 1a, 1d, 1g, 4a, 4c, 4k, 4n, 4p and 4r.

4. In accordance with 30 CFR 732.15, and on the basis of information in the Oklahoma program submission, including the section-by-section comparison of the Oklahoma law and regulations with SMCRA and 30 CFR Chapter VII, public comments, testimony and written presentations at the public meeting and hearings, and other relevant information, the Secretary makes the following findings:

(a) Pursuant to the requirements of 30 CFR 732.15(a), the Secretary finds that the proposed Oklahoma program provides for the Oklahoma Department of Mines (DOM) to carry out the provisions and meet the purposes of SMCRA and 30 CFR Chapter VII with the exceptions noted in findings 1a, 1d, 1g, 3, 4c, 4k, 4n, 4p and 4r.

The Secretary further finds that Oklahoma, in its resubmission, has not proposed any alternative approaches to the requirements of 30 CFR Chapter VII pursuant to 30 CFR 731.13. As explained in 45 FR 67365 (October 10, 1980), Finding 4a, the original submission contained a state window proposal relating to 30 CFR 816.116, that was disapproved. The resubmission contains Oklahoma regulation Section 816.116 that is identical to 30 CFR 816.116 and no proposed alternatives under 30 CFR 731.13.

In the October 10, 1980, decision, finding 4a (45 FR 67365) expressed the Secretary's concern that OCRA and the regulations thereunder were inadequate to regulate all coal mining operations required to be regulated by SMCRA because of the opinions of the Attorney General of Oklahoma (Admin. Record Doc. No.'s OK–18 and OK–85), that it is beyond the authority of OCRA for DOM to propose a rule to regulate "persons" rather than "operators." However, the Secretary notes that those opinions stop short of stating what entities are not subject to regulation as "operators" under Section 4 of OCRA. (45 O.S. 1979 Supp. Section 745.1). At issue is whether the term "operator," as defined in section 3(26) of OCRA [45 O.S. 1979 Supp. Section 742.26(26)], and which is identical to the definition of "operator" in SMCRA Section 701(13), is broad enough to cover coal mining entities other than corporations, partnerships and individual proprietorships. The definition of "operator" includes the term "person," but OCRA fails to define what is meant by "person." The Attorney General has ruled that DOM cannot define that term by regulations, but has not answered the question of what was meant by the legislature when "person" was included in the definition of "operator."

Pursuant to the Attorney General's opinions, DOM has replaced the term "person" that appeared in its originally-proposed regulations with the term "operator" in the enacted regulations included with the resubmission.

In the same resubmission (Section A, Chapter I), the DOM has strongly committed itself to requiring all entities that mine coal in Oklahoma to obtain permits under the provisions of OCRA except those entities specifically exempted by OCRA. (See letter from Blaney Qualls to Raymond Lowrie, December 3, 1980.) The four exemptions listed are consistent with Sections 528 and 701 (13) of SMCRA. Therefore the matter is reduced to whether the Secretary believes DOM has authority to regulate all the entities SMCRA requires to be regulated. Based on his reading of the entire Oklahoma statute and other recent Oklahoma law, the Secretary finds that DOM does have that authority. The basis for this finding is as follows.

Included in the resubmission was a copy of 25 O.S. 1979 Supp. Section 16, which defines "person" for general use in the Oklahoma statutes as follows:

> *Section 16. Person includes corporation.*—The word "person," except when used by way of contrast, includes not only human beings, but bodies politic or corporate.

A recent Oklahoma Supreme Court decision, *State of Oklahoma ex rel Nesbitt* v. *APCO Oil Corporation*, 569 P. 2d 434 (OK. 1977), stated a general belief that the definition of "person" in 25 O.S. Section 16 is broad enough to encompass any "legal, commercial [or] governmental entity," citing *Oklahoma Human Rights Commission* v. *Hotie, Inc.*, 505 P.2d 1320 (OK. 1973). In *Hotie*, "person" was interpreted to include legal, commercial and governmental entities for purposes of enforcing the anti-discrimination statute, 25 O.S. 1971 Section 1402.

The *APCO* court, in deciding that "person" did not include the State of Oklahoma for purposes of collecting treble damages under the Civil Rights statute, 79 O.S. 1976 Supp. Section 25, based its decision primarily on the preceived intent of the legislature. The court reasoned that the State had no need for treble damages and that the legislature intended the treble damage remedy only for private litigants.

Following the court's direction, the Secretary has examined OCRA for an expression of legislative intent. That intent is clearly expressed in Section 2 of OCRA, 45 O.S. 1979 Supp. Section 742.1:

> This act shall be known and may be cited as the "Coal Reclamation Act of 1979." It is the intent of the Oklahoma Legislature that the Coal Reclamation Act of 1978, Sections 742 et seq. of Title 45 of the Oklahoma Statutes, and this Coal Reclamation Act of 1979, be read together as the law regulating the reclamation of lands affected by surface coal mining operations and the surface effects of underground coal mining, to bring Oklahoma into compliance with Public Law 95–87, the Surface Mining Control and Reclamation Act of 1977.

The Secretary finds that the Oklahoma legislature intended to comply with SMCRA and that the use of the term "operator" in Section 4 of OCRA was not intended to exclude from regulation any entity required by SMCRA to be regulated. The Secretary is satisfied that the Oklahoma courts would reach this decision based upon the stated legislative intent and the precedents established by the *Hotie* and *APCO* cases cited above.

Therefore, the Secretary will not disapprove Section 4 of the Oklahoma statute or the regulations that use "operator" rather than "person." However, this matter will necessarily require close attention by the Secretary in his oversight capacity under Sections 504(a)(3) and 521(b) of SMCRA. If the Oklahoma courts should enjoin enforcement of OCRA against certain surface coal mining operations that must be regulated under SMCRA, the Secretary will have to require amendment of OCRA and take immediate steps to enforce SMCRA against those entities directly.

(b) Pursuant to the requirements of 30 CFR 732.15(b)(1), the Secretary finds that the Oklahoma DOM has the authority under Oklahoma law and regulations to implement, administer and enforce all applicable requirements consistent with 30 CFR Chapter VII, Subchapter K. The Oklahoma law and regulations on performance standards are consistent with SMCRA and those sections of 30 CFR Chapter VII, Subchapter K, that have not been suspended by the Secretary or remanded by the District Court of the District of Columbia.

(c) Pursuant to the requirements of 30 CFR 732.15(b)(2), the Secretary finds that the Oklahoma DOM has the authority under Oklahoma law and regulations and the Oklahoma program includes provisions to implement, administer and enforce a permit system consistent with 30 CFR Chapter VII, Subchapter G, and prohibit surface coal mining and reclamation operations without a permit issued by the regulatory authority subject to the exception noted in Finding 4n. These provisions are incorporated in Sections 4–8 of the OCRA and Parts 770–788 of Oklahoma's regulations.

(d) Pursuant to the requirements of 30 CFR 732.15(b)(3), the Secretary finds that the Oklahoma DOM has the authority under Oklahoma law and regulations to regulate coal exploration consistent with 30 CFR Part 776 and 30 CFR 815, and to prohibit coal exploration that does not comply with 30 CFR Parts 776 and 815. These provisions are incorporated in Section 14 of the OCRA and Parts 776 and 815 of Oklahoma's regulations.

(e) Pursuant to the requirements of 30 CFR 732.15(b)(4), the Secretary finds that the Oklahoma DOM has the authority under Oklahoma law and regulations and the Oklahoma program includes provisions to require that persons extracting coal incidental to government-financed construction maintain information on-site consistent with 30 CFR Part 707. These provisions are incorporated in Section 4.F of the OCRA and Part 707 of Oklahoma's regulations.

(f) Pursuant to the requirements of 30 CFR 732.15(b)(5), the Secretary finds that the Oklahoma DOM has the authority under Oklahoma law and regulations to provide for entry, inspections, and monitoring of all coal exploration and surface coal mining and reclamation operations on non-Indian and non-Federal lands within Oklahoma

consistent with Section 517 of SMCRA and 30 CFR Chapter VII, Subchapter L. These provisions are incorporated in Sections 32–35 of the OCRA and Part 840 of Oklahoma's regulations. Section 33.A of OCRA provides inspectors the right to enter for purposes of inspection "upon the lands of the operator," whereas Section 517(b)(3) of SMCRA provides the right of entry "to, upon, or through any surface coal mining and reclamation operations" or any premises where records required to be kept are maintained. Although the statutory authority for State inspectors appears to be different from that provided Federal inspectors in Section 517(b)(3), Oklahoma has promulgated State regulations Part 840 consistent with the Federal regulations in 30 CFR Part 840. Therefore, the Secretary finds that Oklahoma has the appropriate authority for inspection and monitoring.

(g) Pursuant to the requirements of 30 CFR 732.15(b)(6), the Secretary finds that the Oklahoma DOM has the authority under Oklahoma law and regulations to provide for implementation and enforcement of a system for performance bonds and liability insurance, or other equivalent guarantees, consistent with 30 CFR Chapter VII, Subchapter J. These provisions are incorporated in Sections 9 and 37–40 of the OCRA and Parts 800–809 of Oklahoma's regulations.

(h) Pursuant to the requirements of 30 CFR 732.15(b)(7), the Secretary finds that the Oklahoma DOM has the authority under Oklahoma law and regulations to provide for civil and criminal sanctions for violations of the Oklahoma law, regulations and conditions of permits and exploration approvals including civil and criminal penalties in accordance with Section 518 of SMCRA and 30 CFR Part 845 including the same or similar procedural requirements. These provisions are incorporated in Section 56 of the OCRA and Part 845 of Oklahoma's regulations.

(i) Pursuant to the requirements of 30 CFR 732.15(b)(8), the Secretary finds that the Oklahoma DOM has the authority under Oklahoma law and regulations to issue, modify, terminate and enforce notices of violation, cessation orders and show cause orders in accordance with Section 521 of SMCRA and with 30 CFR Chapter VII, Subchapter L. These provisions are incorporated in Sections 42–47 of the OCRA and Parts 840–842 of Oklahoma's regulations.

(j) Pursuant to the requirements of 30 CFR 732.15(b)(9), the Secretary finds that the Oklahoma DOM has the authority under Oklahoma law and regulations to provide for designation of areas as unsuitable for surface coal mining consistent with 30 CFR Chapter VII, Subchapter F. These provisions are incorporated in Sections 48–50 of the OCRA and Parts 760–769 of Oklahoma's regulations.

(k) Pursuant to the requirements of 30 CFR 732.15(b)(10), the Secretary finds that the Oklahoma DOM has authority under Oklahoma law and regulations to provide for public participation in the development and revision of Oklahoma regulations consistent with the public participation requirements of SMCRA and 30 CFR Chapter VII. Oklahoma also has authority under Oklahoma law and regulations to provide for public participation in the permitting process and the enforcement of its laws and regulations consistent with SMCRA and 30 CFR Chapter VII, with three exceptions:

(1) Section 520 of SMCRA provides for citizen's suits against government agencies or other persons where there is alleged a violation of the Act or any rule, regulation, order or permit issued pursuant to it, to compel compliance with the Act or performance of non-discretionary duties. It contemplates an original civil action, as distinguished from judicial review of administrative action, pursuant to Section 526 of the Federal Act. However, Section 41.C of OCRA, which corresponds to Section 520(c) of SMCRA, provides that "(a)ny action respecting a violation of this act or the regulations thereunder may be brought only pursuant to the Administrative Procedures Act * * *." The Oklahoma Attorney General has interpreted the Oklahoma statute as being inconsistent with the Federal law because, according to his opinion of February 25, 1980, no action may be commenced unless relief is first pursued before the Oklahoma DOM, through some unspecified administrative procedure. It also appears that the only further relief available after exhaustion of administrative remedies would be judicial review of the administrative determination which under both State and Federal law is not the required *de novo* proceeding. The Secretary agrees with the Attorney General that Section 41.C is inconsistent with Section 520(c) of SMCRA.

In its resubmission of December 8, 1980, Oklahoma indicated that it would have legislation introduced to amend Section 41.C of the OCRA to remove the phrase "only pursuant to the Administrative Procedures Act." This would alleviate the inconsistency with Section 520 of SMCRA. The resubmission also included the Oklahoma mandamus statute, 12 O.S. 1979 Supp. Section 1451, that is in effect and will remain in effect pending amendment of Section 41.C of the OCRA by the legislature. Section 1451 is available to citizens to compel any official action or decision required by law. However, where the law requires an exercise of discretion, mandamus can only order that the discretionary decision to be made. It is not a vehicle for questioning whether the official discretion was properly exercised. For that, judicial review under 75 O.S. 1976 Supp. Section 318 is the only available proceeding, which is essentially the proceeding available under Section 41.C of OCRA. Therefore, the appoval of the Oklahoma program is conditioned upon Oklahoma's amending Section 41.C of OCRA so that citizens, under OCRA, have the same access to courts as provided under Section 520 SMCRA.

(2) 43 CFR 4.1290–.1296, implementing Section 525(e) of SMCRA, provides for the award of costs and expenses, including attorneys' fees, in administrative proceedings. These provisions are made applicable to state programs through Section 503(a) and 525(c) of SMCRA and 30 CFR 840.15. The resubmitted Oklahoma program, at page 259 of the regulations, is similar except for provisions that would provide the award of appropriate costs and expenses from the Oklahoma DOM (1) to any person other than a permittee or his representative and (2) to a permittee, after making necessary demonstrations and findings. These exceptions are not in accordance with 43 CFR 4.1294(b) and (c). In an opinion dated December 12, 1980, the Attorney General of Oklahoma ruled that the DOM lacked statutory authority to promulgate regulations requiring such awards from the DOM (OK Administrative Record No. 223).

The absence of these provisions causes the State rules for the award of costs and expenses to be inconsistent with 43 CFR 4.1294 and to inhibit the right of operators and the pubic to exercise all the rights they would have under Section 525(e) of SMCRA if the Secretary were the regulatory authority. Therefore, the approval of the Oklahoma program is conditioned upon Oklahoma's enacting a statute that authorizes the award of costs and expenses against the Oklahoma DOM in appropriate cases, and upon the promulgation of regulations consistent with 43 CFR 4.1294 (b) and (c).

(3) As indicated in (2) above, 30 CFR 840.15 requires states to provide for public participation in the enforcement of the state program consistent with 30 CFR 842, 843 and 43 CFR 4. Part 4 of 43 CFR, at Subpart L, contains the

Secretary's rules applicable to surface coal mining hearings and appeals. The Oklahoma resubmission includes "Rules of Practice for Hearings" (Rules) at pp. 260–264 of the regulations (Section B, Chapter I). The Secretary finds that the Rules are inadequate to provide meaningful participation by operators and the public in the enforcement of the Oklahoma program because they do not establish the procedures with sufficient specificity to enable operators or others to prepare their arguments and participate in proceeding with an understanding of what is expected in such proceedings. For example, the Oklahoma program does not set forth what the hearing officers and the Chief Mine Inspector (CMI) can expect in the way of initial pleadings and answers for the various kinds of formal and informal proceedings, including temporary relief proceedings, that will occur and does not inform potential litigants as to who will have the burden of going forward and the burden of persuasion in the different kinds of cases.

Nor does the program require service of pleadings on adversary parties which is the only guarantee a member of the public has of full participation in a proceeding. While Section 2.2 governs cessation order reveiws, the rules do not provide for proceedings to review notices of violations. While Rule 8.1 contemplates appeals, there are no procedures for the time, content, form or nature of appellate review. Rule 8.1 requires that hearing examiners make their decisions "within thirty days," but does not say whether that is thirty days from the hearing or thirty days from a request for a hearing. The rule does not address the requirement of Section 53.B of OCRA that written decisions on the review of cessation orders must be issued by the CMI within thirty days of a request for review, except where temporary relief has been granted (*See* 43 CFR 4.1180, Expedited Review of Orders of Cessation). Rule 8.2 does properly reflect the five day decision deadline on requests for temporary relief from cessation orders required by Section 53.C. Rule 8 also fails to reflect the decision timeframe for permit decision reviews from Section 18.C of OCRA.

Rule 2.1, concerning review of civil penalty assessments, fails to accommodate the assessment conference procedure of DOM rule 845.18.

Section 7 of the Rules deals exclusively with "applicants" and "protestants." These terms are not defined and do not appear applicable to OCRA. Rules 7.5 and 7.6 contain procedures that are not relevant to OCRA which would be confusing to operators and citizens.

Because of the lack of detail and clarity of the Rules, and because of the inconsistencies with 43 CFR Part 4 and OCRA discussed above, the Secretary finds that the "Rules of Practice for Hearings" do not allow citizens, operators, and attorneys practicing before the Chief Mine Inspector to exercise fully the rights to administrative hearings granted by SMCRA and OCRA, and that they are inconsistent with the public participation provisions of SMCRA, 30 CFR Chapter VII, and 43 CFR Part 4. The approval of the Oklahoma program is conditioned upon Oklahoma's promulgating amendments to the "Rules of Practice for Hearings" that correct the problems identified above, to make the public participation aspects of those rules consistent with the public participation provisions of SMCRA, 30 CFR Chapter VII, and 43 CFR Part 4.

(l) Pursuant to the requirements of 30 CFR 732.15(b)(11), the Secretary finds that the Oklahoma DOM has the authority under Oklahoma law and regulations to monitor, review, and enforce the prohibition against indirect or direct financial interests in coal mining operations by employees of the Oklahoma DOM consistent with 30 CFR Part 705. These provisions are incorporated in Section 34 of the OCRA and Part 705 of Oklahoma's regulations.

(m) Pursuant to the requirements of 30 CFR 732.15(b)(12), the Secretary finds that the Oklahoma DOM has the statutory authority under 45 O.S. 1979 Section 902, but does not have the authority under fully enacted regulations, to require the training, examination, and certification of persons engaged in or responsible for blasting and the use of explosives in accordance with Section 719 of SMCRA. Under 30 CFR 732.15(b)(12), the State is not required to implement regulations governing such training, examination and certification until six months after Federal regulations have been promulgated for these provisions. The Secretary promulgated a new Subchapter M and Part 850 to 30 CFR Chapter VII, covering this subject, on December 12, 1980. (*See* 45 FR 82084–82100, effective January 12, 1981.) However, the new Subchapter M is not complete and, as explained at 45 FR 82087, Oklahoma will have six months to submit to OSM regulations in compliance with Subchapter M after it is complete. Therefore, Oklahoma's present inability to comply with Section 719 of SMCRA has no effect on the Secretary's decision published today.

(n) Pursuant to the requirements of 30 CFR 732.15(b)(13), the Secretary finds that the Oklahoma DOM does not have authority under State law and regulations to operate a small operator assistance program (SOAP). According to the May 27, 1980, opinion of the Oklahoma Attorney General (*See* Administrative Record Document No. OK–85), the payment of State tax dollars to mine operators pursuant to 45 O.S. Supp. 1979, Section 745.16 (Section 19 of OCRA) violates Article X, Section 15 of the Oklahoma Constitution and is therefore invalid because it constitutes a "gift". In its resubmission of December 8, 1980, Section A, Chapter 1, page 5, Oklahoma proposed a resolution by the Legislature that would declare the expenditure of State funds for SOAP to be a public purpose. If such a resolution passes the Legislature, the DOM is expected to be able to promulgate regulations consistent with 30 CFR Part 795. The Oklahoma resubmission proposed a memorandum of agreement for the joint administration of SOAP until the Legislature enacts the proposed resolution and the DOM promulgates regulations consistent with 30 CFR Part 795. (*See* Section D, Chapter VII–16 and Administrative Record No. OK–193.) The proposed memorandum of agreement provides for Oklahoma to perform all functions required in SOAP except for contracting and funding which would be performed by OSM. The Oklahoma Attorney General, in a letter to the Chief Mine Inspector dated September 2, 1980 (Administrative Record No. OK–166), indicated approval of such an agreement as long as OSM reimburses the State DOM for its administrative costs. As an interim arrangement, this is acceptable to the Secretary.

However, the Secretary finds the absence of valid SOAP provisions inconsistent with Section 507(c) of SMCRA and 30 CFR Part 795. The approval of the Oklahoma program is conditioned upon Oklahoma's obtaining authority to promulgate regulations consistent with 30 CFR Part 795.

(o) Pursuant to the requirements of 30 CFR 732.15(b)(14), the Secretary finds that the Oklahoma has statutory authority under Section 36.I of OCRA, and the Oklahoma program contains provisions for protection of DOM employees consistent with the protection afforded federal employees under Section 704 of SMCRA.

(p) Pursuant to the requirements of 30 CFR 732.15(b)(15), the Secretary finds that the Oklahoma DOM has the authority under Sections 53 and 54 of

OCRA to provide for administrative and judicial review of the Oklahoma program actions in accordance with Sections 525 and 526 of SMCRA. The Secretary also finds that DOM Regulations, Parts 840–845, are consistent with 30 CFR Chapter VII, Subchapter L. However, as explained in finding 4(k)(3) above, the "Rules of Practice for Hearings" are inconsistent with Parts 840–845. and with OCRA in several ways. The DOM program is deficient to the extent the "Rules of Practice for Hearings" interfere with Parts 840–834.

(q) Pursuant to the requirements of 30 CFR 732.15(b)(16), the Secretary finds that the Oklahoma DOM has authority under the OCRA and the Oklahoma program contains provisions to cooperate and coordinate with, and provide documents and other information to, the Office of Surface Mining under the provisions of 30 CFR Chapter VII.

(r) Pursuant to the requirements of 30 CFR 732.15(c), the Secretary finds that the laws and regulations of Oklahoma contain provisions that would interfere with or preclude implementation of the provisions of SMCRA and 30 CFR Chapter VII. The provisions of the OCRA that would interfere with or preclude implementation of SMCRA and the Secretary's regulations are detailed in findings 1a, 4a, 4k, and 4n. In his decision of October 10, 1980, 44 FR 67367, the Secretary was unable to determine whether Oklahoma's water quality statutes and regulations contained provisions in conflict with the proposed program. The resubmission package contained Oklahoma's water quality statutes (Section C, Chapter II), Oklahoma's Water Quality Standards of 1979, and the 1979 revision to the Rules, Regulations and Modes of Procedure of the Oklahoma Water Resources Board. The Secretary has examined these documents and finds that they do not preclude implementation of the Oklahoma program and do not interfere or conflict with OCRA or the DOM regulations.

(s) Pursuant to the requirements of 30 CFR 732.15(d), the Secretary finds that the Oklahoma DOM and other agencies having a role in the program have sufficient legal, technical, and administrative personnel and sufficient funding to implement, administer, and enforce the provisions of the program, the requirements of 30 CFR 732.15(b), and other applicable State and Federal laws.

However, the Secretary does wish to note that the Chief Mine Inspector (CMI) has not shown in the program how he will allocate his personnel for purposes of the various formal and informal hearings under OCRA. The program envisions the CMI appointing hearing examiners for some adjudicatory hearings and, the CMI exercising appellate, jurisdiction in those cases. The program does not show how hearing examiners will be selected, who will advocate the DOM's position before them and the CMI, and how the impartiality of the CMI will be maintained for appellate review. Note that OCRA Section 17.C requires different personnel for informal permit hearings and later adjudicatory hearings. The Secretary finds that DOM has sufficient personnel and budget to accommodate these duties and assumes that the CMI will allocate his resources in a manner consistent with the obligations discussed above.

Public and Government Agency Comments

The Secretary received comments from the public and government agencies on Oklahoma's program. All of these comments were reviewed and considered by the Secretary in making the decision to conditionally approve the Oklahoma program.

The Secretary intends to publish in the **Federal Register** within the next few days, a summary of the comments received and his disposition of each significant issue they raise.

Background on Conditional Approval

The Secretary is fully committed to two key aims which underlie SMCRA. The Act calls for comprehensive regulation of the effects of surface coal mining on the environment and public health and safety, and for the Secretary to assist the states in becoming the primary regulators under the Act. To enable the states to achieve that primacy, the Secretary has undertaken many activities of which several are particularly noteworthy.

The Secretary has worked closely with several state organizations, such as the Interstate Mining Compact Commission, the Council of State Governments, the National Governors Association and the Western Interstate Energy Board. Through these groups OSM has frequently met with state regulatory authority personnel to discuss informally how the Act should be administered, with particular reference to unique circumstances in individual states. Often these meetings have been a way for OSM to explain portions of the Federal requirements and how the states might meet them. Alternative state regulatory options, the "state window" concept, for example, were discussed at several meetings of the Interstate Mining Compact Commission and the National Governors Association.

The Secretary has dispensed over $6.9 million in program development grants and over $37.6 million in initial program grants to help the states to develop their programs, to administer their initial programs, to train their personnel in the new requirements and to purchase new equipment. In several instances OSM detailed its personnel to states to assist in the preparation of their permanent program submissions. OSM has also met with individual states to determine how best to meet the Act's environmental protection goals.

Equally important, the Secretary structured the state program approval process to assist the states in achieving primacy. He voluntarily provided his preliminary views on the adequacy of each state program to identify needed changes and to allow them to be made without penalty to the state. The Secretary adopted a special policy to insure that communication between him and the states remained open and uninhibited at all times. This policy was critical to avoiding a period of enforced silence with a state after the close of the public comment period on its program and has been a vital part of the program review process (*see* 77 FR 54444, September 19, 1979).

The Secretary has also developed in his regulations the critical ability to approve conditionally a state program.

Under the Secretary's regulations, conditional approval gives full primacy to a state even though there are minor deficiencies in a program. This power is not expressly authorized by the Act; it was adopted through the Secretary's rulemaking authority under 30 U.S.C. 201(c), 503(b), and 503(a)(7). The Act expressly gives the Secretary only two options—to approve or disapprove a state program. Read literally, the Secertary would have no flexibility; he would have to approve those programs that are letter-perfect and disapprove all others. To avoid that result, and in recognition of the difficulty of developing an acceptable program, the Secretary adopted the regulation providing the authority to approve conditionally a program.

Conditional approval has a vital effect for programs approved in the Secretary's initial decision: it results in the implementation of the permanent program in a state monts earlier than might otherwise be anticipated. While this may not be significant in states that already have comprehensive surface mining regulatory programs, in many states that earlier implementation will initiate a much higher degree of

environmental protection. It also implements the rights SMCRA provides to citizens to participate in the regulation of surface coal mining through soliciting their views at hearings and meetings and enabling them to file requests to designate lands as unsuitable for mining if they are fragile, historic, critical to agriculture, or simply cannot be reclaimed to their prior productive capability.

The Secretary considers three factors in deciding whether a program qualifies for conditional approval. First is the state's willingness to make good faith efforts to effect the necessary changes. Without the state's commitment, the option of conditional approval may not be used.

Second, no part of the program can be incomplete. As the preamble to the regulations says, the program, even with deficiencies, must "provide for implementation and administration for all processes, procedures, and systems required by the Act and these regulations" (44 FR 14961). That is, a state must be able to operate the basic components of the permanent program: the designation process; the permit and coal exploration systems; the bond and insurance requirements; the performance standards; and the inspection and enforcement system. In addition there must be a functional regulatory authority to implement the other parts of the program. If some fundamental component is missing, conditional approval may not be used.

Third, the deficiencies must be minor. For each deficiency or group of deficiencies, the Secretary considers the significance of the deficiency in light of the particular state in question. Examples of deficiencies that would be minor in virtually all circumstances are correction of clerical errors and resolution of ambiguities through attorneys general opinions, revised regulations, policy statements, and changes in the narrative or the side-by-side.

Other deficiencies require individual consideration. An example of a deficiency that would most likely be major would be a failure to allow meaningful public participation in the permitting process. Although this would not render the permit system incomplete because permits could still be issued, the lack of any public participation could be such a departure from a fundamental purpose of the Act that the deficiency would most likely be major. The use of a conditional approval is not and cannot be a substitute for the adoption of an adequate program. Section 732.13(i) of Title 30 of the regulations gives the Secretary little discretion in terminating programs where the state, in the Secretary's view, fails to fulfill the conditions. The purpose of the conditional authority power is to assist the states, not to excuse them from achieving compliance with SMCRA.

Conditional Approval

As indicated above under the Secretary's Findings, there are four minor deficiencies which the Secretary requires be corrected. In all other respects, the Oklahoma program meets the criteria for approval. The deficiencies identified in prior findings and the reasons why they are considered minor are summarized below.

1. Section 41.C of OCRA does not provide citizens with the same access to courts for citizen suits as provided under Section 520 of SMCRA.

The deficiency is minor because a citizen would eventually have access to judicial review of the DOM actions or failure to act, but only after exhausting administrative remedies. In addition, a citizen would also have access to federal courts under Section 520 for review of the Oklahoma DOM's actions. Further, Oklahoma mandamus statute would enable a citizen to obtain a writ of mandamus against the State if it fails to perform its mandatory duties.

2. The Oklahoma Department of Mines does not have statutory authority to award appropriate costs and expenses including attorneys' fees to (a) any person other than a permittee or his representative and (b) a permittee in administrative proceedings consistent with 43 CFR 4.1294 (b) and (c).

This deficiency is minor because it would not interfere with the rights of citizens or permittees to administrative review of actions by the Oklahoma DOM. There is only a slight possibility that there will be a need for such an award prior to amending the statute and regulations. Furthermore, such awards are authorized during judicial review of the Department's actions.

3. The Oklahoma Department of Mines does not have authority to administer the Small Operator Assistance Program (SOAP) consistent with Section 507(c) of SMCRA and 30 CFR Part 795.

This deficiency is minor because the number of operators in Oklahoma eligible to receive SOAP assistance is so few. Only six operators are eligible to receive SOAP funds and of these only one has applied for assistance. Furthermore, Oklahoma has proposed a memorandum of agreement for the joint administration of SOAP until the Legislature enacts the resolution and the DOM promulgates regulations consistent with 30 CFR Part 795. The agreement provides for Oklahoma to perform all functions required in SOAP except for contracting and funding which would be performed by OSM, and is a viable interim arrangement.

The Rules of Practice for Hearings are not consistent with the public participation aspects of SMCRA, 30 CFR Chapter VII, and 43 CFR Part 4.This deficiency is minor because it can be quickly remedied by ordinary rulemaking before most of the adjudicatory procedures called for under OCRA and other DOM rules are likely to be used by anyone.

The substantive rights, remedies and procedures required by SMCRA are reflected in OCRA and DOM rules Parts 700–845. The problems lie only in the "Rules of Practice for Hearings," which either omit or conflict with the procedures of OCRA and Parts 700–845 of the DOM rules.

Given the nature of these deficiencies and their magnitude in relation to all the other provisions of the Oklahoma program, the Secretary of the Interior has concluded they are minor deficiencies. Accordingly, the program is eligible for conditional approval under 30 CFR 732.13(i), because:

1. The deficiencies are of such a size and nature as to render no part of the Oklahoma program incomplete since all other aspects of the program meet the requirements of SMCRA and 30 CFR Chapter VII and these deficiencies, which will be promptly corrected, will not directly affect environmental performance at coal mines;

2. Oklahoma has initiated and is actively proceeding with steps to correct the deficiencies; and

3. Oklahoma has agreed, by telegram dated January 12, 1981, to correct deficiencies (1) and (4) by July 1, 1981, and deficiencies (2) and (3) by November 1, 1981.

Accordingly, the Secretary is conditionally approving the Oklahoma program. This approval shall terminate if deficiencies 1 and 4 are not corrected by July 1, 1981, and deficiencies 2 and 3 by November 1, 1981.

This conditional approval is effective January 19, 1981. Beginning on that date, and subject to the delay discussed below under "State Court Litigation", the Oklahoma Department of Mines shall be deemed the regulatory authority in Oklahoma and all surface coal mining and reclamation operations on non-Federal and non-Indian lands and all coal exploration on non-Federal and non-Indian lands in Oklahoma shall be subject to the permanent regulatory program.

On non-Federal and non-Indian lands in Oklahoma the permanent regulatory program consists of the State program as approved by the Secretary.

On federal lands, the permanent regulatory program will consist of the federal rules made applicable under 30 CFR Chapter VII, Subchapter D—Parts 740–745. In addition, in accordance with Section 523(a) of the SMCRA, 30 USC 1273(a), the Federal lands program in Oklahoma shall include the requirements of the approved Oklahoma permanent regulatory program.

Oklahoma and the Department of the Interior will have the opportunity to enter into a cooperative agreement to allow Oklahoma to enforce the requirements of the approved Oklahoma permanent regulatory program on Federal lands.

The Secretary's approval of the Oklahoma program relates at this time only to the permanent regulatory program under Title V of SMCRA. The approval does not constitute approval of any provisions related to implementation of Title IV under SMCRA, the abandoned mine lands reclamation program. In accordance with 30 CFR Part 884, Oklahoma may submit a State reclamation plan now that its permanent program has been approved. At the time of such a submission, all provisions relating to abandoned mined lands reclamation will be reviewed by officials of the Department of the Interior.

State Court Litigation

The coal industry in Oklahoma filed a lawsuit in the District Court for Oklahoma County, Oklahoma, seeking relief from the permanent program within the context of Section 503(d) of SMCRA. (*Oklahoma Mining and Reclamation Association* v. *Oklahoma*, No. CJ–80–5520). On December 23, 1980 the court issued a permanent injunction holding that Oklahoma's permanent program regulations were arbitrary and capricious and ordered the Department of Mines (DOM) (1) to not enforce its proposed permanent program and (2) to withdraw the program submitted to the Secretary on December 8, 1980. The Oklahoma Attorney General opposed the lawsuit vigorously and appealed the decision immediately. A stay of the trial court decision was sought in the Oklahoma district court.

On January 9, 1981, the judge of the district court dissolved his order of December 23, 1980. He then issued a new temporary injunction which enjoins Oklahoma from enforcing the permanent program until further order from the court. However, the judge ordered the state to continue to enforce the interim program and stated that Oklahoma is not required to withdraw its program submission. The judge gave the plaintiffs 45 days to outline their specific objections to the Oklahoma program and the State 30 days thereafter to comment on the plaintiff's objections. The judge has scheduled a hearing on or about March 30 to further consider the injunction.

Although the judge did not specifically address the question of whether or not the State could agree to meet the Office of Surface Mining's conditions for approval, the Oklahoma Assistant Attorney General advised the OSM Regional Solicitor that he interprets the judge's order that the Department of Mines could agree to the conditions if it desires. (Administrative Record No. OK–262) The Oklahoma Department of Mines has agreed to the conditions in a telegram sent to the Secretary on January 12, 1981. (Administrative Record No. OK–261)

The Secretary considered several alternative courses in light of these developments. First, he considered disapproving the program on the grounds that the state did not have the authority to enforce its program as required under Section 503(b)(4) of SMCRA, 30 USC 1253(b)(4). This alternative was rejected, on the grounds that Section 503(d) of SMCRA, (30 USC 1253(d)) intends that for a period of up to one year, the existence of an injunction against State enforcement of its program does not constitute a defect requiring disapproval of a State program.

Second, the Secretary considered delaying his decision until the State court litigation was completed. This alternative was rejected because it would violate the Secretary's duty to approve or disapprove the program within sixty days after resubmission, as required by section 503(c) of SMCRA, 30 USC 1253(c).

Third, the Secretary considered announcing that he would approve this program once the injunction is lifted, so long as it is unchanged from the existing submission. This alternative was rejected because it might lead to additional delay in implementing the permanent program, by requiring reconsideration of the program before an approval could be given if any changes to the program are made during the court action.

Finally, the Secretary considered conditionally approving the program at this time, recognizing that the State may not be able to immediately enforce it. This option was accepted, because it fulfills the Secretary's obligation to make a decision within 60 days of resubmission by the State, it makes the State immediately eligible to qualify for its share of the abandoned mine land fund and it minimizes delay in the effectiveness of the permanent program.

As a result of the existence of the temporary injunction, Oklahoma cannot now enforce the program conditionally approved today. Under section 503(d) of SMCRA, 20 U.S.C. 1253(d), in these circumstances the regulation of surface coal mining and reclamation operations covered by the State program shall be conducted by the State pursuant to Section 502 of SMCRA, 30 U.S.C. 1252. In other words, the initial program will remain in effect in Oklahoma until the injunction terminates or for one year, whichever is shorter.

If the injunction terminates before the end of one year from its issuance, then this conditionally approved program shall become immediately effective in Oklahoma. If the injuction does not terminate within one year, then either a federal program will be implemented or the Secretary will enforce the conditionally approved State program. If the pending lawsuit results in any changes to the program conditionally approved today, these changes must be submitted for approval as revisions or amendments to the approved program under 30 CFR 732.17.

Additional Findings

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 USC 129(d), no environmental impact statement need be prepared on this conditional approval.

The Secretary has determined that this document is not a significant rule under E.O. 12044 or 43 CFR Part 14, and no regulatory analysis is being prepared on this conditional approval.

Dated: January 13, 1981.

Joan Davenport,

Assistant Secretary for Energy and Minerals.

A new Part, 30 CFR Part 936, is adopted to read as follows:

PART 936—OKLAHOMA

Sec.

936.1 Scope.
936.2–936.9 [Reserved]
936.10 State program approval.
936.11 Conditions of State program approval.

Authority: Sec. 503, Pub. L. 95–87, 91 Stat. 407 (30 USC 1253).

§ 936.1 Scope.

This part contains all rules applicable only within Oklahoma that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

§§ 936.2–936.9 [Reserved]

§ 936.10 State program approval.

(a) The Oklahoma State Program, as submitted on February 28, 1980, and amended on June 11, 1980, and resubmitted on December 8, 1980, is approved subject to the conditions set forth in 30 CFR 936.11. Copies of the approved program together with copies of the letter from the Oklahoma Department of Mines agreeing to the conditions in 30 CFR 936.11, are available at:

Office of Surface Mining Reclamation and Enforcement, Region IV, 5th Floor, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106, Telephone: (816) 374–3920.
Oklahoma Department of Mines, 4040 N. Lincoln, Suite 107, Oklahoma City, Oklahoma 73105, Telephone (405) 521–3859.
Office of Surface Mining Reclamation and Enforcement, Room 153, Interior South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240, Telephone: (202) 343–4728.

(b) In its May 16, 1980, opinion, the U.S. District Court for the District of Columbia ordered the Secretary to affirmatively disapprove any regulation in a state program which incorporates a suspended or remanded Federal regulation. A list follows of provisions contained in the Oklahoma submission which are based on suspended or remanded Federal regulations. These regulations are affirmatively disapproved to the extent indicated or, if no limitation is indicated, in their entirety.

1. Section 701.5, the definition of "mine plan area," and the use of the term in Sections 779, 780, 783, and 784, to the extent of the court's decision regarding requirements of information outside the permit area.

2. Section 761.5, the definition of "public road."

3. Section 761.5(a)(2)(ii), the definition of "valid existing rights," to the extent it does not allow recognition of such rights an operator may claim by having made a good faith effort to obtain all permits before 8/3/77 as stipulated by the court's decision.

4. Sections 761.11(c) and 761.12(f)(1) to the extent that they prohibit or restrict mining near places only eligible for listing on the National Register of Historic Places, and the words "or a statutory or regulatory responsibility for" in Section 761.12(f). Further, both rules to the extent that they apply to privately-owned places listed on the National Register of Historic Places in addition to publicly-owned places.

5. Sections 779.20, 780.16, 783.20 and 784.21 requiring a permit application to contain a study of fish and wildlife and to include a fish and wildlife reclamation plan.

6. Section 783.14(a)(1) insofar as it requires a geologic description of the strata down to and immediatly below any coal seam for areas to be affected only by "surface operations and facilities," where no removal of overburden down to the level of the coal seam will occur.

7. Section 785.17(a) concerning the prime farmland grandfather clause.

8. Sections 785.17(b)(3) and 823.14(c) concerning excessive soil compaction.

9. Section 785.17(b)(8) to the extent that it requires prime farmland reclamation target yields to be based on estimated yields under a high level of management rather than a level of management equivalent to that used on prime farmlands in the surrounding area.

10. Section 786.5 to the extent that "or has not been" is no longer part of the definition of "irreparable damage to the environment."

11. Sections 816.42(a) (1) and (7) and 817.42(a) (1) and (7) to the extent they apply effluent standards to the reclamation phase of a surface coal mining operation.

12. Sections 816.42(b) and 817.42(b) relating to effluent standard exemptions during major storm periods.

13. Sections 816.46(b) and 817.46(b) concerning sediment storage volume in sediment ponds.

14. Sections 816.46(c) and 817.46(c) concerning detention time for water in sediment ponds.

15. Sections 816.46(d) and 817.46(d) to the extent they require dewatering devices to have a discharge rate to achieve and maintain the theoretical detention time for sediment ponds.

16. Sections 816.46(h) and 817.46(h) concerning sediment removal from sediment ponds.

17. Sections 816.65(f) and 817.65(f) requiring special approval prior to blasting within 1,000 feet of certain buildings and 500 feet of other facilities and which restrict blasting at distances greater than 300 feet.

18. Sections 816.83(a) and 817.83(a) concerning coal processing waste banks to the extent they preclude a possible exemption from the underdrain requirement where the operator can demonstrate that an alternative would ensure structural integrity of the waste bank and protection of water quality.

19. Sections 816.95 and 817.95 concerning air resources protection to the extent they apply to air pollution not caused by erosion.

20. Sections 816.103(a)(1) and 817.103(a)(1) to the extent they do not provide operators the option of treating acid-forming and toxic-forming material in lieu of covering such materials.

21. Sections 816.115 and 817.115 to the extent they require an operator who proposes range or pasture as the post-mining land use to use actually the land for grazing for the last two years of bond liability.

22. Sections 823.11(c), 823.15(b) and 823.15(c) to the extent they require an operator on prime farmland actually to return the land to crop production.

23. Sections 817.101(b)(1) and 817.102 applying the "approximate original contour" (AOC) regulations to underground mining.

24. Section 823 to the extent that it does not provide an exemption for surface facilities actively used over extended periods, but which affect a minimal amount of land.

25. Sections 816.116(b) and 817.116(b) to the extent that they state that an operator's responsibility for successful revegetation is not commenced until the vegetation reaches 90 percent of the natural cover in the area.

26. Sections 816.133(c) (4) and (9) and 817.133(c) (4) and (9) to the extent they require an operator to provide "letters of commitment" for proposed land use changes or for proposed cropland use.

27. Section 817.52(a)(1) to the extent that it requires ground water monitoring to determine the effects of underground mining activities on the recharge capacity of reclaimed land.

28. Sections 845.12–845.16 to the extent they impose a civil penalty point system.

§ 936.11 Conditions of State program approval.

(a) The approval found in Section 936.10 will terminate on July 1, 1981, unless Oklahoma submits to the Secretary by that date copies of a fully enacted statute which amends Section 41.C of OCRA to provide citizens, under OCRA, with the same access to courts as provided under Section 520 of SMCRA, or otherwise amends its program to accomplish the same result.

(b) The approval found in Section 936.10 will terminate on July 1, 1981, unless Oklahoma submits to the Secretary by that date copies of promulgated regulations which amend the Rules of Practice for Hearings to make the public participation aspects of those rules consistent with the public participation aspects of SMCRA, 30 CFR Chapter VII, and 43 CFR Part 4 or otherwise amends its program to accomplish the same result.

(c) The approval found in Section 936.10 will terminate on November 1, 1981, unless Oklahoma submits to the Secretary by that date copies of a fully enacted statute and implemented regulations which provide the Oklahoma Department of Mines to award costs and expenses, including attorney's fees, in administrative proceedings, in accordance with 43 CFR 4.1294 (b) and (c), or otherwise amends its program to accomplish the same result.

(d) The approval found in Section 936.10 will terminate on November 1, 1981, unless Oklahoma submits to the Secreatry by that date copies of appropriate statutory authority and implemented regulations consistent with 30 CFR Part 795, or otherwise amends its program to accomplish the same result.

[FR Doc. 81–1918 Filed 1–16–81; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 40

[CGD 81-004]

Cadets of the Coast Guard; Appointment Program

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard previously deleted from the Code of Federal Regulations all provisions concerning its cadet appointment program. In order that its regulations may reflect the existence of this program, this action will replace the deleted material with a single section that generally describes the appointment process and provides an address where further information may be obtained.

EFFECTIVE DATE: February 18, 1981.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of the Chief Counsel, (G-LRA/34), U.S. Coast Guard Headquarters, Washington, D.C. 20593 (202) 426-1534.

SUPPLEMENTARY INFORMATION: On May 24, 1979, the Coast Guard published notice in the **Federal Register** (44 FR 30094) that Part 40, governing the appointment of cadets, was being deleted from Title 33, Code of Federal Regulations. This action was taken because the information in Part 40 had become outdated and was inconsistent with internal directives on the appointment of cadets published in the Coast Guard Personnel and Medical Manuals. The need for flexibility in setting the standards for appointment of cadets made publication of current material in the Code of Federal Regulations impractical.

The Coast Guard has since determined that some mention of the Cadet appointment program should be retained in the CFR. It is therefore replacing Part 40 with a single section that contains a general description of the appointment process and an address where further information may be obtained. This will provide recognition of the program's existence and allow a broader dissemination of information concerning it.

This rulemaking has been reviewed and determined to be nonsignificant under the Department of Transportation's Regulatory Policies and Procedures published on February 26, 1979 (44 FR 11034). It was determined to have insufficient economic impact to warrant the preparation of a draft evaluation. Since it is concerned with agency personnel, this action is exempted from the provisions of 5 U.S.C. 553 requiring advance notice and an opportunity for public comment.

In consideration of the foregoing, Title 33 of the Code of Federal Regulations is amended by adding a new Part 40, to read as follows:

PART 40—CADETS OF THE COAST GUARD

Sec.

40. 1 Program for appointing cadets.

Authority: 14 U.S.C. 182 and 633, 49 CFR 1.46(b).

§ 40.1 Program for appointing cadets.

The Coast Guard conducts a program for appointing qualified men and women as cadets who are admitted to the Coast Guard Academy, New London, Connecticut. The Superintendent of the Coast Guard Academy tenders appointments on the basis of previous academic performance, reported College Entrance Examination Board or American College Testing scores, and the findings of a Cadet Candidate Evaluation Board, consisting of Coast Guard officers appointed by the Superintendent of the Coast Guard Academy, which reviews each applicant's personal qualifications. In addition, a Service Academy Medical Examination must be satisfactorily completed before appointment. Applications must be submitted on Coast Guard form CG-4151. This form, along with additional information on the Cadet appointment program, may be obtained from the Director of Admissions, U.S. Coast Guard Academy, New London, CT 06230.

(14 U.S.C. 182 and 633, 49 CFR 1.46(b))

Dated: January 13, 1981.

W. H. Stewart,

Rear Admiral, U.S. Coast Guard, Chief, Office of Personnel.

[FR Doc. 81-1911 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF EDUCATION

Office of Special Education

34 CFR Parts 104 and 300

Assistance to States for Education of Handicapped Children, and Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance; Notice of Interpretations

AGENCY: Department of Education.

ACTION: Notice of Interpretation.

SUMMARY: The Secretary of Education interprets Part B of the Education of the Handicapped Act and Section 504 of the Rehabilitation Act of 1973 to require public educational agencies to provide clean intermittent catheterization as a "related service" when it is required to provide a free appropriate public education, including services in the least restrictive environment, to handicapped children who are entitled to receive services under those statutes. This interpretation is issued in response to public inquiries regarding Department policy on the matter.

EFFECTIVE DATE: This interpretation is expected to take effect 45 days after it is transmitted to Congress. Interpretations are usually transmitted to Congress several days before they are published in the **Federal Register**. The effective date of interpretations that are subject to the transmittal requirement is changed by statute if Congress takes certain adjournments. Although the interpretation of Section 504 is not subject to this requirement, the Secretary has decided to set its effective date for the same day as the interpretation of Part B of the Education of the Handicapped Act. If you want to know the effective date of this interpretation, call or write the Department of Education contact persons.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley A. Jones, Office of Special Education, Department of Education, Donohoe Building, 4th Floor, 400 Maryland Avenue, S.W., Washington, D.C. 20202, telephone: (202) 472-7921. Mr. Edward A. Stutman, Office for Civil Rights, Department of Education, Switzer Building, Room 5430, 300 C Street, S.W., Washington, D.C. 20202, telephone: (202) 245-0781.

SUPPLEMENTARY INFORMATION:

The Issue

The issue presented is whether Part B of the Education of the Handicapped Act, as amended ("Part B"; 20 U.S.C. 1411-1420) and its regulations (34 CFR Part 300; formerly 45 CFR Part 121a) and Section 504 of the Rehabilitation Act of 1973, as amended ("Section 504"; 29 U.S.C. 794) and its regulations (34 CFR Part 104; formerly 45 CFR Part 84) require public educational agencies to provide clean intermittent catheterization as a related service to eligible handicapped children when those children require the service to receive a free appropriate public education, including services in the least restrictive environment.

The Interpretation

Both Part B and Section 504 require public educational agencies to provide clean intermittent catheterization as a "related service" to handicapped children who are entitled to receive services under those statutes, when it is required to provide a free appropriate public education, including services in the least restrictive environment.

Background

A procedure called "clean intermittent catheterization" "(CIC)" is often recommended for physically handicapped children who have impaired function of the urinary bladder. It is usually a relatively simple procedure to administer with minimal training and can be performed by a school nurse, the individual requiring catheterization, or another responsible person, none of whom need to be licensed to perform the service. Therefore, for the limited purpose of interpretating Part B or Section 504, the Secretary does not interpret CIC to be a medical service. In fact, a number of educational agencies are not providing this service to handicapped children as a part of their school health services. A report on the use of CIC accepted and endorsed by the Urology Section of the American Academy of Pediatrics on October 23, 1978, states that "CIC in infancy must be carried out by an adult, but with normal intelligence most children are able to self-catheterize from approximately six to seven years of age, sometimes even earlier."

While the number of children in the United States who currently require assistance with CIC cannot be stated with precision, those children who most often use CIC have myelodysplasia (spine bifida), which medical authorities estimate to occur in 1–2 live births per thousand in the United States. However, not all children with spina bifida require catheterization, and the majority of children who are catheterized do not require assistance with catheterization throughout the years they attend elementary and secondary school.

Part B

Under Part B of the Education of the Handicapped Act, a handicapped child within the eligible age ranges is entitled to receive a free appropriate public education, a term defined in Section 602 of the Act to include special education and related services. 20 U.S.C. 1401. The term "related services" is defined in Section 602(17) to mean:

> "* * * transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education, and * * * the early identification and assessment of handicapping conditions in children."

The regulations implement this section by defining each statutorily-specified related service, and by specifying other services, including school health services, as well. Moreover, while catheterization is not specifically listed as a "related service", the "Comment" that follows 34 CFR 300.13 states:

> "The list of related services is not exhaustive and may include other developmental, corrective, or supportive services * * * if they are required to assist a handicapped child to benefit from special education."

In addition to the related services requirements outlined above, each public agency must ensure that to the maximum extent appropriate, handicapped children are educated with children who are not handicapped, and that special classes, separate schooling, or other provision of education to handicapped children outside of the regular environment occurs only when the nature or severity of the handicap is such that education in the regular classes cannot be satisfactorily achieved with the use of supplementary aids and services. 20 U.S.C. 1412(5)(B); 34 CFR 300.550.

In light of the above, the Secretary concludes that clean intermittent catheterization is a "related service" as that term is defined in the Education of the Handicapped Act. CIC must be provided when it is required to provide a free appropriate public education, including services in the least restrictive environment, to handicapped children receiving special education. A public agency is not required to provide CIC to a child who is enrolled in a day program when that child is not in school. Nor is the agency required to provide routine medical services, such as laboratory analysis, that may be related to the provision of CIC. (These services are also not required under Section 504.)

Section 504

Under Section 504 and the Department's implementing regulation, public educational agencies are required to provide regular or special education and related aids and services to eligible handicapped children. 34 CFR 104.3(j), 104.3(k)(2). Those handicapped children entitled to services under Section 504 must be provided a free appropriate public education "regardless of the nature or severity of the person's handicap". 34 CFR 104.33(a). Moreover, Section 104.34 of the regulation requires that handicapped persons be educated in the regular educational environment unless this cannot be satisfactorily achieved with the use of supplementary aids and services.

Therefore, the Secretary concludes that, under Section 504, clean intermittent catheterization is a "related service" when it is necessary to ensure the provision of a free appropriate public education, including services in the least restrictive environment, for handicapped children requiring regular or special education.

Judicial Precedent

The limited judicial precedent on catheterization as a required service is consistent with the Secretary's interpretation. See *Tatro* v *State of Texas*, 625 F.2d 557 (5th Cir. 1980); *Tokarcik* v. *Forest Hills School District*, No. 79–338 (W.D. Pa. Oct. 31, 1980); and *Hairston* v. *Drosick*, 423 F. Supp. 180 (S.D. W.Va. 1976). In the cases decided after publicaition of regulations under Part B and Section 504, the courts held that CIC is a related service which must be provided to handicapped children. In the case decided before publication of the regulations, the court held that a handicapped child could not be excluded from the regular classroom because she needed CIC.

(20 U.S.C. 1401, 1411–1420; 29 U.S.C. 794)

Dated: January 13, 1981.

Shirley M. Hufstedler,

Secretary of Education.

[FR Doc. 81-1683 Filed 1-16-81; 8:45 am]

BILLING CODE 4000-01-M

---

34 CFR Part 322

Training Programs for Teachers of Handicapped Children in Areas With a Shortage

AGENCY: Department of Education.

ACTION: Final regulation with comments invited.

SUMMARY: The Secretary issues regulations to establish a new program for training teachers of handicapped children. This program authorizes the Secretary to make grants to State education agencies for fellowships to students and allowances to institutions of higher education for teacher training in the area of special education for handicapped children. The regulations state criteria the Secretary uses to determine areas of teacher shortage,

criteria for assuring that the training programs for the fellowship recipients are appropriate, certain requirements that a State agency must meet to obtain a grant, and restrictions relating to students who hold jobs during the period of a fellowship.

DATES: These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the **Federal Register.** The effective date is changed if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

Comments on these regulations must be received on or before March 5, 1981.

ADDRESS: Comments should be addressed to William Wolfe, Budget Officer, Office of Special Education, Room 4130, Donohoe Building, 400 Maryland Avenue SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: William Wolfe, telephone (202) 245–2709.

SUPPLEMENTARY INFORMATION:

Waiver of Proposed Rulemaking Procedures

Section 546(b) of the Higher Education Act, as added by the Education Amendments of 1980 (Pub. L. 96–374), requires the Secretary to publish regulations governing this program not later than 30 days after the enactment of Pub. L. 96–374 (October 3, 1980). Given this extremely short deadline, the Secretary has determined in accordance with 5 U.S.C. 553(b) that public participation in the rulemaking process is impracticable. However, interested persons may submit comments and recommendations regarding future revisions to the regulations.

Purpose of the Regulations

The new teacher training program is intended to increase the number of special education teachers in areas that need more of these teachers. The statute authorizes fellowships to students who agree to teach in areas identified as needing special education teachers or other specialists; they must agree to teach in those areas for two out of the first five years after they complete their training.

The statute requires the Secretary to publish regulations covering the following topics:

(1) The Secretary is required to establish criteria for—

a. determining whether there is a shortage of teachers in a State;

b. assuring that the institutions of higher education where recipients of fellowships pursue their studies offer a program designed to prepare them in the area of special education for handicapped children; and

c. assuring that the individuals trained with assistance under this program receive specialized training in subject areas in which there is the greatest need for teachers of handicapped children.

(2) The Secretary is also required to promulgate regulations setting forth detailed requirements with respect to—

a. the agreement between a State and a student who receives a fellowship that the student will teach for a two-year period in a public school or program that provides or will provide special education; and

b. procedures for reducing the repayment requirement that the statute places on a fellowship recipient who teaches less than the required two-year period.

(3) The statute provides that students who receive fellowships are not allowed to engage in gainful employment unless approved by the Secretary by or pursuant to regulations. Further, payments to a student engaged in gainful employment must be appropriately reduced pursuant to regulations of the Secretary.

The regulations in this document are limited to those that are required by the Act.

To determine areas with a shortage, the regulations require a State to submit in its application evidence upon which the Secretary can determine the extent of any teacher shortages. However, to minimize reporting requirements, the Secretary may accept as evidence of teacher shortages the information relating to personnel development provided by a State in its State plan under Part B of the Education of the Handicapped Act, as amended by Pub. L. 94–142. (See 34 CFR Part 300, formerly 45 CFR Part 121a.)

To assure that students receive appropriate training under the program, the regulations require the State to award fellowships only in institutions of higher education that offer programs meeting applicable State standards, and only for training that meets the greatest need in the State for teachers of handicapped children. The regulations also require a student to carry at least a half-time course load and maintain satisfactory progress, as determined by the institution of higher education that the student attends.

The statute encourages students to work in public education programs that provide services to handicapped children. It does so by requiring each student to enter into an agreement with the State that the student will either teach for two years in such a program, or repay all of the stipends the student received plus any allowances paid to the institution of higher education where the student attended. A State is permitted to reduce the repayment if the student does not meet the two-year teaching requirement for reasons beyond the student's control.

The regulations set forth the statutory requirements, provide guidance on the type of school or program that meets the intent of the statute, and authorize the State to determine the amount of any necessary repayment of a stipend by a student who does not meet the two-year provision.

With respect to the statutory restrictions on employment, the regulations permit gainful employment without reduction in stipend if the employment is in a federally-assisted program providing services to handicapped children. This is consistent with the statutory provisions relating to the two-year teaching requirement.

Stipends for students and allowances for institutions of higher education are governed by section 543 of the Act. Section 544 of the Act includes certain provisions regarding reports to the State educational agency and a requirement that no fellowship may be awarded for study at a school or department of divinity. The regulations do not elaborate on these statutory provisions.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before March 5, 1981, will be considered in any future revisions of the final regulations.

All comments submitted in response to these final regulations will be available for public inspection during and after the comment period in Room 4130, Donohoe Building, 6th & D Street, S.W., Washington, D.C. between 8:30 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays.

Comments are particularly invited on whether the regulations in this document require any information that is already being gathered by or is available from any other agency or authority of the United States.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (Pub. L. 96–354, enacted Sept. 19, 1980) requires each Federal agency to prepare an initial regulatory flexibility analysis and

a final regulatory flexibility analysis for each regulation that ——

(1) Is published as a notice of proposed rulemaking after January 1, 1981, and

(2) Has a significant economic impact on a substantial number of small entities (small businesses, small organizations, or small governmental jurisdictions).

Because the Department has not yet established its own definitions of "small organization" and "small governmental jurisdiction", as contemplated by the Act, it is not possible to prepare a full intial regulatory flexibility analysis at this time. Further, since the regulations in this document are required by statute to be published immediately, it is impracticable to delay publication while the necessary definitions are being developed. As noted elsewhere in this preamble, it was impracticable to take public comments before publishing these regulations as final. For the same reasons, it was impracticable to delay the regulations while an initial regulatory flexibility analysis was prepared. In these circumstances, the Regulatory Flexibility Act permits a waiver or delay of the initial regulatory flexibility analysis. If it is determined that these regulations are subject to that Act, the Secretary will prepare the necessary analyses at a later date.

As an interim measure, this document, to the maximum extent possible, includes information of the kind contemplated by the Regulatory Flexibility Act, including the reasons for the regulations, the objectives and legal basis for the regulations, and any significant issues and alternatives for consideration by the public. To assist the Department in determining whether the Regulatory Flexibility Act applies to these regulations, and in complying with the Act's requirements, public comment is especially invited on the following matters:

(1) The number and kind of small entities (small businesses, small organizations, or small governmental jurisdictions) affected by the regulations;

(2) The reporting, recordkeeping, and compliance burdens imposed by the regulations on small entities;

(3) The type of professional skills necessary for preparation of any reports or records required by the regulations;

(4) Any Federal rules that may duplicate, overlap, or conflict with the regulations;

(5) Any significant alternatives that would accomplish the purposes of the applicable statute but would minimize any significant economic impact of the regulations on small entities. The Secretary is particularly interested in suggestions on alternatives such as the following:

- The establishment of differing reporting or compliance requirements or timetables that take into account the resources available to small entities.
- The clarification, consolidation, or simplification of compliance and reporting requirements for small entities.
- The use of performance rather than design standards.
- An exemption for small entities from coverage of part or all of the regulations.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(No Catalog of Federal Domestic Assistance number has been assigned.)

Dated: January 13, 1981.

Shirley M. Hufstedler,

Secretary.

Title 34 of the Code of Federal Regulations is amended by adding a new Part 322 to read as follows:

PART 322—TRAINING PROGRAM FOR TEACHERS OF HANDICAPPED CHILDREN IN AREAS WITH A SHORTAGE

Subpart A—General

Sec.

322.1 Purpose of the program.
322.2 Eligible applicants.
322.3 Regulations that apply to this program.
322.4 Definitions that apply to this part.

Subpart B—[Reserved]

Subpart C—How Does a State Educational Agency Apply for a Grant?

322.10 Application requirements.

Subpart D—How Does the Secretary Make a Grant?

322.20 Distribution of grants.
322.21 Criteria for determination of need for teachers and other specialists.

Subpart E—What Conditions Must Be Met by Grantees and by Students Who Receive Fellowships?

322.30 Criteria to assure appropriate training.
322.31 Two-year teaching requirement.
322.32 Restrictions on employment.

Authority: Title V–C of the Higher Education Act of 1965, as amended, (20 U.S.C. 1119b–1119b–5), unless otherwise noted.

Subpart A—General

§ 322.1 Purpose of the program.

(a) This program is intended to increase the numbers of persons qualified to teach handicapped children in areas that have a shortage of those persons.

(b) The program provides grants to States to fund fellowships at institutions of higher education.

(20 U.S.C. 1119b)

§ 322.2 Eligible applicants.

State educational agencies are eligible to apply for grants under this part.

(20 U.S.C. 1119b)

§ 322.3 Regulations that apply to this program.

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 76 (State-administered programs) and 77 (Definitions).

(b) The regulations in this Part 322.

(20 U.S.C. 3474)

§ 322.4 Definitions that apply to this part.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Application
EDGAR
Grant
Local educational agency
Secretary
State
State educational agency

(b) *Other definitions.* The following definitions also apply to the regulations in this part:

"Act" means Title V–C of the Higher Education Act of 1965, as amended.

"Special education" has the same meaning as defined in section 602(16) of the Education of the Handicapped Act, as amended. (See 34 CFR 300.14—formerly 45 CFR 121a.14—Definition of "special education".)

(20 U.S.C. 3474)

Subpart B—[Reserved]

Subpart C—How Does a State Educational Agency Apply for a Grant?

§ 322.10 Application requirements.

To receive a grant, a State educational agency shall submit an application that meets the requirements of EDGAR Part 76, Subpart C, and Section 542 of the Act.

(20 U.S.C. 1119b–1)

Subpart D—How Does the Secretary Make a Grant?

§ 322.20 Distribution of grants.

(a) The Secretary makes a grant to each State that—(1) Has a shortage of teachers or other specialists in special education; and

(2) Meets the requirements under the Act and the regulations in this part.

(b) The Secretary determines the amount of each State's grant by dividing the number of teachers and other specialists needed in that State by the total number needed by all States, and multiplying that percentage by the amount of funds available for grants under this program.

(20 U.S.C. 1119b(c))

§ 322.21 Criteria for determination of need for teachers and other specialists.

(a) The Secretary determines a State's need for teachers and other specialists based on information provided by the State.

(b) A State may provide this information—

(1) In its application; or

(2) By reference to the information relating to personnel development in its State plan under Part B of the Education of the Handicapped Act, as amended.

(20 U.S.C. 1119b(b)(c))

Cross reference: 34 CFR Part 300 (Formerly 45 CFR Part 121a)—Assistance to States for Education of Handicapped Children.

Subpart E—What Conditions Must Be Met by a Grantee or by a Student Who Receives a Fellowship?

§ 322.30 Criteria to assure appropriate training.

(a) A State may not award a fellowship unless the State determines that—

(1) The student receiving the fellowship will attend an institution of higher education that offers a program in special education that meets applicable State standards; and

(2) The specialized training that the student receives will be in the subject areas in which there is the greatest need in the State for teachers of special education.

(b) A student receiving a fellowship under this part shall—

(1) Devote at least one-half of a full-time academic workload to study in the area of special education for which the fellowship is awarded; and

(2) Maintain satisfactory progress, as determined by the institution of higher education that the student attends.

(20 U.S.C. 1119b(b) (2) and (3); 1119b–3(a))

§ 322.31 Two-year teaching requirement.

(a)(1) Within the five-year period after a student completes the training for which a fellowship was awarded under this part, the student must teach for a period of not less than two years in—

(i) An elementary or secondary school of a local educational agency of the State that awarded the fellowship;

(ii) A public elementary or secondary school of that State; or

(iii) A public educational program, approved by the local educational agency or the State, which has (or has provided assurances that it will have) a special education program.

(2) The student must obtain State educational agency approval of the school or program in which the student intends to teach. The school or program must be located in an area with a shortage of teachers or other specialists in special education, as measured by—

(i) Lack of special education services for handicapped children in the area;

(ii) Lack of other specialized services for handicapped children in the area; or

(iii) High ratio of students to teachers in the special education programs in the area.

(b)(1) If the student does not meet the conditions of paragraph (a), the State shall require the student to repay the stipend provided to the student and the allowances paid to the institution of higher education.

(2) If the State educational agency determines that the student did not meet the requirements of paragraph (a) for reasons beyond the student's control, the State educational agency shall reduce or eliminate the amount of the student's repayment. The amount of any reduction is at the discretion of the State educational agency.

(20 U.S.C. 1119b–1(b))

§ 322.32 Restrictions on employment.

(a) A student may not engage in gainful employment unless the employment is in a federally-assisted program providing services to handicapped children.

(b)(1) If the student engages in any other gainful employment, the State educational agency shall reduce the student's stipend.

(2) The State educational agency may set the amount of reduction of a stipend as appropriate under the particular circumstances.

(20 U.S.C. 1119b–3(a))

[FR Doc. 81–1682 Filed 1–16–81; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–1–FRL 1729–1]

Approval and Promulgation of Implementation Plans; Massachusetts Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On March 2, 1979, the Commissioner of the Massachusetts Department of Environmental Quality Engineering (the Massachusetts Department) submitted to EPA for approval a revision to the Massachusetts State Implementation Plan (SIP) which would permanently amend Regulation 310 CMR 7.05(1)(e) "Sulfur Content of Fuels and Control Thereof" for the Pioneer Valley Air Pollution Control District (the Pioneer Valley). The revision increases the maximum sulfur-in-fuel limit from 1% to 2.2%. EPA is today approving this revision for all sources in Franklin and Hampshire Counties rated at less than 100 million Btu heat input capacity with the exception of three sources which EPA is disapproving. A proposed rulemaking on this revision was published on August 28, 1980 (45 FR 57459). Three letters of comment were received.

EFFECTIVE DATE: January 19, 1981.

ADDRESSES: Copies of the Massachusetts document which is incorporated by reference are available for public inspection during regular business hours at the Environmental Protection Agency, Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460; Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C.; and the Massachusetts Department of Environmental Quality Engineering, 600 Washington Street, Room 320, Boston, MA 02111.

FOR FURTHER INFORMATION CONTACT: Margaret McDonough, Air Branch, EPA Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203, (617) 223–5609.

SUPPLEMENTARY INFORMATION: The Commissioner of the Massachusetts Department submitted to EPA for approval on March 2, 1979 a revision to the Massachusetts SIP which amends Regulation 7.05 "Sulfur Content of Fuels and Control Thereof". Additional

technical information was submitted on January 18, 1980.

The original Massachusetts SIP, approved by EPA on May 31, 1972 (37 FR 10842), allowed all sources in the Pioneer Valley to burn fuel oil having a sulfur content of not more than 1%. Pursuant to Chapter 494 of the Massachusetts General Laws of 1974, the Massachusetts Department was required to periodically review its control strategies and to relax any regulation which was more stringent than necessary to attain National Ambient Air Quality Standards (NAAQS). As a result, the Massachusetts Department submitted revisions to its SIP to allow the burning of higher sulfur fuel. These revisions, approved by EPA on May 21, 1979 (44 FR 29452) and October 2, 1979 (44 FR 56694), excluded sources rated at less than 100 million Btu per hour.

The Massachusetts Department's March 2, 1979 submittal requested approval of a revision which amends the SIP by adding a new subparagraph (3) to regulation 310 CMR 7.05(1)(e) that allows sources in Hampshire and Franklin Counties rated at less than 100 million Btu per hour to burn residual fuel oil having a sulfur content of not more than 1.21 pounds per million Btu heat release potential. Accompanying the Massachusetts Department's submittal was technical support which included a mathematical modeling analysis to predict the effect on the ambient air quality of additional sulfur dioxide (SO_2) emissions which would be permitted by the revision. Subsequently, EPA performed additional modeling analyses to supplement the work of the Massachusetts Department. This analysis is discussed in detail in the August 28, 1980 Notice of Proposed Rulemaking (45 FR 57459). The mathematical modeling performed was used to determine compliance with NAAQS and Class II Prevention of Significant Deterioration (PSD) increments for SO_2. The NAAQS are maximum allowable ambient air pollutant concentrations which are set to protect public health and welfare. The NAAQS for SO_2 is 80 $\mu g/m^3$ based on annual averaging time; 365 $\mu g/m^3$ based on a 24-hour averaging time and 1300 $\mu g/m^3$ based on a 3-hour averaging time. The PSD increments are allowable incremental increases in ambient pollutant concentrations which are set to limit the degradation of air quality over baseline levels. The Class II PSD increments which apply to Hampshire and Franklin Counties for SO_2 are 91 $\mu g/m^3$ based on a 24-hour averaging time; 512 $\mu g/m^3$ based on a 3-hour averaging time; and 20 $\mu g/m^3$ based on an annual averaging time. The baseline date is the date on which a source subject to the PSD regulations filed a permit application to construct or modify in an area designated attainment or unclassifiable under Section 107(d)(1) of the Clean Air Act. The baseline date has been set for the State of Massachusetts which is the Section 107 designated attainment area where the sources subject to these revisions are located. The date is August 4, 1978 which was set by the PSD application filed by the Massachusetts Municipal Wholesale Electric Company (MMWEC).

The MMWEC Plant consumes increment in part of the same area that Texon, Inc. of South Hadley consumes increment. A conservative mathematical modeling analysis of the predicted combined increment consumption shows that the increments are not in danger of being violated.

SO_2 data from six monitoring stations were examined for the years 1978 and 1979. Based on these data EPA determined maximum background levels of SO_2 in the two county area of 31 $\mu g/m^3$ (annual average), 179 $\mu g/m^3$ (24-hour average) and 452 $\mu g/m^3$ (3-hour average).

The mathematical modeling analysis predicted that four sources would cause violations of ambient air quality standards if allowed to burn 2.2% sulfur fuel oil. Therefore, in its proposed rulemaking EPA proposed to disapprove the burning of higher sulfur fuel oil at the following sources: Butler and Ullman, Inc., Hadley; Esleeck Manufacturing Co., Montague; Strathmore Paper Co., Montague; and Millers Falls Paper Co., Millers Falls.

EPA received three comments during the 30 day comment period. One comment submitted by the Massachusetts Department effects EPA's decision on Butler and Ullman, Inc., Hadley, Massachusetts. The Massachusetts Department submitted corrected annual fuel use data for this source. EPA then re-analyzed this source using the corrected data, and found that no violations of air quality standards were predicted by the mathematical models. Therefore, EPA is approving the burning of 2.2% sulfur fuel oil at Butler and Ullman, Inc.

Comments were also received from Miller Falls Paper Company and Esleeck Manufacturing Company. These two sources are investigating any measures which may be taken to gain approval to burn 2.2% sulfur fuel oil. The Massachusetts Department has indicated that Strathmore Paper Company is also investigating alternative measures. If the Massachusetts Department submits information (for example, ambient air monitoring data or evidence that SO_2 control equipment has been installed) at a later date which demonstrates that air quality standards will be maintained, EPA will again consider approval of these sources. EPA is disapproving these three sources in this final rule.

Based on the mathematical modeling performed and comments received EPA is approving the revision for all sources located in Hampshire and Franklin Counties rated at less than 100 million Btu per hour to burn 2.2% sulfur fuel oil with the exception of the following sources which EPA is disapproving: Esleeck Manufacturing Company, Montague; Strathmore Paper Company, Montague; Millers Falls Paper Company, Millers Falls.

EPA finds good cause for making this revision effective immediately for the following reasons:

1. The implementation plan is already in effect under State Law and poses no additional regulatory burdens.

2. The immediate use of less expensive higher sulfur fuel oil will ease the economic burden of burning residual fuel oil.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this SIP revision is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

After evaluation of the State's submittal, the Administrator has determined that the Massachusetts revision meets the requirements of the Clean Air Act and 40 CFR Part 51. Accordingly, this revision is approved as a revision to the Massachusetts SIP.

Authority: Section 110(a) of the Clean Air Act, as amended, 42 U.S.C. 7410.

Dated: January 13, 1981.

Douglas M. Costle,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Massachusetts was approved by the Director of the **Federal Register** on July 1, 1980.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart W—Massachusetts

1. Section 52.1120, Paragraph (c) is amended by adding subparagraph (33) as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(33) A revision to Regulation 310 CMR 7.05(1) (formerly Regulation 5.1) "Sulfur Content of Fuels and Control Thereof" for the Pioneer Valley Air Pollution Control District submitted by the Commissioner of the Massachusetts Department of Environmental Quality Engineering on March 2, 1979.

2. Section 52.1126, paragraph (b) is amended by adding the following paragraph after the words "Mount Tom Generating Station, Holyoke":

§ 52.1126 Control strategies: sulfur oxides.

* * * * *

(b) Massachusetts Regulation 310 CMR 7.05(1)(e)(3) for Pioneer Valley, as submitted on March 2, 1979, which allows sources in Hampshire and Franklin Counties rated at less than 100 million Btu per hour heat input capacity to burn fuel oil having a sulfur content of not more than 1.21 pounds per million Btu heat release potential (approximately equivalent to 2.2% sulfur content) is approved for all such sources with the exception of:

Esleeck Manufacturing Co., Montague
Strathmore Paper Co., Montague
Millers Falls Paper Co., Millers Falls.

[FR Doc. 81-1922 Filed 1-16-81; 8:45 am]

BILLING CODE 6560-38-M

---

40 CFR Part 52

[A-2-FRL 1626-8]

Approval and Promulgation of Implementation Plans; New Jersey

AGENCY: Environmental Protection Agency.

ACTION: Final rule related notice.

SUMMARY: EPA, under the provisions of a federally promulgated regulation published in the June 4, 1979, **Federal Register** (44 FR 31979), and corrected in the July 2, 1979 **Federal Register** (44 FR 38471), requires the State of New Jersey to submit to EPA a copy of the permit application for specific coal conversions, together with an air quality analysis employing methodology acceptable to EPA. On November 26, 1980 the New Jersey Department of Environmental Protection submitted the permit and an air quality analysis for the conversion from oil to coal at unit 8 of Atlantic City Electric Company's Deepwater Generating Station, Deepwater, New Jersey. EPA has reviewed the impact of the proposed conversion and determined on the basis of the air quality modeling results that the proposed coal conversion will not interfere with the attainment or maintenance of air quality standards and will not cause any Prevention of Significant Deterioration (PSD) increment to be exceeded.

FOR FURTHER INFORMATION CONTACT: William S. Baker, (202) 264-2517.

(Secs. 110 and 301 of the Clean Air Act, as amended (42 U.S.C. 7410, 7601))

Dated: January 8, 1981.

Charles S. Warren,

Regional Administrator, Environmental Protection Agency.

[FR Doc. 81-1774 Filed 1-16-81; 8:45 am]

BILLING CODE 6560-38-M

---

40 CFR Part 205

[N-FRL-1517-8]

Noise Emission Standards for Transportation Equipment; Motorcycles and Motorcycle Exhaust Systems

Correction

In FR Doc. 80-40478, at page 86694, in the issue of Wednesday, December 31, 1980, on page 86723, in the first column, the first full paragraph, the last line, insert the word "except" between the words "section" and "with".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

42 CFR Part 52

Extension of Applicability Provisions of 42 CFR Part 52 to Include the Research Grant Program of the National Center for Health Care Technology; Technical Amendment

AGENCY: National Center for Health Care Technology, Office of Health Research, Statistics, and Technology, Public Health Service.

ACTION: Final rule; technical amendment.

SUMMARY: The National Center for Health Care Technology, Office of Health Research, Statistics, and Technology, Public Health Service (NCHCT/OHRST/PHS) by publishing this technical amendment of 42 CFR Part 52, Grants for Research Projects, incorporates a program of research grants authorized by section 309(b) of the Public Health Service Act (PHSA) into the group of programs to which Part 52 applies. Paragraph (b) of section 309 authorizes a program of grants to support research on health care technologies. This research grant program is to be administered by the NCHCT. The amendment to 42 CFR Part 52 does not expand the scope of the current regulations to include a new type of research project. Rather it indicates that in addition to grants for research on health care technologies made under sections 301, 303 and other provisions of the PHSA enumerated in the regulation, Part 52 will also apply to grants for such research authorized by section 309(b). No further amendments to Part 52, beyond that described, are necessary to implement this grant program.

The Department is not requesting public comment on the amended Part 52 since no substantive change is being made in the grant award procedures set forth in this regulation. It is a well-known and long-established rule of broad applicability including applicability to research on health care technologies and is familiar to the public and the scientific community which will seek support for grants authorized by section 309(b). There have been prior opportunities for public comment when substantive changes have been made in the rule.

EFFECTIVE DATE: January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Norman Weissman, Ph.D., Associate Director of Extramural Research/NCHCT, Room 17A-29, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1820.

Dated: December 17, 1980.

Julius B. Richmond,

Assistant Secretary for Health and Surgeon General.

Approved: January 13, 1981.

Patricia Roberts Harris,

Secretary.

Part 52, Grants for Research Projects, of Title 42 of the Code of Federal Regulations is hereby amended by

adding the following citation to the end of the Statement of Authority, "Sec. 309(b), 92 Stat. 3447 (42 U.S.C. 242n)," and by adding a paragraph (8) to § 52.1(a) to read as follows:

§ 52.1 [Amended]

(a) * * *

(8) Health care technology assessments, including studies of the safety, efficacy, effectiveness, and cost effectiveness of particular technologies, their social, ethical, and economic impacts, as well as studies of methods of dissemination of information about technologies, and factors affecting the use of technologies as authorized by section 309(b) of the Act (42 U.S.C. 242n).

* * * * *

The word "and" is removed from the end of paragraph 52.1(a)(6) and inserted instead at the end of paragraph 52.1(a)(7), following a semicolon which replaces the period at the end of paragraph 52.1(a)(7).

[FR Doc. 81-1853 Filed 1-16-81; 8:45 am]

BILLING CODE 4110-85-M

Social Security Administration

45 CFR Part 233

Financial Assistance Programs; Need and Amount of Assistance; Using Equity Value for Resources

AGENCY: Social Security Administration, HHS.

ACTION: Final rule; extension of grace period.

SUMMARY: On July 8, 1980, this final regulation which requires that the value of resources be determined based on equity was published in the **Federal Register** (45 FR 45911). A 90-day grace period for quality control purposes was provided for States to amend their rules and procedures. Based on information received after the final regulation was published, it is apparent that the 90-day grace period was not sufficient for State and local welfare agencies to take appropriate actions. Therefore, we are extending the grace period through January 31, 1981, so that it now incompasses 6 full months after publication of the final regulation.

EFFECTIVE DATE: This regulation was effective July 8, 1980. However, the grace period has been extended to a full 6 months during which States that have to amend their rules and procedures in order to comply with this regulation will not be adversely affected by quality control sanctions. States will have through January 31, 1981, to implement the changes.

FOR FURTHER INFORMATION CONTACT:

Mrs. Juanita Henderson, Office of Family Assistance, Social Security Administration, 2100 Second Street, S.W., Washington, D.C. 20024, telephone (202) 245-2021.

(Secs. 402 and 1102 of the Social Security Act, as amended, 49 Stat. 629 as amended, 49 Stat. 647 as amended; 42 U.S.C. 602 and 1302)

(Catalog of Federal Domestic Assistance Program No. 13.808, Assistance Payments—Maintenance Assistance (State Aid).)

Dated: December 22, 1980.

William J. Driver,

Commissioner of Social Security.

Approved: January 13, 1981.

Patricia Roberts Harris,

Secretary of Health and Human Services.

[FR Doc. 81-1849 Filed 1-16-81; 8:45 am]

BILLING CODE 4110-07-M

COMMUNITY SERVICES ADMINISTRATION

45 CFR Part 1069

Interpretive Ruling and Waiver of Special Conditions

AGENCY: Community Services Administration.

ACTION: Notice of interpretive ruling and waiver of certain grantee special conditions.

SUMMARY: The Community Services Administration is publishing an interpretive ruling issued by the General Counsel on January 12, 1981, regarding CSA grantee lobbying prohibitions. This interpretive ruling provides the Agency's legal position on the effect of certain lobbying prohibitions attached to CSA's appropriations acts for fiscal 1980 and 1981 (Pub. L. 96-123, Pub. L. 96-369 and H.J.R. 644 (12/15/80)). The purpose of publishing this interpretive ruling is to inform CSA grantees of the effect of the statutory lobbying prohibitions on present CSA regulations (45 CFR 1069.6). This notice and interpretive ruling also serves to waive special conditions attached to CSA grantees' fiscal 1980 and 1981 grants relating to lobbying prohibitions.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Mack, General Counsel, Community Services Administration, Room 548-I, 1200 19th Street, N.W., Washington, D.C. 20506, Telephone: (202) 254-6004.

(Sec. 602, 78 Stat. 530 (42 U.S.C. 2942))

Richard J. Rios,

Director.

Notice of Interpretive Ruling and Waiver of Special Conditions

1. *Interpretive Ruling*

"Memorandum to: Richard J. Rios, Director
From: Thomas J. Mack, General Counsel
Subject: Interpretive Ruling on Grantee Lobbying Prohibitions

Continuing resolutions providing appropriations for CSA and other agencies for fiscal 1981 (Pub. L. 96-369 and H.J.R. 644) incorporate a two-paragraph lobbying prohibition provision found in H.R. 4389 as passed by the House of Representatives on August 2, 1979. Identical provisions were passed by the House on August 27, 1980 in H.R. 7998. The latter bill is also incorporated in Pub. L. 96-369 and H.J.R. 644, but the relevant portions of these two acts make H.R. 4389's lobbying prohibition applicable to CSA. This prohibition is also applicable to fiscal 1980 appropriations through Pub. L. 96-123.

Section 407 of H.R. 4389 provides:

"Sec. 407. No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself. No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient or agent acting for such recipient to engage in any activity designed to influence legislation or appropriations pending before the Congress."

The Office of General Counsel has reviewed the legislative history behind Section 407 for guidance on how this provision should be implemented in the case of CSA. While other agencies receiving appropriations subject to H.R. 4389 may have no difficulty, CSA's statutory obligations create a question of conflict. The second paragraph of the provision, if read without regard to the first paragraph or to legislative history, could be interpreted to prevent all contact between CSA grantees and Congress regarding legislation, even where requested by Congress itself.

Many of CSA grantees have contract responsibilities which include advocacy on behalf of the poor, i.e., seeking those changes necessary to improve conditions for the poor, changes which often necessitate passage, elimination or amendment of laws, regulations, etc.

Congress has by statute mandated CSA to stimulate a better focusing of Federal resources on behalf of the poor. (Sec. 101, 201, Economic Opportunity Act of 1964, as amended).

Given this mandate, CSA has an obligation to interpret both its own statutory obligation and the more general lobbying prohibition in a manner which gives reasonable effect to both. While no direct legislative history exists, the issue is easily resolved when reference is made to comparable lobbying prohibitions. While Congress has often "prohibited" lobbying, it has never intended to eliminate contact between its members and affected constituencies on relevant pending legislation. At least two other Federal statutes with prohibitions comparable to those contained in Section 407 have been interpreted by the General Accounting Office in a manner which allows CSA to give reasonable effect to Section 407 and its own enabling legislation. In 18 U.S.C. 1913, a penal statute in effect since 1919, Congress prohibited Federal agency lobbying:

"No part of the money appropriated by an enactment of Congress shall in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

"Whoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section, shall be fined not more than $500 or imprisoned not more than one year, or both; and after notice and hearing by the superior officer vested with the power of removing him, shall be removed from office or employment."

The Comptroller General has stated that the primary purpose of Section 1913 is to prohibit Government officials from making appeals to the public to in turn contact their representatives with respect to legislation, but not to prohibit agency officials from expressing their views and agency policy on pending legislation and appropriation matters. (B–196559 (12/3/79), at 4). In short, Government officials cannot participate in grassroots lobbying. Another lobbying prohibition applicable to any and all appropriations has been enacted since 1973 as Section 607(a) of the Treasury, Postal Service, and General Government Appropriations Act. That section states:

"No part of any appropriation contained in this or any other Act, or of the funds available for expenditure by any corporation or agency, shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before Congress."

As with 1913, the Comptroller General has interpreted 607(a) to apply primarily to expenditures involving appeals addressed to members of the public suggesting that they contact their elected representatives and indicate support of or opposition to pending legislation, or urge their elected representatives to vote in a particular manner. (B–196559, at 3).

Thus, the Section 1913 and Section 607(a) statutory prohibitions, which are similar to H.R. 4389's Section 407 prohibition have been found to prohibit primarily grassroots lobbying by Federal officials. It is unclear whether Section 1913 and Section 607(a) apply to grantees of a Federal agency, although Comptroller General decisions appear to conclude the Section 1913 prohibition does not, while the Section 607(a) prohibition may apply to grantees in certain instances.

It is General Counsel's opinion that the restrictions of Section 407 of H.R. 4389 are properly subject to the same interpretation as GAO has given 1913 and 607(a) except that Congress has made it clear by adding the second paragraph of Section 407 that such prohibitions apply to Federal grantees as well as Federal agencies. Congress has instructed the agencies receiving appropriations under H.R. 4389 to insure that its grantees do not participate in grassroots lobbying, at least as regards pending legislation before the United States Congress, but it did not intend to cut off all contact between grantees and Congress with regard to such legislation.

A recent communication from Senator Warren Magnuson, Chairman of the Senate Labor, Health and Human Services and Education Appropriations Subcommittee confirms this Office's position. The Senator, in a letter to the Director of CSA, stated that his Committee agreed to the language of Section 407 of H.R. 4389, in large part, to restrict the use of Government funds to transport groups of people to Washington, D.C., for the purpose of affecting legislation. The Senator stated further:

Congress has mandated that the Community Services Administration assist this Nation's poor by serving, training, and representing them as stated in the Economic Opportunity Act of 1964 and ensuing amendments. The Senate Appropriations Committee did not intend by the above-quoted [407] language for CSA and its grantees to be prevented from carrying out its mandate to represent the poor in the following ways:

1. To respond to any requests for information from Members of Congress.

2. To provide educational information to Congress and the public in general on the effects of legislative issues on individuals and/or communities.

3. To provide information to Congress concerning legislative issues which directly affect the continued existence of CSA or its grantees.

The Senator concluded that allowance of these activities was consistent with Congressional intent that CSA assist the poor as well as with the guidelines that the Internal Revenue Service applies for non-profit organizations.

The letter from Senator Magnuson substantiated the General Counsel's conclusion that 407, like 1913 and 607(a) is intended to prohibit the Agency and its grantees from using CSA funds for grassroots lobbying or for financing large groups of people coming to Washington to lobby Congress directly.

Given the conclusions above, this Office does not believe CSA need amend its present rule on grantee lobbying activities, found at 45 CFR 1069.6. That regulation already states that CSA funds may not be used to support:

(3) Any campaign of advertising carried on through commercial media for the purpose of influencing the passage or defeat of legislation.

(4) Any campaign of letter writing, of other mass communications, or of mass visits to individual members of Congress or State legislatures for the purpose of influencing the passage or defeat of legislation. This restriction does not prohibit purely informational and educational activities involving target areas and groups. (45 CFR 1069.6–2(a) (3) and (4).)

The above regulatory provisions will continue to be interpreted to preclude the use of CSA appropriations for direct appeals addressed to the public suggesting that they contact their elected officials and indicate their support or opposition to pending legislation, i.e., appeals to members of the public for them in turn to urge their

representatives to vote in a particular manner.

The obvious question that arises from this conclusion is that if our regulation already prohibited such grassroots activities, why would Congress attach the prohibition in an appropriation act. Congress put the prohibition on an appropriation bill that funded a number of Federal agencies including CSA. Congress obviously did not make a study or a judgment of CSA's regulations or the regulations of the other agencies funded by the appropriation acts. It merely attached the prohibition to apply to all of the affected agencies, a number of which did not have controlling regulations. Congress merely legislated a prohibition that CSA already abides by.

This Office believes that publication of this interpretive ruling as a Notice in the **Federal Register** is the appropriate means of notifying grantees of the effect of Section 407 on CSA's present lobbying regulation. This approach is preferable since no regulatory amendment to 1069.6–2(a) (3) and (4) is required. It is also preferable since it provides the speediest vehicle for notifying grantees, many of whom are presently expending fiscal 1980 and 1981 funds at this time and are presently confused and concerned about the impact of 407 and of H.R. 4389. This point is particularly relevant since the present appropriations act (H.J. Res. 644) which contains reference to H.R. 4389 expires no later than June 5, 1981.

Finally, many grantees who have received fiscal 1980 and 1981 funds presently have a special condition in their grant that reflects a broader interpretation of 407. These special conditions were attached prior to General Counsel's conclusions regarding statutory provisions 607(a) and 18 U.S.C. 1913 and the receipt of the letter from Senator Magnuson.

These special conditions should be waived in the Federal Register Notice so that all grantees will be bound by the same interpretation of Section 407 and 1069.6–2(a) (3) and (4)."

2. *Waiver of Special Conditions*

Based on the interpretive ruling of the General Counsel, the Director is waiving special conditions attached to CSA grantees' fiscal 1980 and 1981 grants relating to grantee lobbying prohibitions. Grantees, instead, are to comply with the above interpretive ruling.

[FR Doc. 81-1809 Filed 1-16-81; 8:45 am]

BILLING CODE 6315-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Part 1300

Consolidated Grants to Insular Areas

AGENCY: Office of Human Development Services (HDS), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: These regulations implement the program of consolidated grants to the Insular Areas authorized by Title V of Pub. L. 95–134, commonly known as the Omnibus Territories Act, as amended. Title V authorizes each Federal agency to consolidate into a single grant award any or all grant funds to the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands (the "Insular Areas"). The purpose of these regulations is to minimize the burden caused by existing application and reporting procedures for certain HDS formula grants for social services programs awarded to the Insular Areas.

EFFECTIVE DATE: These regulations are effective January 19, 1981, rather than 30 days thereafter, because they grant an exemption from requirements for multiple grant awards to certain Insular Areas. Waiver of the 30 day period will not adversely affect any Insular Area. However, for an exception affecting §§ 1300.4 and 1300.7, see Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Mrs. Johnnie U. Brooks, Room 722E, HHH Building, Department of Health and Human Services, 200 Independence Avenue, SW., Washington, D.C. 20201, (202) 472–4415.

SUPPLEMENTARY INFORMATION:

Background

Although the name "Omnibus Territories Act" is not listed as the popular name of the law in Pub. L. 95–134, we are using this name since it is a convenient shorthand and since the law has been referred to throughout the government as the Omnibus Territories Act. Section 510 of Pub. L. 95–134, the Omnibus Territories Act, as amended, permits Federal agencies to revise existing application and reporting procedures for certain grant-in-aid programs available to the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands (The "Insular Areas"). Specifically Section 501 permits:

(a) A Federal agency to consolidate any or all grants to each of these Insular Areas except those grants used to make direct payments to individuals. A consolidated grant for any Insular Area cannot be less than the sum of all grants which such area would otherwise be entitled to receive for such year;

(b) A Federal agency to waive requirements for matching funds, applications, and reports with respect to the consolidated grant; and

(c) An Insular Area to use the consolidated grant funds for any purpose or purposes authorized under any of the grant programs that have been consolidated.

Participation by an Insular Area in the consolidated grant program is voluntary. If an Insular Area does not wish to participate in the consolidated grant program, it must follow current application and reporting procedures to receive funds for services under titles I, IV–A, IV–B, X, XIV, XVI (AABD) and XX of the Social Security Act. At the present time only the Virgin Islands, Guam and the Commonwealth of the Northern Mariana Islands are eligible to receive consolidated grants under these titles.

The Secretary of Health and Human Services decided to allow consolidation of only the formula grant funds administered by the Public Health Service and the Office of Human Development Services (HDS) and decided not to waive the current matching, application, and reporting requirements. These final regulations apply only to formula grant funds available for social services from the Office of Human Development Services to the Insular Areas. Final regulations for consolidated grant awards from the Public Health Service were published in the **Federal Register** on November 9, 1979.

HDS is also developing guidelines that give specific procedures on how to apply for a report on the use of the consolidated funds. We expect that by the end of December 1980 these guidelines will be ready to submit for official OMB clearance with respect to reporting and recordkeeping requirements. Sections 1300.4, Grant application procedures, and 1300.7, Reporting requirements, will not take effect until the guidelines receive OMB clearance. The Insular Areas will be notified when official OMB clearance is obtained.

Affected HDS Formula Grants

Subsequent to passage of Pub. L. 95–134, Congress enacted legislation (Section 102(h) of Pub. L. 95–478) exempting from consolidation any

formula grants authorized by the Older Americans Act of 1965, as amended. Consequently, an Insular Area may only apply for a grant consolidating funds available for social services under the following titles of the Social Security Act:

Title I—Grants to States for Old-Age Assistance and Medical Assistance for the Aged
Title IV, Part A—Aid to Families With Dependent Children
Title IV, Part B—Child Welfare Services
Title X—Grants to States for Aid to the Blind
Title XIV—Grants to States for Aid to the Permanently and Totally Disabled
Title XVI—Grants to States for Aid to the Aged, Blind or Disabled
Title XX—Grants to States for Services (for the purposes authorized under Section 2002(a)(2)(C) of the Act)

Additional formula grant programs may be added in the future.

Specific Information About HDS Formula Grants

The Insular Areas are eligible to receive funds for services under several Social Security Act titles:

1. Under authority of titles I, IV–A, X, XIV and XVI(AABD), funds are made available to the Virgin Islands and Guam for income maintenance payments and the provision of social services to eligible individuals. Section 1108 of the Social Security Act imposes a ceiling on the amount of such Federal funds allotted to each of the Insular Areas under these titles. Although the Commonwealth of the Northern Mariana Islands is authorized to participate in programs under these titles, at this time it is still in its early stages of developing social services programs.

The Department's Social Security Administration makes grant awards to the Virgin Islands and Guam for their income maintenance programs in accordance with Section 1108. If the Virgin Islands or Guam decides to use a portion of the Section 1108 funds for the provision of social services, HDS awards the grant for services. Of the funds available under Section 1108 only those awarded by HDS for social services are eligible for consolidation under Pub. L. 95–134.

2. Title IV–B (Child Welfare Services) funds are eligible for consolidation under Pub. L. 95–134 to the Virgin Islands, Guam and the Commonwealth of the Northern Mariana Islands.

3. Prior to enactment of Pub. L. 96–272 ("Adoption Assistance and Child Welfare Act of 1980") on June 17, 1980, Section 2002(a)(2)(C) of the Act authorized certain unused title XX funds to be allotted to the Virgin Islands and Guam if any of the 50 States and the District of Columbia certified that they would not use all of their title XX allotment. This did not authorize these Insular Areas to participate in the title XX social services program. Pub. L. 96–272 amended Section 2002(a)(2)(C) of the Act to make a separate allocation available to the Virgin Islands and Guam, rather than an amount dependent on funds unused by the States, beginning in fiscal year 1980. In addition, Pub. L. 96–272 makes funds available to the Commonwealth of the Northern Mariana Islands under Section 2002(a)(2)(C) of the Act. Pub. L. 96–272 retains the requirement in Section 2002(a)(2)(C) of the Act that the Virgin Islands and Guam spend the Section 2002(a)(2)(C) funds they receive on behalf of services authorized under titles I, IV–A, X, XIV and XVI (AABD) of the Act; the Commonwealth of the Northern Mariana Islands must spend its Section 2002(a)(2)(C) funds on services provided to title IV–A recipients or to other individuals as determined by the Secretary.

However, notwithstanding the above provisions or any other provisions of law to the contrary, Pub. L. 95–348 amended Pub. L. 95–134 to allow an Insular Area to use the funds received under a consolidated grant for any of the programs included in the consolidated grant (including the use of funds authorized by Section 2002(a)(2)(C) of the Act for services provided under title IV–B of the Act).

Response to the NPRM

A Notice of Proposed Rulemaking was published on April 7, 1980 (45 FR 23477) followed by a 45-day comment period. The Government of Guam sent its general support of the proposed regulations and requested the Secretary to reconsider the decision not to waive the matching funds requirement. This decision was reconsidered. However, consistent with her policy to encourage increases, not decreases, in services, the Secretary chose to stay with the Department's original decision not to waive the matching funds requirement. No other comments were received as a result of the NPRM.

Differences Between the Proposed Regulations and the Final Rule

The final rule includes the following changes:

1. Throughout the final rule, wherever a cross-reference such as "§ 1300.2, Scope," appeared in the NPRM, the cross-reference is changed to "§ 1300.2." The title of the section has been dropped.

2. Table of Contents—Reflects the title change for § 1300.5 from "Matching Funds Requirements" to "Fiscal and Administrative Requirements."

3. Authority—Reflects the addition of "a" at the end of the statutory citation as follows: 48 U.S.C. 1469a.

4. Sections 1300.1, 1300.2, 1300.4, 1300.5, 1300.6 and 1300.7 are recoded for clarity.

5. Section 1300.1—A statement of purpose is added.

6. Section 1300.2—A new parenthetical phrase is added to paragraph (b) to read as follows: Title XX—Grants to States for Services (for the purposes authorized under Section 2002(a)(2)(C) of the Act). This phrase is added to clarify that Section 2002(a)(2)(C) includes an entitlement of funds to certain Insular Areas (including the Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands) even though the Insular Areas are not authorized to have a title XX program.

7. Section 1300.3—A definition of single grant application is added to clarify the responsibility of the Insular Area, as distinct from the consolidated grant award which is the responsibility of the Department.

8. Section 1300.4—The text is changed slightly, but no substantive change in policy is intended.

9. Section 1300.5—The title of the Section is changed from "Matching Funds Requirements" to "Fiscal and Administrative Requirements". A paragraph (b) is added to affirm the requirement in § 501(b) of Pub. L. 95–134 that any consolidated grant for any Insular Area shall not be less than the sum of all grants which such area would otherwise be entitled to receive for such year. A paragraph (c) is also added to affirm that the provisions of 45 CFR Part 74, establishing uniform administrative requirements and cost principles, shall apply to all consolidated grants made under this Subpart.

10. The final rule drops the provision in the NPRM that funds made available under title XX can only be used for social services authorized by titles I, IV–A, X, XIV, or XVI (AABD). Based on a legislative amendment (Section 9 of Pub. L. 95–348) to Pub. L. 95–134, the final regulations allow any funds from a consolidated grant award to be spent for any of the programs included in the consolidated grant (including the use of funds authorized by Section 2002(a)(2)(C) of the Act for services provided under title IV–B of the Act.)

11. Section 1300.7—A paragraph (b) is added to affirm the requirement in § 501(d) of Pub. L. 95–134 for the Department's continued responsibilities

to provide adequate procedures for accounting, auditing, evaluating, and reviewing any programs or activities receiving benefits from any consolidated grant.

(Sec. 501 of Title V of Pub. L. 95–134, the Omnibus Territories Act, as amended, 48 U.S.C. 1469a)

(Catalog of Federal Domestic Assistance Programs No. 13.642, Social Services for Low Income and Public Assistance Recipients; No. 13.645, Child Welfare Services.)

Dated: November 25, 1980.

Cesar A. Perales,

Assistant Secretary for Human Development Services.

Approved: January 3, 1981.

Patricia Roberts Harris,

Secretary.

PART 1300—GENERAL REGULATIONS

Title 45 is amended to add a new Part 1300 consisting of Subpart A to read as follows:

Subpart A—Consolidated Grants to Insular Areas

Sec.

1300.1 Basis and purpose.
1300.2 Scope.
1300.3 Definitions.
1300.4 Grant application procedures.
1300.5 Fiscal and administrative requirements.
1300.6 Use of consolidated grant funds.
1300.7 Reporting requirements.

Authority: Sec. 501 of Title V of Pub. L. 95–134, the Omnibus Territories Act, as amended, 48 U.S.C. 1469a.

Subpart A—Consolidated Grants to Insular Areas

§ 1300.1 Basis and purpose.

(a) These regulations implement Title V of Pub. L. 95–134, the Omnibus Territories Act, as amended, by allowing an Insular Area: (1) to submit a single application and other supporting documentation in order to receive a single grant award consolidating the formula grant funds available for social services under certain titles of the Social Security Act; and (2) to allocate the funds among one or more of the various titles consolidated under the grant awards.

(b) The purpose of this Subpart is to minimize the burden caused by existing application and reporting procedures for certain formula grants awarded to the Insular Areas by the Office of Human Development Services.

§ 1300.2 Scope.

(a) These regulations apply to the consolidation of formula grant funds for social services available to the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands under the Social Security Act titles listed in paragraph (b) of this section.

(b) The following formula grant funds for social services may be consolidated under these regulations:

(1) Title I—Grants to States for Old-Age Assistance and Medical Assistance for the Aged.

(2) Title IV, Part A—Aid to Families with Dependent Children.

(3) Title IV, Part B—Child Welfare Services.

(4) Title X—Grants to States for Aid to the Blind.

(5) Title XIV—Grants to States for Aid to the Permanently and Totally Disabled.

(6) Title XVI—Grants to States for Aid to the Aged, Blind, or Disabled.

(7) Title XX—Grants to States for Services (for the purposes authorized under Section 2002(a)(2)(C) of the Act).

§ 1300.3 Definitions.

(a) "Assistant Secretary" means the Assistant Secretary for Human Development Services.

(b) "Single Grant Application" means the document or documents an Insular Area must submit to HDS in any fiscal year to apply for a consolidated grant award.

(c) "Consolidated Grant Award" means the single quarterly grant award to an Insular Area, the funds for which are derived from the allocations under the programs specified in Section 1300.2

(d) "Insular Area" means the Virgin Islands, Guam, American Samoa, the Trust Terrritory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

§ 1300.4 Grant application procedures.

(a) An Insular Area may apply for a grant award consolidating two or more of the formula grant funds specified in § 1300.2(b) by submitting a single grant application, budget, and any supporting documentation, rather than the various applications and budgets which must be submitted under any of these Social Security Act titles.

(b) The single application must be submitted within time limits and in the format prescribed by the Assistant Secretary in guidelines.

§ 1300.5 Fiscal and administrative requirements.

(a) Grant funds awarded under a consolidated grant are subject to the matching funds requirements applicable to the Social Security Act titles under which the funds are made available.

(b) Any consolidated grant for any Insular Area cannot be less than the sum of all the grants which such area would otherwise be entitled to receive for such year.

(c) The provisions of Part 74 of this title establishing uniform administrative requirements and cost principles, shall apply to all consolidated grants made under this Subpart.

§ 1300.6 Use of consolidated grant funds.

(a) An Insular Area may use funds awarded under a consolidated grant for that fiscal year for any social services authorized by any of the titles listed in § 1300.2(b) that are included in the consolidated grant award.

(b) Except as provided in these regulations, an Insular Area that receives funds under a consolidated grant made under this Subpart must meet the statutory, regulatory, and administrative requirements applicable to the titles for which those funds are spent.

§ 1300.76 Reporting requirements.

(a) An Insular Area which receives a consolidated grant under this Subpart must submit a single report on the use of the funds to the Assistant Secretary. The single report must be in the format and contain the information prescribed by the Assistant Secretary in guidelines.

(b) Nothing in paragraph (a) of this section shall preclude the Department from continuing to carry out its responsibility to provide adequate procedures for accounting, auditing, evaluation, and reviewing any programs or activities receiving benefits from any consolidated grant awarded under this Subpart.

[FR Doc. 81–1852 Filed 1–16–81; 8:45 am]

BILLING CODE 4110–92–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[FCC 80–708]

Radio Frequency Devices; Order Granting Waiver

AGENCY: Federal Communications Commission.

ACTION: Order granting waiver.

SUMMARY: In 1979, the FCC promulgated rules to control the interference potential of electronic products to radio communications. Under these rules, personal computers manufactured after January 1, 1981 must be certificated by the Commission as a Class B Computing Device. In response to two petitions for special relief, the Commission granted a 3-month extension to two manufacturers

of personal computers. Delegated authority was granted to the Commission's Chief Scientist to grant similar short term waivers where the petitioner provided certain information.

EFFECTIVE DATE: December 4, 1980.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Herman Garlan or Sydney Bradfield, Office of Science and Technology, (202–653–8121 or 202–653–8131).

SUPPLEMENTARY INFORMATION:

Order Granting Waiver

Adopted: December 4, 1980.

Released: December 9, 1980.

By the Commission:

In the matter of petition by Apple Computer, Inc. and Heath Company for a limited extension of § 15.834 as it requires certification of personal computers, and peripherals capable of being attached to a personal computer, manufactured after January 1, 1981.

1. On October 11, 1979, the Commission released rules establishing technical standards and equipment authorization procedures for computing equipment.[1] These rules were revised on reconsideration. The revised rules were released on April 9, 1980.[2]

2. These computer rules establish two classes of computing equipment: Class B which is basically marketed for use in a residential environment; and, Class A for use in a commercial/industrial environment. They specify limits for conducted and radiated interference. They also specify the equipment authorization procedure to be used to demonstrate compliance. Finally, the rules provide a labelling procedure to make the purchaser aware of compliance with our rules and the interference potential of the equipment.

3. Among other things, these rules specifically classify personal computers and their peripheral devices as Class B computing equipment (Section 15.834(a)(1)) and require such equipment manufactured after January 1, 1981 be certificated [3] by the Commission (Section 15.834(a)).

4. Apple Computer, Inc. (Apple) on November 3, 1980, and Heath Company (Heath) on October 20, 1980, each filed requests for the Commission to delay the January 1, 1981, certification date for their products.[4] The Heath petition was put on public notice October 31, 1980. The Apple petition was put on public notice November 7, 1980. Comments regarding the Heath petition were received from Tandy Corporation (Tandy) on November 10, 1980.

5. Both the Heath and Apple petitions cite the fact that they have expended considerable sums of time and money in an effort to redesign their products to meet the new criteria, but that because of unforseen technical problems, and, in the case of Apple, delays in vendor deliveries, neither can guarantee the products they manufacture after January 1, 1981, will meet the Class B limits. In addition, both petitioners cite economic hardship as a result of their inability to manufacture their products if the Commission does not grant their petitions.

6. In its petition, Apple enumerated the exact nature of their redesign and procurement problems. In addition, Apple laid out a specific date beyond which they guarantee they will only manufacture and market products that comply with the Class B standards. Apple has also stated that as parts necessary to achieve compliance arrive at their manufacturing location they will immediately be installed in manufactured units, thereby reducing the degree of non-compliance for these future units in advance of the delay date. Finally, Apple has submitted to the Commission applications for certification on nine of their product line and has promised to provide the hardware for each of the products as soon as it is available.

7. We feel the petition from Apple has merit. In the First Report and Order establishing the limits we stated we would accept waivers in special hardship cases.[5] We also stated that, in the event a waiver were granted, we would require equipment produced under the waiver to bear a label indicating the equipment was likely to cause interference to radio and television reception. The wording specified in that order appears appropriate in this case:

This equipment is marketed pursuant to a waiver of FCC Rules Part 15 Subpart J. Operation of this computer in a residential area is likely to cause objectionable interference to radio and TV reception, because it emits more radio frequency energy than the FCC Rules allow. If interference occurs, the user will be required to take all steps necessary to correct the interference.

8. In order to efficiently consider and act on any additional waiver requests for extensions of time by personal computer and peripheral manufacturers, delegated authority is hereby granted to the Chief Scientist to grant waivers of this type. The Chief Scientist shall base his decision on a petitioner satisfactorily providing the following information:

a. The steps taken by the manufacturer to meet the established date, and the reasons why the date cannot be met. The steps and reasons may be different for different products.

b. An exact timetable by which the manufacturer fully expects to have each product in compliance (including certification by the Commission).

c. An assurance by the manfacturer that equipment produced will include as many RF supression techniques and components that are possible during the waiver period.

9. In contrast to the Apple petition, Heath submitted relatively little information about its products. Although Heath did enumerate the approximate amount of money expended on the redesign and testing of their products to comply with the Commission's standards, they did not specifically propose a timetable around which its products will meet the standards. In addition, Heath did not indicate that as components of their products necessary for the standards to be met became available, they would utilize the newly arrived components to lessen the severity of the interference from the subsequently produced devices. In addition, Heath has not applied for certification of their products.

10. In their comments to the Heath petition, Tandy opposes the postponement of the January 1, 1981, certification date for only one manufacturer. Instead, Tandy believes the date should be postponed for the entire industry "to make for a smoother transition." There is no justification provided to support this argument.

11. Although the Heath petition did not contain all the elements enumerated in paragraph 8, we will grant them some extension of time for two reasons. First, they filed sufficiently ahead of the January 1, 1981, date to allow adequate Commission consideration. Second, Heath, unlike future petitioners did not have the benefit of the guidance of this order. If Heath desires time extension beyond that granted herein, we will consider additional petitions provided they contain the information requested in paragraph 8.

12. Accordingly, it is ordered that the date in Section 15.834(a) for certification of personal computers and accompanying peripheral equipment

[1] First Report and Order in Docket 20780, adopted September 18, 1979, released October 11, 1979, 44 FR 59530, October 16, 1979.

[2] Order Granting in Part Reconsideration in Docket 20780, adopted March 27, 1980, released April 9, 1980, 45 FR 24154, April 9, 1980.

[3] The Commission's equipment authorization program is described in Part 2 Subparts I, J, K and L of our rules (47 CFR Part 2 Subpart I, J, K and L).

[4] Apple requested a ninety day delay; Heath requested a six month delay.

[5] See 44 FR 59530, October 16, 1979, at par. 47.

manufactured by Apple Computer, Inc. and the Heath Company is hereby stayed from January 1, 1981 to April 1, 1981 subject to the condition that each unit manufactured under this waiver carries the following warning label:

This equipment is marketed pursuant to a waiver of FCC Rules Part 15 Subpart J. Operation of this computer in a residential area may cause objectionable interference to radio and TV reception, because it emits more radio frequency energy than the FCC Rules allow. If interference occures, the user will required to take all steps necessary to correct the interference.

13. It is further ordered that, pursuant to § 1.427(b), since it relieves a regulatory restriction, this order shall become effective on December 4, 1980.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 81-1875 Filed 1-16-81; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 15

[FCC 80-709]

Radio Frequency Devices; Order Granting Waiver

AGENCY: Federal Communications Commission.

ACTION: Order granting waiver.

SUMMARY: The Commission has granted to manufacturers of personal computers a conditional waiver of its requirements for computing devices for certain interface units which can only be attached to a personal computer manufactured before January 1, 1981. The Commission also delegated authority to its Chief Scientist to grant similar waivers for peripherals that can only be attached to personal computers manufactured before January 1, 1981 and do not significantly increase the interference potential of the complete system to radio and TV reception.

EFFECTIVE DATE: December 4, 1980.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Herman Garlan or Sydney Bradfield, Office of Science and Technology, (202-653-8121 or 202-653-8131).

SUPPLEMENTARY INFORMATION:

Order Granting Waiver

Adopted: December 4, 1980.

Released: December 10, 1980.

By the Commission:

In the matter of Tandy Corporation petition for conditional waiver of Part 15, Sections 15.830, 15.832, and 15.834 for Radio Shack Computer Interface Device Models 26.1140, 26.1141, and 26.1142.

1. The Tandy Corporation on August 22, 1980, filed a petition for conditional waiver of Sections 15.830, 15.832, and 15.834 of Part 15 for its Radio Shack Computer Interface Device Models 26.1140, 26.1141, and 26.1142. These interface devices are a means of connecting various peripheral devices to Radio Shack Computer TRS 80 Model I for the purpose of expanding the capability of this TRS 80 Model I computer. Tandy asserts that these interface models are totally incompatible with any other computer marketed by Tandy. The only possible market for these interface devices according to Tandy, are the approximately 100,000 consumers who purchased TRS 80 Model I computers, but who did not buy the mentioned computer interface device. Tandy is accordingly seeking a waiver to permit it to continue manufacturing the said interface devices until January 1, 1983.

2. The subject petition was placed on public notice on September 8, 1980, FCC mimeo 35675, asking for comments by September 22, 1980. Comments were received from the Association of Maximum Service Telecasters, Inc. (MST) and from Texas Instruments (TI). Reply comments were received from Tandy on September 29, 1980.

3. Tandy states that when it sold the TRS 80 Model I computer, it assured its customers that the subject interfaces would be available in the future if the purchaser wanted to expand the capability of his basic TRS 80 Model I computer. The waiver sought by Tandy is to fulfill this promise and retain its credibility with its customers.

4. Tandy points out that this promise to its customers could be maintained in either of two ways. It could have accelerated its manufacturing and stock piled as many of these interface devices as it estimated it would sell within the next two years. This course of action is permitted under the Commission's computer rules.[1] Tandy elected not to follow this procedure, because of the unpredictability of the market and the likelihood of over or under estimating the demand for these interface devices. Instead, Tandy requested a conditional waiver of the rules to permit a monthly production of only those units requested by its customers.

5. The Association of Maximum Service Telecasters, Inc. (MST),[2] in their comments filed on September 22, 1980, submits that "Tandy's Petition should be denied outright due to its (Tandy) failure to provide any supporting material, let alone technical data permitting evaluation of possible interference to the public's television reception." In absence of technical data, MST asserts the interference potential of the interface devices cannot be evaluated and no favorable decision on the waiver is justifiable.

6. Texas Instruments Incorporated (TI), in its comments to the Tandy petition filed on September 22, 1980, states that the Tandy petition lacks specificity on two crucial questions: "First, one must assume that the TRS 80 Model I is not capable of certification and will not be manufactured after December 31, 1980; and second, one must assume that Tandy will not manufacture a new computer after January 1, 1981 which could use the expansion interfaces which would remain on the market." If these premises are confirmed by Tandy, TI states that it would have no objection to the granted waiver.

6. In its reply comments filed on September 26, 1980, Tandy assures the Commission, TI and MST that it will not manufacture a computer that can be operated with the subject interface models after January 1, 1981. Furthermore, the TRS 80 Model I computer will not be manufactured after January 1, 1981. Tandy argues that MST missed the real question with respect to its petition. Tandy restates that its request is merely to continue to honor its obligation to market the subject units which interface to a computer that will cease production on or before December 31, 1980. Moreover, there are many interface units already sold with no cases of reported interference where the interface was identified as the source.

7. In a letter dated November 14, 1980, Tandy supplements its comments by stating the attachment of the subject interface units do not significantly increase the interference potential of TRS 80 Model I. This is based on a cursory evaluation of the interfaces attached to Model I computers by Tandy's engineers. The letter also states that Tandy does not expect to sell more than 30,000 units of the subject interfaces.

---

[1] Section 15.834(a)(3) requires "peripherals, terminals, etc. that are capable of being attached to a personal computer" which are manufactured after January 1, 1981 shall be certificated by the Commission to show compliance with the technical standards for computing equipment. Since the Radio Shack TRS 80 Model I has been found to be a personal computer, any attachment thereto that can be sold separately must likewise be certificated.

[2] MST is an organization of more than 240 television broadcast stations, UHF and VHF in small, medium and large markets across the country, interested in maintaining and improving high technical quality television broadcast service.

Commission Decision

8. The new rules adopted on September 18, 1979 are designed to reduce the interference potential of personal computers and other electronic devices to radio and TV reception.[3] The effective date was postponed and other changes were made to these rules in an Order Granting Reconsideration adopted by the Commission on March 27, 1980.[4] As stated in the first Report and Order, the Commission is particularly concerned about the interference caused by personal computers to radio and TV reception.[5] A number of cases of interference were reported to the Commission in 1978 and 1979. Because of these reported interference cases, the Commission required certification for personal computers and all peripherals which are attached to personal computers. Certification is a prerequisite for marketing of personal computers manufactured after January 1, 1981, pursuant to Section 15.834 of the rules, as revised on March 27, 1980. Certification is expected to provide additional assurance that such devices do in fact comply with the Commission's rules and therefore can be expected to provide reasonable assurance that it will not cause interference to radio and TV reception.

9. In our opinion, there are a number of factors that warrant the relief requested by Tandy. First and foremost is the fact that the production of non-complying computers will cease on or before January 1, 1981, which satisfies one of the concerns expressed by TI. Second, the subject interface unit can only be attached to the TRS 80 Model I computers. Newer computers are said to have a different input bus and therefor the subject interface units cannot be used with computers manufactured after January 1, 1981. This should satisfy the second concern expressed by TI. Third, Tandy asserts that the attachment of the subject interfaces to the TRS 80 Model I will not significantly increase the interference potential of the non-complying system. Unfortunately, these are only non-conclusive opinions which cannot be substantiated before a decision from the Commission is required. To defer action on this petition, or to deny it outright as suggested by MST, until tests have been made, would, in our opinion, be unresponsive to this request for relief. Therefore, to satisfy the concern expressed by MST, we are placing a 6dB limit on the increase interference potential of the system. Finally, in view of the current economic situation and the fact that the interference units marketed under this waiver will not perpetuate the production of new computers capable of causing interference to TV reception, the Commission is persuaded to grant the relief sought by Tandy. Conditions are attached to the waiver to deal with the above stated concerns.

10. Accordingly, the Commission hereby waives §§ 15.830, 15.832, 15.834 for Radio Shack Computer Interface Device Models 26.1140, 26.1141, 26.1142 subject to the following conditions:

1. The waiver is limited to one year; i.e., manufacture of the subject equipment must cease December 31, 1981.

2. Test data must accompany the petition showing that the interference potential of the non-complying computer will not be increased by more than 6dB when the peripheral is attached to the computer.

3. Not more than 30,000 units of the subject models may be manufactured under the terms of this waiver.

4. The subject devices shall be incapable of being attached to a personal computer manufactured after January 1, 1981.

5. The grantee accepts the responsibility to correct any interference complaints where its equipment has been identified as the source or to refund the purchase price of the equipment.

11. It is further ordered that, pursuant to § 1.427(b), since it grants an exemption from a regulatory requirement, this order shall become effective December 4, 1980.

12. Since it is conceivable that other manufacturers may have peripherals that can be used on non-complying personal computers manufactured prior to January 1, 1981, the Commission will entertain applications for similar waivers to manufacturers. The Chief Scientist is hereby granted delegated authority to grant waivers for devices that satisfactorily meet these same conditions.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 81-1876 Filed 1-16-81; 8:45 am]

BILLING CODE 6712-01-M

[3] First Report & Order in Docket 20780 adopted September 18, 1979 and published in the **Federal Register** on October 16, 1979 at 44 FR 59530.

[4] Order Granting in Part Reconsideration adopted March 27, 1980 and published in the **Federal Register** on April 9, 1980 at 45 FR 24154.

[5] See paragraphs 14–23 of the First Report and Order in Docket 20780, footnote 3, supra.

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1003, 1100

[Ex Parte No. 55 (Sub-No. 44)]

Rules Governing Applications Filed by Motor Carriers

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Final Rules.

SUMMARY: Section 27 of The Motor Carrier Act of 1980 establishes time frames for the processing of motor carrier acquisition applications. In order to immediately implement these time frames, the Commission, in this proceeding adopted interim rules governing applications filed by motor carriers (1) to consolidate, purchase, merge, or lease operating rights and properties, or to acquire control of motor carriers pursuant to 49 U.S.C. 11343 and (2) to be granted temporary authority to engage in operations under 49 U.S.C. 11349 corresponding to permanent authority which is sought under 49 U.S.C. 11343 and 10926. The notice of interim rules included a request for public comment on the feasibility of the rules as final rules.

DATES: These regulations are effective January 19, 1981.

FOR FURTHER INFORMATION CONTACT:

Eliot Horowitz, (202) 275–7657.

For copies of these rules: Office of the Secretary 202–275–7428 or 800–424–5230.

SUPPLEMENTARY INFORMATION: These rules are designed to ensure that the Commission processes motor carrier acquisition cases as efficiently as possible while also meeting the time-frames established under 49 U.S.C. 11345a. The statute provides that within 30 days of the filing of an application, the Commission must either (1) publish notice of the proposal in the **Federal Register** or (2) reject it if improperly filed. Once an application is published, written comments about it must be received by the Commission within the following 45 day period. The Commission must conclude all evidentiary proceedings within 240 days from the **Federal Register** publication and render a final decision within the next 180 day period.

Applications Affected by These Rules

Applications filed on or after January 19, 1981 will use these rules. Applications filed between July 3, 1980 and January 16, 1981, will continue to use the interim rules.

Preliminary Matters

On July 3, 1980, the Commission published interim rules in this proceeding to be codified at 49 CFR 1100.240(A) through 1100.240(E). On October 1, 1980, the Commission published notice (at 49 FR 64958) of a change in the codification of these rules as follows:

Old section No.	New section No.
1100.240(A)	1100.240
1100.240(B)	1100.241
1100.240(C)	1100.242
1100.240(D)	1100.243
1100.240(E)	1100.244

In order to avoid confusion, whenever reference is made in this notice to an interim regulation, both codifications will be cited (e.g. § 1100.241(a)(1), formerly § 1100.240(b)(a)(1)).

The comments of the Motor Carrier Lawyers Association embrace a motion (1) to dismiss the interim application of these rules and (2) for oral arguments in this proceeding.

The MCLA claims that the Commission has failed to establish a sufficient basis under 5 U.S.C. 553(b) (A) and (B) for the immediate use of these rules. Furthermore, it argues that, in view of the significance of this proceeding, oral argument would provide the Commission with the best means of receiving input from the public, and ultimately formulating sound, final regulations.

As we pointed out in the notice of interim rules and request for comments, these rules are designed to ensure Commission compliance with the statutory time frames governing "acquisition" transactions contained in section 11345a of the Motor Carrier Act of 1980. The Act, of course, became effective on July 1, 1980, necessitating the immediate use of the interim rules prior to our formulation of final regulations. We disgree with the MCLA's contentions that the rules place a greater burden on parties to acquisition proceedings than on the Commission (respecting time frames) or that the procedural changes involved (for reasons discussed *infra*) do not afford parties adequate opportunity to prepare their cases.

Secondly, we do not perceive a need for oral argument in this proceeding. The issues involved can be adequately addressed and resolved based on a written record. This is particularly true in this proceeding where procedural rather than substantive changes in the law are contemplated.

Accordingly, the motion filed by the MCLA is denied.

The Interim Rules

Under the interim rules, applicants have been required to submit all of their information in support of a proposal along with their application. (See § 1100.240, formerly § 1100.240(A)). This requirement does not constitute a departure from past practice, since the involved application forms elicit all of the information required for the processing of an application. Significantly, under the interim rules no substantive changes have been made to the application forms. Minor modifications have been made to the instructions accompanying the forms to reflect technical changes in case processing.

The interim rules do require, for the first time, that protestants file all of their evidence in opposition to a proposal within 45 days from the date notice of an application is published in the **Federal Register.** (See § 1100.241, formerly § 1100.240(B)). Applicants are afforded 15 days for the filing of an (optional) reply. All pleadings, other than those consisting wholly of legal argument (e.g. arguments of counsel and motions) must be verified.

The Commission will decide a case once the record of evidence is closed. No need exists for the service of a "designation" or "modified procedure" order upon parties to a proceeding. The decision-notice format adopted by the Commission in *Summary Grant Procedure (Finance),* 49 FR 41203 (July 16, 1979) has been retained.

While we do not contemplate that many cases will be assigned to oral hearing, the rules include procedures (1) under which parties may request hearings and (2) pertaining to the Commission's handling of such requests. (See § 1100.242 formerly § 1100.240(C)).

Several general rules (concerning such matters as verification and copies of pleadings) are set forth at the § 1100.243, formerly § 1100.240(D).

Finally, the rules at § 1100.244, formerly § 1100.240(E), concern the filing and processing of applications filed under 49 U.S.C. 11344. These applications involve requests for temporary authority to conduct operations corresponding to those sought in permanent applications filed under 49 U.S.C. 11344 or 10926. The involved rules have not been substantively changed but merely reworded for clarification.

Summary of Comments

Comments have been received from a federal agency, several associations representing industry members and practitioners, and from individual practitioners and motor carrier firms.

Several commenters argue that the Commission should not require applicants in acquisition cases to file their entire case at the outset of a proceeding. These persons claim that the Act does not impose time frames which require this practice to be followed. As a consequence of such a rule, however, they contend that applicants will often have to engage in unnecessary time, effort and expense (where, for example, a proceeding is ultimately unopposed). In essence, these commenters suggest that the Commission is imposing unreasonable restraints upon applicants in order to facilitate its own goal of timely processing cases.

In a related matter, several commenters argue that the requirement that applications be complete upon filing will delay the filing and processing of applications for temporary authority under 49 U.S.C. 11349. Since temporary authority applications are filed for the purpose of preserving the integrity of operating rights which are the subject of a proposed permanent acquisition transaction, they suggest that such proposals should be permitted to accompany incomplete permanent application filings.

A number of commenters also challenge the rule which would bar the filing of amendments to an application. Basically, they feel that such a rule merely deprives the Commission of exercising its discretion with respect to the merits of a given, proposed amendment.

The Department of Justice (DOJ) has expressed concern regarding the 45 day "protest period," believing it to be too short in those cases which may contain significant anticompetitive consequences. In such cases, DOJ argues that this time frame may prove inadequate to permit interested persons to scrutinize closely troublesome transactions. DOJ argues that these rules may prove inconsistent with the Commission's own intention [recently expressed, for example, in Ex Parte No. 55 (Sub-No. 38), *Antitrust and Competition Factors in Motor Carrier Finance Cases,* 45 FR 26395 (April 18, 1980)] to analyze carefully the competitive implications of acquisition transactions.

Several other procedural aspects of these rules have been brought into question. These include the circumstances under which applications are made available to interested persons, and the Commission's policy regarding extensions of time for the

filing of pleadings. Finally, concern has been raised over whether the Commission has adequately addressed the impact of this proceeding upon energy consumption.

Discussion

In enacting the 1980 legislation, Congress was very clear in its resolve to expedite the processing of motor carrier application cases. (See H.R. Rep. No. 96–1069, 96th Cong., 2d Sess. §§ 25 and 27 (1980)).

The "complete application" requirement is designed to remove what has previously proven to be a major obstacle to the prompt processing of acquisition applications. In the past, Commission staff has expended a great deal of time in assisting applicants in correcting either incomplete or incorrectly filed applications (prior to publishing notice of the application) in the **Federal Register**. This practice is no longer feasible.

Section 11345a (a) of the new Act requires the Commission to either reject or publish notice of an application within 30 days of its filing date. As a practical matter, this time frame leaves the Commission little time to review the completeness of applications filed (in light of the time which must be allotted to purely administrative functions).

We disagree with the notion that the "complete filing" requirement places an unreasonable burden upon applicants. In fact, applicants are not required to file any new or different information with their applications than has previously been required. Also, if an application is rejected, the applicants are, of course, free to file a new application for the same transaction.

The information which must be filed is set forth in the pertinent finance application forms (OP–F–44 and 45). These forms have not been revised in this proposal. Only the instructions accompanying them have been modified to reflect technical changes in the processing of the applications.

The argument that incomplete applications should be permitted for the purpose of expediting the filing and processing of temporary authority applications is specious. Section 11349 of the Act allows for the filing of the latter-type applications pending the Commission's determination of a permanent acquisition application. It is the existence of the permanent application, then, which gives rise to the need for filing a proposal for temporary authority. An incomplete application under 49 U.S.C. 11343 *et seq.* is no application at all. Rather, it is a proposal which must be rejected within 30 days of its filing.

Secondly, the rules do permit applicants to file, concurrently, permanent and temporary authority applications. The situation may arise where a temporary authority application which establishes a valid basis for granting the proposal under section 11349 will accompany an incomplete or improperly filed permanent application.

Conceivably, the temporary proposal could be granted prior to the Commission's publishing or rejecting the permanent application filing. If, however, the permanent application is rejected, the Commission will immediately issue a notice revoking the temporary authorization. If, on the other hand, the permanent application is acceptable and notice is published in the **Federal Register**, the temporary authorization will remain in effect during the pendency of the permanent application proceeding. Under these circumstances, we seriously doubt that the effect of the rules in question could be to undermine the value of operating rights which are the subject of a finance transaction. Nonetheless, in order to obviate potential problems (such as discussed above) and to provide the Commission with sufficient flexibility to deal with these matters, we will include a provision to the rules which will allow applicants to seek a waiver from any of the informational requirements in the application.

Rule 1100.240(c), formerly § 1100.240(A)(c), will be revised by adding a subsection which will permit applicants to file a petition for this purpose. Such a petition would have to be filed, and acted upon by the Commission, prior to the filing of the application itself. Petitioners would have to meet a two part test to obtain a waiver from the filing requirements. First, they would have to demonstrate that the information, for which a waiver from the filing requirement is sought, is unnecessary for the disposition of the case, or unavailable, and that the Commission could make its requisite statutory findings without benefit of such information. Secondly, they must show that as a consequence, the requirement for the filing of such information would impose an undue burden upon applicants.

As a matter of internal procedure, the Commission will give such a petition a docket number (MC–F— * * *) which will thereafter remain with the later-filed application. While the decision of the Commission's decisional body is not subject to any statutory time frames, the Commission will attempt to render it as quickly as possible. If a waiver is authorized, the **Federal Register** notice of the later-filed application will indicate that "by decision of (date), in this proceeding, the Commission (decisional body) granted applicants a waiver from the filing requirements set forth in parts (specifically enumerated) of application form OP–F– (44 or 45)."

This procedure constitutes a codification of a past Commission practice in motor carrier acquisition cases. It also parallels procedures currently employed by the Commission in certain rail proceedings (See 49 CFR 1110.10). We believe that the "waiver" procedure will provide applicants with a valuable tool for dealing with problems they may foresee as a consequence of the "complete application" filing requirement set forth in the rules. Additionally, it will relieve the Commission (in cases where a waiver is granted) of having to review extraneous information while helping to narrow the issues in a case.

With respect to "amendments" to applications, the interim rules state that "amendments which change the scope of the authority sought are not allowed after the **Federal Register** publication" (49 CFR 1100.240(h), formerly 1100.240(A)(h)). This practice will encourage parties carefully to consider their requests, while eliminating the amendment process as an applicant's device for limiting opposition possibly at the expense of the shipping public.

There are times, however, when a decisional body, upon reviewing an acquisition application (prior to publication) may require it to be modified to conform to the law and/or Commission practice. (In the past, this has occurred, for example, to avoid unlawful splits or duplication of authority.) This latter type situation is clearly distinguishable from the one the rule is designed to eliminate, and the rule will not affect this practice in the future.

When an impediment is noted in the **Federal Register** (decision) notice of an application, applicants will have to submit a pleading suggesting a cure to the noted impediment and/or containing argument on the issue, within a time certain from the publication date. (Failure to "cure" will result in the dismissal or denial of the application.) Moreover, protestants (if any) must be afforded an opportunity to comment not only on the applicants' "complete" application but also on the impediment issue, and applicants' responsive pleading. As a practical matter we must vary somewhat the time frames generally governing the submission of pleadings to accommodate the occasions in which impediments are noted in an application proceeding.

We will revise interim rule 1100.240(g), formerly 1100.240(A)(g) to indicate initially, that the Commission's decisional body may note an impediment to an application in the Federal Register notice which will require applicants to amend their proposal. Secondly, we will apply the following time frame structure to govern only cases falling within this category.

(1) Where an impediment to an application is noted, applicants must file their responsive pleading no sooner than 50 days and no later than 55 days from the date upon which notice of the application was published in the Federal Register. Applicants must certify that a copy of this pleading has been simultaneously served upon all parties of record.

(2) Protestants (if any) will be afforded 20 days from the filing date of the pleading in (1) above to file responsive pleadings.

(3) Applicants may file an optional rebuttal statement to protestants' pleading, in (2) above, within 15 days from the date upon which protestants' statements are due.

While this rule is designed to accommodate a particular type of proceeding, we recognize that the complexity of the issues in any case may warrant affording the parties additional time to file their evidence. We are also mindful of the fact that while 49 U.S.C. 11345a(b) requires written comments about an application to be filed within 45 days of an application's publication, the Commission has 240 days (from publication) to conclude the evidence of record.

We anticipate that most cases can be decided expeditiously upon the initial and "complete" evidentiary presentation of the parties (within 60 days of the application's publication). The rules are designed to achieve this goal. However, these rules do not preclude this Commission, or interested parties from identifying issues they feel warrant additional study or comment in light of their complexity, or from seeking additional time or procedural avenues to develop such issues. For example, a given case may contain antitrust considerations, or an issue concerning the transferability of dormant authority the resolution of which will require the submission of additional evidence from the parties. (In this context, note the multi-step evidentiary procedure employed by this Commission in cases involving a "dormancy" issue. See *Central Transport, Inc. Pur. Piedmont Petroleum*, 127 M.C.C. 1 (1977).)

In Ex Parte No. 55 (Sub-No. 38F), *supra*, we indicated our desire to streamline our case processing system in order to facilitate indentifying whether cases have significant anticompetitive or public interest consequences. We proposed to (1) revise the motor finance application forms (OP–F–44 and 45) to elicit necessary information; (2) accord each case an appropriate measure of agency review in light of its significance; and (3) develop guidelines helpful to our staff and the public concerning how information received in any case would be analyzed in determining the measure of agency review required.

We believe, however, that the finance case processing time frames set forth in the 1980 Act, and these procedural rules, already provide us with a useful method for achieving our purpose. The information elicited in the application forms will furnish the Commission and interested parties with a sufficient basis for raising the "anti-trust, competition" issue, and for determining whether additional information should be submitted by the parties. Any interested person could file a motion for this purpose, defining, precisely, the grounds therefor and the nature of the information which is necessary to supplement the existing record. In addition, where the Commission identifies anti-competitive issues, we can direct the submission of specific additional data.

Whenever the Commission's decisional body reviewing an application finds, in its discretion, that further information is required of the parties to a given proceeding, it shall issue an interim order eliciting further comment on the specific issue(s) involved. In such cases, the "close of evidence" will occur only after all responsive pleadings are received. The Commission must, of course, render its final decision (in every case) within 180 days from the date the evidentiary record is closed. Rules 1100.240(c) and 241(b)(2) (formerly §§ 1100.240(A)(c) and 1100.240(B)(b)(2)) will be amended to indicate that the Commission may elicit additional information from the parties to a proceeding.

As previously noted, several comments address the procedural rules concerning such practical matters as the fee to be paid by an interested person wishing to acquire a copy of an application, or the maximum extension of time the Commission will permit for the filing of any pleading. We believe that with the exceptions noted below, the scheme for processing applications set forth in the interim rules represents the best approach for compliance with the letter and spirit of the new Act. Our experience with the implementation of the interim rules has proven highly successful to date, due in substantial part to the cooperative efforts of the parties practicing before this Commission. Moreover, we recognize that new procedures may give rise to new problems in the future. We encourage practitioners in the motor carrier industry to continue to work with the Commission to ensure that our procedures are always as efficient and reasonable as possible.

In this context, we have found, for example, that the interim rules have created a practical problem concerning the receipt of a request and accompanying $10 fee for a copy of an application. We believe that it would be more efficient for the request and the payment to be made directly to applicants' representative. This would facilitate the handling of the request and the negotiation of the check. Rule 1100.240(h)(3), formerly § 1100.240(A)(h)(3), will be modified accordingly.

We believe, further, that rule 1100.240(h)(3) should be modified to require applicants' representative to furnish a copy of the application within 3 days of the receipt of a request. This will assist interested parties in the preparation of their cases, without imposing an undue burden upon applicants.

We will also revise rule 1100.243(e)(2), formerly 1100.240(d)(e)(2), to facilitate the manner in which a pleading containing statements of fact must be verified. The person offering the statement will be required to make the following declaration:

I, _____, verify under penalty of perjury under the laws of the United States of America, that the information above is true and correct. Further, I certify that I am qualified and authorized to file this statement. (See 18 U.S.C. 1001 and 18 U.S.C. 1621 for penalties).

_____

(Signature)

Consequently, we shall no longer require such statements to be notarized.

The basis for this revision is set forth in detail in the notice of final rules in Ex Parte No. 55 (Sub-No. 43), *Rules Governing Applications for Operating Authority* (45 FR 86771, December 31, 1980), in which we have adopted the identical requirement. Essentially, we have determined that existing Federal statutes governing perjury and fraudulent representations are adequate to ensure that persons offering statements in application proceedings will make complete and honest disclosures.

We have amended rule 1100.242(b)(1), formerly § 1100.240(C)(b)(1), to allow parties to a proceeding to request oral hearing at any time during the pendency of a proceeding. This rule reflects our belief that a material issue may arise during the pendency of a given proceeding warranting a hearing. While we anticipate this occurrence only in rare cases, the rule will provide us with the necessary flexibility.

Finally, a minor modification is required to interim rule 1100.240(d), formerly § 1100.240(A)(d) which concerns the filing of "directly related applications" (i.e. applications filed under other provisions of the Act which either directly affect or are directly affected by the acquisition transaction proposed under 49 U.S.C. 11343). This rule requires the concurrent filing of the acquisition and related application, and that each makes reference to the other in its caption summary. In order to ensure that cases are timely processed, however, we believe it also necessary for applicants to file related cases "under the same cover" (i.e. in a single package). This procedure will facilitate the internal handling of such cases by Commission personnel. The related cases will be handled on a consolidated record, and decided within the time frames established under 49 U.S.C. 11345(a) governing acquisition transactions. [The instructions acompanying application forms OP–F–44 and 45 will be modified to reflect this change.]

Environmental Impact

We conclude that this proceeding will not have a significant impact upon either the qualify of the human environment, or the conservation of energy resources. This conclusion is premised in large part on the fact that each case processed under 49 U.S.C. 11343 *et seq.* must contain an independent environmental finding. It is also noteworthy that these rules do not contain substantive changes to the law governing acquisition transactions and will not affect the ultimate disposition of any case. The nature of the evidence submitted by parties and the manner in which the evidence will be weighed has not been changed.

Final Matters

One significant consequence of the new motor carrier legislation and our own adoption of these implementing regulations, is that a number of Commission regulations codified in the Code of Federal Regulations are either outdated, incorrect or redundant. For example, the information contained in 49 CFR 1134.1 (a)–(c), relating to "applications for authority to merge properties or franchises" is clearly unnecessary and somewhat in conflict with the rules adopted here. Also, for example, information contained in 49 CFR 1134.3 ("computation of gross operating revenues of carriers involved in unifications") (1) cites the former sections of the Interstate Commerce Act which was recodified (without substantive change) by Act of Congress in October, 1978 (See Pub. L. 95–473, 92 Stat. 1339 (1978), recodification of subtitle IV of Title 49, United States Code, "Transportation") and (2) furthermore, relies on jurisdictional monetary limits which were raised by provisions of the Motor Carrier Act of 1980. We have elected not to revise or delete these and other inappropriate sections of the Code in this particular proceeding because the necessary revisions are being made in other rulemaking and policy proceedings currently pending before this Commission. (The revisions will be made regardless of the ultimate disposition of the substantive issues involved in these other cases). To the extent, however, that ambiguities and conflicts hereafter appear in the regulations during the brief period preceding recodification of the involved Code sections, the 1980 legislation and the rules adopted in this proceeding will, of course, control.

Lastly, a number of the interim rules adopted in this proceeding were cross-referenced to interim rules adopted by the Commission in Ex Parte No. 55 (Sub-No. 43), *Rules Governing Applications for Operating Authority*, 45 FR 45534, July 3, 1980. Cross-referencing was employed where the two sets of regulations (49 CFR 1100.240 and 49 CFR 1100.247) duplicated one another. However, the final rules for each part shall be set forth in their entirety.

This will eliminate possible confusion and also any extra effort in the future if rule changes are made to any subsection of these mutually exclusive regulations.

Summary

We adopt the final rules set forth below, and the instructions accompanying acquisition application forms set forth in Appendix A.

This action is taken under the authority of 49 U.S.C. 10321, and 11343 *et seq.*, and 5 U.S.C. 553.

Decided: January 6, 1981.

By the Commission, Chairman Gaskins, Vice-Chairman Gresham, Commissioners Clapp, Trantum, Alexis and Gilliam.

Agatha L. Mergenovich,

Secretary.

Introduction

These rules govern the processing of motor carrier applications to consolidate, purchase, merge, or lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11344 and to be granted authority temporarily to do so under 49 U.S.C. 11349.

The general topics covered are:

Sec.

1100.240 Filing of applications under 49 U.S.C. 11344.
1100.241 How to oppose applications filed under 49 U.S.C. 11344.
1100.242 Procedures relating to oral hearings.
1100.243 General rules governing the applications filed under 49 U.S.C. 11344.
1100.244 Processing of applications filed for temporary authority under 49 U.S.C. 11349 corresponding to applications filed under 49 U.S.C. 11344 or 10926.

Sections 1100.240 through 1100.244 are revised to read as follows:

§ 1100.240 Filing of applications under 49 U.S.C. 11344.

(a) *Procedures used generally.* The Interstate Commerce Commission uses two basic types of procedures. Most cases are processed under the *modified procedure* (on the basis of an evidentiary record composed entirely of written statements). Occasionally, a case involves extraordinary substantive issues, the resolution of which requires taking testimony from persons at an *oral hearing.* These rules govern both types of proceedings. It is the Commission's policy to process cases under the modified procedure where at all possible.

(b) *Starting the application process.* Carriers that seek to consolidate, purchase, merge, or lease operating rights and properties, or acquire control of motor carriers shall properly complete an application to do so. (See 49 CFR 1003.1 and 1002 regarding the forms and filing fees.) Application forms are available at Commission field or regional offices or at the Office of the Secretary.

(c) *Information to be submitted by applicants*—(1) *The application form.* Application forms are explicit concerning the information which shall be submitted. Failure to fully comply with the instructions on the application form may result in the rejection, dismissal, or denial of the application. Persons shall resolve any questions relating to the application form by

contacting the Commission before filing the application.

(2) *Petitions for waiver of application requirements.* Prior to filing an application under this section, applicants may file a petition seeking waiver from any of the filing requirements set forth in the application form. With respect to the information for which a waiver from the filing requirement is sought, petitioners must demonstrate that (i) it is unavailable or that it is unnecessary for the disposition of the case, (ii) the Commission can make the requisite statutory findings governing the transaction without benefit of such information, and (iii) consequently, the filing requirement would impose an undue burden upon applicants.

Applicants may not file their application until after the Commission's decisional body reviewing the petition has rendered its decision on the waiver request. Where a waiver request is granted, the **Federal Register** notice of the application will indicate the extent to which applicants have been relieved from the usual filing requirements.

(3) *Caption summary.* Each application shall be accompanied by a caption summary: (i) Describing the proposed transaction, and indicating (ii) (A) whether any portion of the operating rights involved in the transaction is proposed to be cancelled or restricted, (B) whether an application under 49 U.S.C. 11349 to perform temporarily the service proposed to be acquired in the permanent application has been filed, and (C) whether another application has been filed under provisions of Title 49, Subtitle IV, U.S. Code, "Transportation" which is directly related to the proposed transaction. (See 49 CFR 1100.240(d) regarding directly related applications.)

(4) The completed application form shall contain applicants' entire case (other than an optional reply statement in an opposed proceeding) under the modified procedure, unless (i) the Commission finds, upon its own motion or that of a party to the proceeding, that additional evidentiary submissions are required to resolve the issues in a particular case, or (ii) the application contains an impediment. (See rule 240(g) *infra.*)

Any statements submitted on behalf of an applicant supporting the transaction shall be verified. Pleadings consisting strictly of legal argument, however, need not be verified.

(d) *Directly related applications.* (1) Directly related applications shall be filed along with the proposed acquisition transaction under the same cover (i.e. in a single submission). These applications are filed under other provisions of title 49, Subtitle IV, U.S. Code, "Transportation" which either directly affect or are directly affected by the application filed under 49 U.S.C. 11344. Typically, they include requests for authority to obtain new operating authority, to modify or convert existing operating authority, or to issue securities or assume debt obligations. Whenever an application is filed under these rules and a directly related application is also filed, the caption summary of each shall make reference to both applications.

(2) Whenever possible, the Commission will decide directly related applications in a consolidated proceeding. In such cases, the statutory time frames governing the (lead) proceeding under 49 U.S.C. 11344 will be applied.

(e) *Where the application is sent.* (1) The original and (2) two copies of the application shall be sent to the Office of the Secretary, Interstate Commerce Commission, Washington, DC 10423, along with the application fee.

(2) Copies of the application shall be sent to the Commission personnel and State officials specified in the application form.

(f) *Commission review of the application.* (1) Interstate Commerce Commission staff will review the application for correctness and completeness. Minor errors will be corrected without notification to applicant. Incomplete applications may be rejected.

(2) The caption summary will be published in the **Federal Register** to give notice to the public in case anyone wishes to oppose the application. It will be published in the form of a tentative grant of authority. (Also, see rule 240(g) *infra*, regarding applications published with impediments).

(3) If the **Federal Register** publication does not properly describe the authority sought because of ministerial error, applicant shall inform the Interstate Commerce Commission within 10 days of the publication date.

(g) *Changing the request for authority after notice of the application appears in the* **Federal Register.** (1) After notice of an application is published in the **Federal Register**, applicants are not permitted to file amendments to their proposal, unless specifically required to do so by the Commission because of an "impediment" in the application. Any such impediment will be indicated in the **Federal Register** publication.

(2) If an impediment is noted, applicants must file a pleading suggesting a "cure" to the impediment and/or containing legal argument within no less than 50 days or more than 55 days of the **Federal Register** publication. Also, the pleading must contain a certification that a copy of this pleading has been served, simultaneously, upon all parties of record. Failure to comply with these provisions will result in the dismissal of the application.

(3) Protestants wishing to file a reply to the applicants' pleading must do so within 20 days from the date applicants' pleading is filed. (Protestant's pleading will be filed in addition to the evidence previously submitted within the time frame noted in § 1100.240(h) *infra*).

(4) If replies to applicants' pleading are filed (under paragraph (g)(3) of this section) applicants may file an (optional) rebuttal within 15 days from the due date of the replies in paragraph (g)(3) of this section. This (optional) pleading will be in addition to any evidence previously submitted by applicants in compliance with rule 240(c) *supra.*

(h) *After publication in the* **Federal Register.** (1) Interested persons have 45 days to file comments at the Commission. See § 1100.241.

(2) If no one opposes the application, it will be decided using the information submitted with the application.

(3) Applicants are required to furnish a copy of the application to any interested person. The request for a copy shall be made to applicants' representative (noted in the **Federal Register** publication) and shall contain a check for $10 payable to applicants' representative. This fee will cover (at least partially) reproduction and mailing costs. Applicants' representative need not supply copies to any person not sending the appropriate payment. Applicants' representative is required to mail the copy within 3 days of the request being received.

(4) If the application is opposed, opposing parties are required to send a copy of their protest to the applicants, see § 1100.241(a)(2).

(i) *Filing a reply statement.* (1) If the application is opposed, applicants may file a reply to the protests. This reply statement is due at the Commission within 60 days of the **Federal Register** publication.

(2) The reply statement may not contain new evidence. It shall only rebut or further explain matters previously raised.

(3) The reply statement shall be verified (unless it consists strictly of legal argument), and a copy served upon protestants.

(j) *After all statements are submitted.* (1) When the proceeding is to be handled under the modified procedure a decisional body will review the

evidence and serve an initial decision on the parties

(2) If the proceeding is to be handled by oral hearing, parties will receive a notice to this effect.

(k) *Applicant withdrawal.* If applicants wish to withdraw an application, they shall jointly request dismissal in writing. This request shall be directed to the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423, with the docket number of the case.

§ 1100.241 How to oppose finance applications.

(a) *Filing a protest to an acquisition application.* (1) Protests to an acquisition application (filed under 49 U.S.C. 11344) shall be filed (received at the Commission), within 45 days from the date the application is published in the **Federal Register.**

(2) A protest filed under these rules shall also be served upon applicants' representatives.

(3) Failure to file timely a protest waives further participation in the proceeding.

(b) *Contents of a protest.* (1) Protests shall be verified.

(2) All information upon which the protestant plans to rely shall be put in the protest including:

(i) The grounds upon which the protest is made and the protestant's interest in the proceeding;

(ii) All facts, matters, and things relied upon by the protestant in opposing the application; and

(iii) A request for oral hearing if one is desired. See 49 CFR 1100.242.

(3) A protestant may include, in the protest, a request that the Commission allow for (i) additional evidentiary submissions from the parties to a proceeding or (ii) further procedural steps to develop the evidentiary record (e.g. discovery) in a proceeding. The request must demonstrate that this procedure is necessary to resolve the *specific issues* giving rise to the request. If the Commission finds, either upon its own motion, or that of a party to a proceeding, that the evidentiary record requires supplementation, it shall issue a decision indicating the precise nature of the additional information required of the parties and the time frames within which such information must be submitted. Upon receipt of all such information the record of evidence will be closed and the case will go forward to decision.

(c) *To whom the protest is sent.* (1) An original and one copy of the protest is to be sent to the Office of the Secretary, I.C.C., Washington, D.C. 20423. The docket number of the proceeding shall be placed conspicuously on the top of the first page of the protest.

(2) Concurrently with the filing in paragraph (c)(1) of this section, a copy shall be sent to applicants' representative(s).

(d) *Obtaining a copy of the application.* A copy of the application is available for inspection at the Commission's offices in Washington, D.C., or the regional office of each applicant's domicile. In addition, applicants' representative is required to send a copy to interested persons upon payment of a $10.00 charge. See 49 CFR 1100.240(h)(3).

(e) *Withdrawal by protestant.* A protestant wishing to withdraw from a proceeding shall inform the Commission and the applicants in writing.

§ 1100.242 Procedures relating to oral hearing.

(a) *Requests for oral hearing.* It is the policy of the Commission to handle motor finance application proceedings under § 1100.240 using the modified procedure if at all possible.

(1) If a person believes that a proceeding should be orally heard because of the significance of the case, or because material issues are in dispute, the person may request oral hearing. A request for oral hearing may be made at any time during the pendency of a proceeding.

(2) The request shall specifically state the evidence that would be presented, the reason why the evidence is material to determine the merits of the proceeding, why an oral hearing with cross-examination is necessary to bring it out, and what evidence already in the record would be contravened (with specific page references).

(3) The person requesting a hearing shall further indicate the approximate number of witnesses to be presented, an estimate of the hearing time required for such presentation, and a suitable location for the hearing.

(b) *Designation of case for oral hearing.* (1) The Commission will determine whether an assignment for oral hearing should be made, either before or after notice to interested persons of the filing of the application has been published in the **Federal Register** and the period for filing protests has expired.

(2) Notice of the time and place of any hearing, conference, or other proceedings will be given to interested parties by mailing to them the order or notice assigning the application for hearing, conference, or other procedure.

(3) Unless a request for oral hearing is specifically granted (under paragraph (b)(2) of this section) it is deemed denied.

(c) *Change of place or time of assigned hearing.* (1) A request by any party for a change in the time or place of an assigned hearing shall set forth emergency circumstances warranting the change; shall be in writing and filed with the Commission within 10 days of the date of the notice assigning the proceeding for a hearing, and shall be served on all known parties of record at the same time and by the same method of communication as service is made on the Commission.

(2) The applicants' representatives, protestants, and those who request notice of changes in time or place of hearing, conference, or other proceedings will be informed of any changes if notice is given by mail. If telegraphic notice becomes necessary, notice of any changes will be given by telegram only to those who request telegraphic notice at their expense.

(d) *Applicant's withdrawal.* Upon receipt of an order or notice of a hearing assignment, applicants who no longer intend to proceed to hearing shall immediately and jointly request dismissal of their application, with appropriate notification to all protestants, failing which applicants or their representatives, or both, may be subject to censure.

(e) *Failure of protestant to appear at hearing.* The failure of any person filing a protest to an application to appear at a scheduled hearing shall be construed as a waiver of the person's rights to participate further in the proceeding. Additionally, that person and any representative responsible for participation in the proceeding may be subject to censure for failure to appear.

§ 1100.243 General rules governing the application process.

(a) *Contacting another party.* When a person wishes to contact another party or serve a pleading on that party, it shall do so through the party's representative (if any).

(b) *Serving copies of pleadings, and the certificate of service.* (1) Where the rules require service of a pleading on another party, that pleading shall be mailed or delivered by hand concurrently with its service on the Commission.

(2) The pleading shall contain a statement (certificate of service) that the pleading has been mailed or hand delivered in accordance with paragraph (b)(1) of this section.

(3) All motions and replies shall be served on all parties.

(4) All pleadings mailed to the Commission in Washington, D.C., should

be addressed to "Office of the Secretary, I.C.C., Washington, D.C., 20423".

(c) *Copies.* (1) An original and *two* copies of acquisition applications must be filed.

(2) All other material forwarded to the Commission in Washington, D.C., shall consist of an original and one copy.

(d) *Requests for extensions of time.* (1) Requests for extensions of time may be granted only in extraordinary circumstances. Parties' or their representatives' workload, personnel changes, or scheduling problems are not sufficient cause.

(2) No extension will be granted for more than 3 working days.

(e) *Verification of statements.* (1) All statements and shipper certifications (except motions to strike, replies thereto, and other pleadings which consist only of legal argument) must be verified by the person offering the statement.

(2) The manner of verification must be as follows:

I, ————, verify under penalty of perjury under the laws of the United States of America, that the information above is true and correct. Further, I certify that I am qualified and authorized to file this statement. (See 18 U.S.C. 1001 and 18 U.S.C. 1621 for penalties).

(f) *Caption summary.* The caption summary which must accompany all applications shall be in the form prescribed by the Commission. Commission field and regional offices offer assistance in preparing correct caption summaries.

§ 1100.244 Processing of temporary authority applications filed under 49 U.S.C. 11349 corresponding to applications filed under 49 U.S.C. 11344 or 10926.

(a) *Applications governed by these rules.* These rules govern the handling of applications filed for temporary authority to operate motor carrier properties sought to be acquired by the applicants under separately filed applications under

(1) 49 U.S.C. 11344 (for authority to consolidate, purchase, merge or lease operating rights and properties, or to acquire control of motor carriers), and

(2) 49 U.S.C. 10926 (for the transfer of motor carrier certificates and permits).

(b) *Procedures used generally.* Since the basis for filing applications for temporary authority under these rules is to prevent destruction or injury to motor carrier properties sought to be acquired under 49 U.S.C. 11343 and 11344 or 10926 these rules are designed to permit the Commission to decide expeditiously temporary authority applications. The Commission has no obligation to give public notice of applications filed under these rules for temporary authority. Cases are decided by an appropriate decisional body without hearings or other formal proceedings. However, the rules do permit the Commission, where it is feasible, to publish notice of temporary authority applications, and applications may be opposed.

(c) *Starting the application process.* (1) Persons seeking temporary authority under this section shall properly complete an application. [See 49 CFR Part 1003 and § 1002.1 regarding forms and filing fees].

(2) *Note.* an application for temporary authority may only be filed concurrently with, or subsequent to, the filing of a related application under 49 U.S.C. 11344 or 10926.

(d) *Information to be submitted by applicants.* The completed application form contains all of the information necessary to allow the Commission to decide a case. It consists of applicants' entire case and shall contain all of the information upon which applicants intend to rely.

(e) *Where the application is sent.* (1) The original and two copies of the application shall be sent to the Interstate Commerce Commission, Office of the Secretary, Washington, D.C., 20423 along with the application fee.

(2) Copies of the application shall be sent by applicants to the persons and State officials specified on the application form.

(3) *Provided that,* for an application for temporary authority which is filed subsequent to the filing and **Federal Register** publication of the related acquisition transaction (under 49 U.S.C. 11344 or 10926) applicants shall serve a copy of the temporary authority application upon all parties of record without charge as of the date of the filing.

(f) *Commission review of an application.* (1) Where an application for temporary authority is filed concurrently with the related acquisition application (under 49 U.S.C. 11344 or 10926), notice of the filing of the temporary authority application will appear in the **Federal Register** publication of the corresponding permanent transaction. The **Federal Register** publication will be of the decision-notice in the section 11344 proceeding, and of the service conditionally authorized in the section 10926 proceeding.

(2) A concurrently filed temporary authority application (and protests, if any) will be submitted to an appropriate decisional body for disposition as soon after its filing as possible. These rules do not provide for any specific time period for the filing of opposition to concurrently filed temporary authority applications. A case may be decided prior to the **Federal Register** publication of the related 49 U.S.C. 11344 or 10926 proposal.

(3) Where an application for temporary authority is filed subsequent to the filing of a related 49 U.S.C. 11344 or 10926 application to which protests have been filed, the Commission will seek to refrain from deciding the temporary application until at least 20 days from the date applicant served protestants with a copy of the temporary authority application. This procedure, when employed, will afford protestants of record an opportunity to file opposing comments in the temporary application proceeding. However, the Commission will take immediate action if warranted.

(4) A copy of the Commission's decisions will be served upon all parties of record.

(g) *Who can oppose an application.* A protest to an application filed for temporary authority under these rules may only be filed by persons who oppose, or intend seasonably to oppose, the related application filed under 49 U.S.C. 11344 or 10926.

(h) *Acquiring notice of the application.* Notice of the filing of an application may be afforded potential protestants in one of the following ways:

(1) Where the temporary application is filed concurrently with the acquisition transaction under 49 U.S.C. 11344 or 10926, notice of the acquisition transaction will appear in the **Federal Register** publication. (See 49 CFR 1100.244 (f)(1).)

(2) Where the temporary authority application is filed subsequent to the filing and **Federal Register** publication of the related acquisition transaction under 49 U.S.C. 11344 or 10926, applicant shall serve a copy of the temporary authority application without charge on parties of record as of that date. (See § 1100.244 (e)(3).)

(3) A copy of the temporary authority application is available for inspection at the Commission's Offices in Washington, DC, and the Regional Office(s) in which each applicant is domiciled.

(i) *Contents of a protest.* (1) A protest to an application for temporary authority shall be in writing, but in no particular form. It may, for example, consist of a telegram, letter, or pleading.

(2) The protest shall state the protestant's interest in the proceeding and the specific grounds upon which protestant relies in opposing the temporary authority application.

(3) The protest shall also indicate that a copy has been served on applicants' representative(s).

(j) *To whom the protest is sent.* (1) Only the original need be sent to the Commission (Office of the Secretary, Washington, DC, 20423).

(2) A copy of the protest shall be served on applicants' representative(s).

Appendix A.—Instructions for Forms OP–F–44 and OP–F–45

Instructions

1. *Reference*—See 49 U.S.C. 11343–11344; 49 CFR 1100.240.

2. *Filing Fee* Applicant must submit, with the application, a check or money order payable to the Interstate Commerce Commission for the amount listed at 49 CFR 1002.2.

3. *Form*—If this form is not used, application shall be typewritten or printed on paper 8½ inches wide and 13 inches long, with a margin of 1½ inches on the left side and 1 inch on the right side. Indent quotations and use only one side of the paper. White-line blueprints which cannot be reproduced by photography are not acceptable.

4. *Appendices*—Shall be folded to conform to the size of the application.

5. *Manner of Execution*—The original application shall be signed in ink by applicant(s), if individual(s); by all general partners, if a partnership; and if a corporation, association, or other similar form of organization, by an executive officer having knowledge of all matters in the application.

6. *Number of copies*—File with the Interstate Commerce Commission at Washington, D.C. 20423, the original and (two) copies of each application. Concurrently furnish one copy to each of the Regional Managing Directors of the Commission's Office of Consumer Protection in which are located the headquarters of the carriers involved in the application, and upon written request, to the Board, Commission, or Official (or to the Governor where there is no Board, Commission or Official) having authority to regulate the business of transportation by motor vehicle in each State in or through which operations may be conducted under the operating authorities involved in the application. Signatures on copies may be stamped or typed. A summary of the application shall be delivered by first-class mail to the appropriate official (described above) of the State in which the headquarters of applicants are located.

7. *Notice to Competitors*—Applicants are nt required to give notice to competitors. Notice to interested persons of the filing of the application will be given by the publication of a summary of the authority sought in the **Federal Register.**

8. *Amendments*—Amendments to applications will not be permitted after notice of the filing of the application has been published in the **Federal Register,** unless the Commission requires the application to be amended to cure a legal impediment. Notice of an impediment will appear in the **Federal Register** publication of the authority sought.

9. *When Additional Space Required*—Attach to the application supplemental sheets making specific reference to the supplements.

10. *Information Required*—Must be given unless not known, unavailable or inapplicable. However, an explicit statement to the effect shall be made in the application, stating why the information has not been given.

11. *Hearing*—Requests for postponement, or change of location of a hearing, must be made in writing and filed with the Commission within 10 days of the date of the notice assigning the proceeding for a hearing. Any request must state the emergency circumstances warranting the change. An ample supply of exhibits to be used at a hearing should be prepared so that copies are available for all parties, and where practicable should be distributed in advance.

12. *Related Applications*—Applicant shall bring to the Commission's attention any application it has filed under any other provision of title 49, Subtitle IV, U.S. Code, "Transportation" which is directly related to the proposed transaction. Directly related applications must be filed contemporaneously, and under the same cover.

13. *Federal Register Summary*—The applicant shall prepare a summary of the authority sought for the **Federal Register** in the form prescribed by the Commission. The caption summary shall indicate, in part, whether an application has been filed under (a) 49 U.S.C. 11349 for temporary authority and/or (b) another section of the Act which is directly related to the proposed finance transaction.

Instructions for Form OP–F–46

Instructions

1. *Reference*—See 49 U.S.C. 11349 and 10926, 49 CFR 1100.244.

2. *Fees*—Applicant shall submit with the application a check or money order made out to the Interstate Commerce Commission for the amount listed at 49 CFR 1002.2.

3. *Form*—If this form is not used, application shall be typewritten or printed on paper 8½ inches wide and 13 inches long, with a margin of 1½ inches on the left side and 1 inch on the right side. Indent quotations and use only one side of the paper. White-line blueprints which cannot be reproduced by photography are not acceptable.

4. *Exhibits*—Shall be folded to conform to the size of the application.

5. *Manner of Execution*—The original application shall be signed in ink by applicant(s), if individual(s); by all general partners, if a partnership; and if a corporation, association, or other similar form of organization, by an executive officer having knowledge of all matters in the application.

6. *Number of Copies*—File with the Interstate Commerce Commission at Washington, D.C. 20423, the original and (two) copies of each application. Concurrently furnish one copy to each of the Regional Managing Directors of the Commission's Office of Consumer Protection in which are located the headquarters of the carriers involved in the application, and upon written request, to the Board, Commission, or Official (or to the Governor where there is no Board, Commission or Official) having authority to regulate the business of transportation by motor vehicle in each State in or through which operations may be conducted under the operating authorities involved in the application. Signatures on copies may be stamped or typed. A summary of the application shall be delivered by first-class mail to the appropriate official (described above) of the State in which the headquarters of applicants are located.

7. *Notice*—If applicants file this application subsequent to the filing of a related application under 49 U.S.C. 11344 or 10926, they shall serve a copy of this application upon all parties of record to date. If this application is filed concurrently with the corresponding application under 49 U.S.C. 11344 or 10926, the Commission will give notice of both filings by **Federal Register** publication of a summary of the authority sought. (Applicants shall prepare the summary in conjunction with the filing of the application under 49 U.S.C. 11344 or 10926).

8. *When Additional Space Required*—Attach to the application supplemental sheets, making specific reference to the supplements in the form. Do not paste riders to any page.

9. *Lease or Other Agreement*—The written instrument filed as Exhibit B should provide for a specific monetary monthly rental or management fee commensurate with the value of the properties to be operated temporarily. Temporary authority should not be requested for the purpose of making legal a violation of 49 U.S.C. 11343.

10. *General*—No consideration will be given to an application for temporary authority under 49 U.S.C. 11349 unless a corresponding application under 49 U.S.C. 11344 or 10926 has been filed.

[FR Doc. 81–1837 Filed 1–16–81; 8:45 am]

BILLING CODE 7035–01–M

49 CFR Part 1033

[Fifth Revised Service Order No. 1474; Amdt. No. 1]

Various Railroads Authorized To Use Tracks and/or Facilities of Chicago, Milwaukee, St. Paul and Pacific Railroad Co., Debtor (Richard B. Ogilvie, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Amendment No. 1 to Fifth Revised Service Order No. 1474.

SUMMARY: Fifth Revised Service Order No. 1474, authorized various railroads to use tracks and/or facilities of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee). The provisions of this order are extended to permit an additional thirty (30) days for carriers to undertake compensation negotiations, and shall expire at 11:59 p.m., February 15, 1981.

EFFECTIVE DATES: 11:59 p.m., January 15, 1981, and continuing in effect until 11:59 p.m., February 15, 1981, unless modified,

amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT:
M. F. Clemens, Jr. (202) 275–7840.

SUPPLEMENTARY INFORMATION:

Decided: January 13, 1981.

Upon further consideration of Fifth Revised Service Order No. 1474 (45 FR 41638, 43766, 48634, 52158, 53157, 64955, and 83236), and good cause appearing therefor:

It is ordered,

§ 1033.1474 *Various railroads authorized to use tracks and/or facilities of the Chicago, Milwakee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee),* Fifth Revised Service Order No. 1474 is amended by substituting the following paragraph (n) for paragraph (n) thereof:

(n) *Expiration date.* The provisions of this order are extended to permit an additional thirty (30) days for carriers named to undertake compensation negotiations, and shall expire at 11:59 p.m., February 15, 1981, unless otherwise modified, amended or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., January 15, 1981.

This action is taken under authority of 49 U.S.C. 10304–10305 and Section 122, Pub. L. 96–254.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John H. O'Brien.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81–1832 Filed 1–16–81; 8:45 am]
BILLING CODE 7035–01–M

Proposed Rules

Federal Register
Vol. 46, No. 12
Monday, January 19, 1981

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 907 and 908

Navel Oranges and Valencia Oranges Grown in Arizona and Designated Parts of California; Proposed Amendments of Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rules.

SUMMARY: This notice invites written comments on a proposal to amend rules and regulations governing the exemption for the handling of California-Arizona Navel and Valencia oranges for commercial processing into by-products. The proposed action is designed to clarify the basis for such exemption and specify safeguards to prevent oranges shipped under exemption from entering regulated fresh markets.

DATES: Comments must be received on or before February 3, 1981.

ADDRESSES: Send two copies of comments to the Hearing Clerk, United States Department of Agriculture, Room 1077 South Building, Washington, D.C. 20250, where they will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975. The Draft Impact Analysis relative to this proposed action is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under the USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and is classified "not significant." The proposal is being published with less than a 60-day comment period because there is insufficient time between the date when the information upon which it is based became available and the effective date necessary to effectuate the declared policy of the act.

The Department is considering issuing the proposed amendments of Subpart-Rules and Regulations under Marketing Order Nos. 907 and 908, both as amended (7 CFR Parts 907 and 908), regulating the handling of Navel oranges and Valenica oranges grown in Arizona and designated parts of California. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposed amendments were recommended by the Navel Orange Administrative Committee, and the Valencia Orange Administrative Committee, which locally administer these marketing order programs.

The committees believe the proposed amendments are necessary to prevent oranges shipped under marketing order exemption provisions from entering into commercial channels of trade. The proposed amendments are designed to clarify criteria by which the committee determines eligibility for exemption. Under the proposals, applicants who desire to acquire oranges for commercial processing into by-products would need to provide specified information relating to their manufacturing operations and the intended disposition of the oranges, and have their names placed on the list of "approved by-products manufacturers" by the appropriate committee. The proposed action specifies that no person shall handle oranges for commercial processing into by-products unless such oranges are handled under allotment or the processor is an approved by-product manufacturer.

1. The first proposal is to amend 7 CFR Part 907; Subpart-Rules and Regulations by revising paragraph (d) of § 907.100, by removing current paragraph (a)(2) and redesignating current (a)(3) as (a)(2) in § 907.131, and by revising paragraph (b) of § 907.131 to read as follows:

§ 907.100 Definitions.

* * * * *

(d) "Handle oranges to commercial processors for processing into products, including juice" means the handling of oranges to a person on the list of approved by-product manufacturers, as provided in § 907.131(b).

* * * * *

§ 907.131 By-product oranges.

(a) *Notice to committee.* No person shall handle oranges for commercial processing into by-products unless (1) such oranges are, or have been, handled pursuant to an allotment therefor; or (2) the processor is an approved by-product manufacturer, as prescribed in paragraph (b) of this section.

(b) *Approved by-products manufactuer.* (1) Any person who desires to acquire oranges as an approved by-products manufacturer for commercial processing into by-products exempt from regulation pursuant to § 907.67(b) must first apply to and obtain approval from the committee. Applicants for such exemption shall submit to the committee an application on NOAC Form No. 14 containing the following information: (i) the name and address of applicant; (ii) the proposed type of by-product(s) to be made or derived from oranges; (iii) the approximate quantity of oranges to be used annually; (iv) a description of the product(s) to be manufactured and the equipment to be used in manufacturing such by-products and the capacity per hour thereof; (v) the intended disposition of unused components of the oranges; (vi) a statement describing the manner in which the by-product(s) will be sold, whether at wholesale, retail, or both; (vii) a statement whether orange juice will be pasteurized and, if so, a description of the manner in which such pasteurization will be accomplished; (viii) the location of the plant(s); (ix) a statement that the exempt oranges acquired hereunder will be used for by-products manufacturing only and will not be resold or disposed of in fresh fruit channels; and (x) an agreement to submit such reports as may be required by the committee.

(2) Such application shall be referred to the committee's Compliance Department for investigation and reported back to the committee. The committee shall approve the application if, in it's opinion: (i) the applicant's principal occupation is manufacturing food by-products, including orange by-products, except those applicants providing oranges or by-products for animal feeding purposes; (ii) all orange by-products, including juice, will be sold at wholesale only or will be used for animal feeding; (iii) the applicant agrees to submit such reports as may be required by the committee; (iv) the

oranges obtained under this exemption will not be resold or disposed of in fresh fruit channels; and (v) approval of the application will not be contrary to the purposes of this part. If an application is denied, the committee shall within a reasonable time inform the applicant in writing of the facts and reasons therefor, and afford the applicant an opportunity, either orally or in writing, to present opposing facts and reasons. If the application is approved, the applicant's name shall be placed on the list of approved by-products manufacturers. The applicant shall be informed of the committee's determination in a timely manner.

(3) A commercial processor on the list of approved by-products manufacturers who: (i) fails to commercially process oranges into by-products for a period of one year or more; (ii) sells or otherwise disposes of any orange by-product(s) manufactured from oranges at the retail level other than for animal feeding; (iii) sells or otherwise disposes of oranges obtained under this exemption in fresh fruit channels; (iv) fails or refuses to submit reports required by the committee, may be determined by the committee to be ineligible to acquire oranges under this exemption and the committee may suspend or remove it's name from the list of approved by-products manufacturers for such time as the committee deems appropriate in the circumstances. Prior to making such determination the committee shall give the processor reasonable advance notice in writing of it's intention, the facts and reasons therefor; and afford the processor an opportunity, either orally or in writing, to present opposing facts and reasons. After a processor's name has been removed from the list of approved by-products manufacturers, it must submit a new application and secure approval of the committee in order to acquire exempt oranges pursuant to § 907.67(b).

* * * * *

2. The second proposal is to amend 7 CFR Part 908; Subpart-Rules and Regulations by revising paragraph (d) of § 908.100, by removing current paragraph (a)(2) and redesignating current (a)(3) as (a)(2) in § 908.131, and by revising paragraph (b) of § 908.131 to read as follows:

§ 908.100 Definitions.

* * * * *

(d) "Handle oranges to commercial processors for processing into products, including juice" means the handling of oranges to a person on the list of approved by-product manufacturers, as provided in § 908.131(b).

* * * * *

§ 908.131 By-product oranges.

(a) *Notice to committee.* No person shall handle oranges for commercial processing into by-products unless (1) such oranges are, or have been, handled pursuant to an allotment therefor; or (2) the processor is an approved by-product manufacturer, as prescribed in paragraph (b) of this section.

(b) *Approved by-products manufacturer.* (1) Any person who desires to acquire oranges as an approved by-products manufacturer for commercial processing into by-products exempt from regulation pursuant to § 908.67(b) must first apply to and obtain approval from the committee. Applicants for such exemption shall submit to the committee an application on VOAC Form No. 14 containing the following information: (i) the name and address of applicant; (ii) the proposed type of by-product(s) to be made or derived from oranges; (iii) the approximate quantity of oranges to be used annually, (iv) a description of the product(s) to be manufactured and the equipment to be used in manufacturing such by-products and the capacity per hour thereof; (v) the intended disposition of unused components of the oranges; (vi) a statement describing the manner in which the by-product(s) will be sold, whether at wholesale, retail, or both; (vii) a statement whether orange juice will be pasteurized and, if so, a description of the manner in which such pasteurization will be accomplished; (viii) the location of the plant(s); (ix) a statement that the exempt oranges acquired hereunder will be used for by-products manufacturing only and will not be resold or disposed of in fresh fruit channels; and (x) an agreement to submit such reports as may be required by the committee.

(2) Such application shall be referred to the committee's Compliance Department for investigation and reported back to the committee. The committee shall approve the application if, in it's opinion: (i) the applicant's principal occupation is manufacturing food by-products, including orange by-products, except those applicants providing oranges or by-products for animal feeding purposes; (ii) all orange by-products, including juice, will be sold at wholesale only or will be used for animal feeding; (iii) the applicant agrees to submit such reports as may be required by the committee; (iv) the oranges obtained under this exemption will not be resold or disposed of in fresh fruit channels; and (v) approval of the application will not be contrary to the purposes of this part. If an application is denied the committee shall within a reasonable time inform the applicant in writing of the facts and reasons therefor, and afford the applicant an opportunity, either orally or in writing, to present opposing facts and reasons. If the application is approved, the applicant's name shall be placed on the list of approved by-products manufacturers. The applicant shall be informed of the committee's determination in a timely manner.

(3) A commercial processor on the list of approved by-products manufacturers who: (i) fails to commercially process oranges into by-products for a period of one year or more; (ii) sells or otherwise disposes of any orange by-product(s) manufactured from oranges at the retail level other than for animal feeding; (iii) sells or otherwise disposes of oranges obtained under this exemption in fresh fruit channels; (iv) fails or refuses to submit reports required by the committee, may be determined by the committee to be ineligible to acquire oranges under this exemption and the committee may suspend or remove it's name from the list of approved by-products manufacturers for such time as the committee deems appropriate in the circumstances. Prior to making such determination the committee shall give the processor reasonable advance notice in writing of it's intention, the facts and reasons therefor; and afford the processor an opportunity, either orally or in writing, to present opposing facts and reasons. After a processor's name has been removed from the list of approved by-products manufacturers, it must submit a new application and secure approval of the committee in order to acquire exempt oranges pursuant to § 908.67(b).

* * * * *

Dated: January 13, 1981.

D. S. Kuryloski,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 81-1898 Filed 1-16-81; 8:45 am]

BILLING CODE 3410-02-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 122

Business Loans; Delegation of Certain Authority and Responsibility to Preferred Lending Institutions

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: Section 114 of Pub. L. 96–302, enacted July 2, 1980, (84 Stat. 838) amended section 5(b)(7) of the Small Business Act (15 U.S.C. 634) to authorize SBA to delegate to certain lending institutions, with respect to deferred participation (guaranteed) loans, the authority to determine eligibility, creditworthiness, loan monitoring, collection, and liquidation. These proposed regulations implement this recent enactment. These proposed regulations cite the statutory authority for these delegations of authority and responsibility to certain "preferred" lenders; set forth the objectives of this new initiative; detail the limitations on these delegations; provide eligibility criteria for a lender seeking to attain (and retain) this "Preferred" status vis-a-vis SBA; and, detail the respective roles of the "Preferred Lenders" and the SBA in terms of making decisions or taking actions with respect to loan eligibility, loan processing, loan closing; loan administration (servicing/collection) and loan liquidation.

DATE: Comments must be received on or before March 20, 1981.

ADDRESS: Written comments, in duplicate, are to be addressed to: Wayne S. Foren, Director, Office of Lender Relations and Certification—Room 720, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Danny J. Gibb, Lender Relations and Certification, Room 720, Washington, D.C. 20416, 202–653–6423.

These proposed rules and regulations create a Preferred Lenders Program and are within the letter, and in the spirit, of the Act. Conceptually, we are establishing three strata of private sector lending partners with the SBA.

(1) *Regular Participating Lenders.* These are either banks or non-bank lenders that have executed a Guaranty Agreement with the SBA. This strata of lenders is the entry level or participants with the SBA and, typically, these lenders are relatively inactive participants. SBA's standard loan processing, servicing and liquidation procedures apply to these lender's involvement and interaction with the SBA.

(2) *Certified Lenders.* These are either banks or non-banks lenders that have executed with the SBA the standardized SBA Forms 750, 750B and 1186 (respectively, "Guaranty Agreement (Deferred Participation) (5–78)", "Loan Guaranty Agreement (Deferred Participation) For Short-Term Loans (3–80)", and "Loan Guaranty Agreement (Deferred Participation) Supplemental Guaranty Agreement Bank Certification Program (BCP) (2–79 or 1–80)". These lenders are relatively active with the SBA, and we rely to a great degree on these lenders' evaluations of the small business concerns' loan applications. These lenders include the Agency's Fiscal Years' 1979 and 1980 participants in the Bank Certification Program. Because these lenders have proven "track records" with the Agency, thereby justifying SBA's great reliance upon their abilities to present *complete* and *well-analyzed* loan guaranty application packages to us, SBA is able to provide these Certified Lenders with our final decisions on their loans within three (3) of SBA's working days. For these lenders, SBA retains all *final* decision-making authorities in all aspects of our financial assistance delivery system.

Note.—Details concerning participation in the Certified Lender Program may be obtained from any local SBA office. The mechanics of how a "Certified Lender Program" participant (such as those 252 lenders included in the Bank Certification Program during SBA's Fiscal Years 1979 and 1980) interacts with SBA are contained in the February 26, 1979, SBA publication, "The Information Book For The SBA Bank Certification Program", and the SBA/Lender Guaranty Agreements [SBA Form 750 (as of 5/78), SBA Form 750B (as of 3/80), and SBA Form 1186 (as of 2/79 or 1/80)]. The SBA reserves the right to revise and re-issue these documents as is deemed appropriate and necessary.

(3) *Preferred Lenders.* These are our best and most reliable lending partners. To acquire this preferred status, a participating lender must have performed satisfactorily in our Certified Lenders Program. The Preferred Lenders are the recipients of SBA's delegations of authority/responsibility for all aspects of our financial assistance delivery system. These proposed rules and regulations deal almost solely with this new strata of SBA's lending partners, the Preferred Lenders Program (PLP).

In effect, these and regulations establish framework for SBA's development of three, dynamic tiers of the SBA/lender partnership:

1. Regular loan processing, administration and liquidation (non-BCP; SBA involvement in each case).
2. Certified Lenders Program's loan processing, administration and liquidation (3-day service to lenders).
3. Preferred Lenders Program's loan processing, administration and liquidation (lender makes many final decisions).

There are built-in incentives for lenders to work themselves up the latter from regular SBA handling to CLP and

on the PLP authorities and responsibilities. There are built-in safeguards for the SBA whereby each participant (in any of the three tiers) is evaluated fairly and on a timely basis as to its performance (successful or unsuccessful) at any rung on the SBA's ladder, and both upward and downward mobility are possible.

Also, SBA's evaluation of three-tier system will permit us to adapt the better ideas from each tier for the utilization by the other tiers. For instance, if the PLP's rules for loan administration and liquidation prove not be too "liberal" (from SBA's standpoint), the Agency could decide to adapt those rules for usage by CLP's participants, or, even for Regular Participants (probably to a lesser degree).

SUPPLEMENTARY INFORMATION: Section 122.102 provides that the policy of the Act and this Subpart B is to transfer from SBA to qualified, "Preferred Lenders" certain financial assistance delivery system functions (as delineated hereinafter in Subpart B) relating to determinations of eligibility and creditworthiness, loan closing, loan administering (including monitoring, collecting and servicing) and loan liquidating. Such delegations are limited to deferred participation (guaranteed) loans as described in § 122.6(b) of SBA regulations [13 CFR 122.6(b)] and as limited, further, in Sections 122.106(c) and (d) of this proposed regulation. These additional delegations of authority to qualified, approved lenders are restricted to those lenders selected by this Agency to become participants in the "Preferred Lender Program" (PLP), having met the SBA's eligibility criteria for such designation as set forth later in this section. Within this section, the SBA explains the eligibility *and* performance criteria for a lender to be:

(a) Approved as a "Preferred Lender Program" participant [defined as being a lender which has been delegated by SBA to take specific, *final* actions (as delineated hereinafter in Subpart B) on behalf of the Agency with regard to SBA's financial assistance delivery system].

(b) Re-certified/de-certified as a participant in the "Preferred lender Program" [to be determined by SBA at least once every three (3) years].

These proposed regulations apply only to PLP participants, insofar as they delineate SBA's delegations of the financial assistance delivery system's authorities/ responsibilities. It should be noted, however, that the eligibility and performance criteria set forth herein (as to how a lender can be selected, for retained in, or removed from the Preferred Lender Program) *will* apply to all prospective participants in the PLP. The remainder of this Supplementary Information portion summarizes the rationale used in determining the proposed regulations' content with respect to Preferred Lender Program certification, re-certification and de-certification criteria.

These eleven (11) eligibility criteria pertain to the factors for the "Preferred Lender Program" and include such *quantifiable* factors as the lender's required experience as an SBA participating lender, lenders' loss rate on their non-SBA commercial loan portfolio, years' passage since the lenders have had any difficulty with SBA vis-a-vis denial(s) of liability and/ or involuntary termination(s) of guaranty, and acceptable volumes of Lender disbursed, SBA-guaranteed business loans. This later criteria (loan volume) becomes more restrictive as a lender seeks to be *re-certified* by SBA as a "Preferred Lender Program" participant. The SBA will develop specific criteria for re-certification and de-certification. Such proposed criteria and related procedures will be published in the **Federal Register** within 120 days of these rules' effective date. The acceptable SBA-loan purchase rate (as to dollars) for lenders is to be at least twenty (20 percentum *less* than the *average* purchase rate percentage experienced (over SBA's three (3) fiscal years immediately preceding lender's application) by the local (Branch or District) SBA office servicing the territory in which the lender's principal office is located. For instance, if a particular SBA office's average loan purchase rate (as to dollars) on all of its *guaranteed* business loans during our Fiscal Years 1978/1980 were fifteen (15) percentum, a local lender apply for PLP status would have to have a purchase rate on SBA's guaranteed business loans for the that same period of time of no more than twelve (12) percentum (20% less than the overall, localized average).

These selection criteria are designed to make certain that the "Preferred Lender Program" is selective and is reserved for our more experienced, more active and least troublesome lending partners. Among our *qualitative* factors for PLP participation selection, is a proven commitment to small business generally, including concerns owned and operated by women, members of socially and economically disadvantaged groups (such as minorities), etc. In these proposed regulations, we do not establish specific (numeric) goals, targets or requirements as to how many SBA-guaranteed loans

must or should be made to SBA's "priority" groups' members or to our "priority" types of business activities. However, we do propose to reserve such goal-setting rights to the Agency. Of course, such goals would be as localized as is possible. We expect that our preferred lending partners will cooperate fully in helping SBA meet higher, national objectives, such as equal credit opportunities, etc. Lenders' performance in these areas will be monitored very closely to make certain that the PLP does not operate to the detriment or exclusion of our "priority" groups' members or "priority" types of business actvities.

Our final points with respect to *eligibility* criteria for lenders to be selected as PLP participants are that:

(1) the process begins at the lender's local SBA office (and *not* in Washington, D.C.);

(2) any of the criteria can be waived by the SBA's Associated Administrator for Financial Assistance *if* there are extenuating circumstances and *if* SBA's regional and district or branch offices request such waiver(s) with full explanation and justification; and

(3) Certain re-certification/de-certification *quantifiable* criteria permit deviations (with the "benchmark" being twenty (20) percentum from the established, published performance standards).

As for the Preferred Lender Program's policies with respect to loan processing (including decision-making as to loan eligibility, creditworthiness, structuring, approving/disapproving, and closing), Section 122.106 provides that SBA is willing to transfer from SBA to "Preferred Lender Program" participants many, final decision-making and action authorities and responsibilities relevant to most of SBA's deferred participation business loans. In these proposals, we intend (at least for now) to restrict the "Preferred Lender Program" authority to 7(a) business loans [excluding Handicapped Assistance Loans, Economic Opportunity Loans, Energy Loans, Employee Stock Ownership Plan (Trust) loans, etc.]. The 7(a) business loan eligibles are restricted further by listing specific types of business activities which pose particular eligibilty—determination problems, such as media loans, and are ineligibles for "Preferred Lender Program" processing. Many of these "ineligibles" are eligible for processing under the "Certified Lender Program" and/or SBA's "regular" business loan procedures.

The rationale for proposing these restrictions is the need to be cautious in exercising the authorities granted by Pub. L. 96–302 and the need to keep the rules as clear and simple as possible, especially in the beginning of the "Preferred Lender Program". It should be noted that PLP participants are to process all PLP-eligible loans under the PLP procedures. Other SBA loans are to be processed, as appropriate, under the auspices of either the Certified Lenders or Regular Participating Lenders Programs.

Most of the types of loans ineligible for "Preferred Lender Program" processing are so categorized because of their eligibility-determination complexities, most of which evove from the Small Business Act's provisions and their implementing regulations.

It would be difficult for PLP participants to determine whether some particular type of loan, e.g., media, could or could not be processed, unilaterally, without any SBA guidance. This matter is all the more critical when one recognizes that SBA *cannot* honor its guaranty to a lender on what was an illegal loan, according to SBA's statutes, rules and regulations, etc. These restrictions will enhance the SBA/Lender partnership.

The authority contained in Pub. L. 96–302 does not relieve SBA from complying with the statutory requirements that apply to any other loan guarantee of the Agency. Therefore, any lender exercising PLP authority to obligate the Agency on a loan must also assume the responsibility of compliance with all limitations on such loans. It would defeat the purpose of the delegation if all applications, first, had to be submitted to SBA for its review of all statutory requirements before the lender processed the loan. All loan guarantee approvals, whether approved by SBA or a lender, are subject to the total authority appropriated by Congress in the Agency's budget. In order to avoid any possibility of exceeding the budget authority, it is necessary for SBA to control the amount of approvals by the lenders. The amount of approval authority allocated to various lenders must be subject to the Agency's right to increase, decrease or terminate unused portions of the authority at any time, as required by various budget actions by the Congress.

This program represents the vast majority of SBA loan guarantee approvals, and the specified limitations eliminate the need for lenders to become familiar with the many special eligibility requirements involved with the additional loan guarantee programs.

Also, many of the other loan programs require SBA to get the assistance of other agencies before action can be taken. The total amount of the lender's PLP loan approval authority is limited at

this time to under $300,000 (SBA *and* lender's shares) because loans less than this amount are categorically excluded from the requirements of the National Evironmental Protection Act (NEPA). Since these requirements specify several actions that *must be taken by SBA* (on loans of $300,000 or more in face value), it is not feasible for the lender to process the loan up to the point of approval and then forward the loan application to SBA for the NEPA evaluations. SBA will continue to work with the Council on Environmental Quality to see if NEPA restrictions can be clarified and/or simplified in such a way that PLP participants could process, unilaterally, *all* otherwise eligible, SBA-guaranteed 7(a) business loans, up to the SBA's statutory limitation as to SBA's share of the loan, rather than having to "cap" this PLP authority at the $300,000 total amount, (SBA and Lender) level.

These proposed regulations, also, deal specifically with:

(1) Requirements of "Preferred Lender Program" participants to have SBA's "Statements of Personal History" (SBA Form 912) *cleared* by SBA's Office of Security and Investigations (for determinations of good character on the part of the small businesses' owners, principal stockholders, etc.);

(2) Maximum flexibility to PLP participants [and their local SBA office(s)] with respect to mutually-agreed upon *loan closing* documents and requirements;

(3) A *specific* listing of those types of SBA's guaranteed, 7(a) business loans which are *not* eligible for unilateral (PLP) processing by the lender participants (though they may be eligible for *either* "Certified Lender Program" *or* SBA's regular loan-processing procedures);

(4) A prohibition against the usage of the Preferred Lender Program's procedures if the loan's proceeds are to be used to reduce the lender's exposure or the exposure of any other lender affiliated through common ownership, such as through a holding company; and,

(5) No more than twenty-five (25) percent of the loan proceeds can be used for debt payment, including debt owed to the lender or its affiliates. Payment of trade accounts payable is *not* considered to be debt payment.

As for the Preferred Lender Program's loan administration (collection and servicing) and loan liquidation policies, §§ 122.107 and 122.108 specify that SBA is willing to transfer to "Preferred Lender Program" participants many final decision-making and action authorities and responsibilities.

Under § 122.107, SBA permits participants in the "Preferred Lender Program" to take (on or after the effective date of this regulation) such future servicing actions as specified on *all* Guaranteed Loans (including prospective actions on those SBA-guaranteed loans which were in the participant's portfolio *prior* to the lender having become approved by SBA as being a "Preferred Lender Program" participant).

Each qualified lender, under this proposed delegation of authority, must follow accepted standards of loan servicing (including collection follow-up, borrower services and accounting controls) employed by prudent lenders. Each qualified lender would retain all documents relating to the loan, would receive all payments from the borrower, and be responsible for the loan's proper servicing. SBA *does not* propose that PLP participants be permitted to sell the guaranteed portion of SBA loans in the secondary market without prior SBA review or consent.

With respect to loan administration (servicing and collection), a qualified lender would have to obtain prior SBA written consent if it plans to (1) release or waive any claim against any borrower, guarantor, obligor, or standby creditor; (2) sell any primary obligation or other evidence of a Guaranteed Loan to anyone other than another Preferred Lender, or for an amount less than the total amount due; (3) accept a compromise settlement for less than the total amount due; (4) advance funds which would be chargeable to SBA or added to an outstanding loan balance; or, (5) take or consent to any action that would confer a preference on the qualified lender over SBA. SBA shall have the responsibility to ensure that the borrower complies with the non-discrimination provisions set forth in Title 13 CFR Part 113 and Part 117 (when promulgated) of SBA Rules and Regulations.

SBA will continue to make its loan officers and management assistance personnel available to the borrower and the preferred lender. If the borrower defaults, the regular procedures prescribed in Subpart A of this Part [§ 122.10(b)] shall be applicable.

If a preferred lender is determined to be negligent in its responsibilities under the delegation of authority, one of SBA's possible remedies may be the removal of the institution from our Preferred Lender status.

Section 122.108 is devoted to the authorities and responsibilities of the preferred lender with respect to loan liquidation. The section requires, before any determination to liquidate a loan is made, that the lender develop a written liquidation plan having the concurrence of SBA. Such plan must consider, among other items, the possibility of a work-out, the estimated cost of planned actions, and the necessary time frame. The plan could be amended with the concurrence of SBA and the preferred lender. The lender, within the confines of state and local law, would have the authority to work on legal and credit aspects of the liquidation relating to, among other items, work-outs, taking possession, appraisals, foreclosures, and litigation. Prior SBA approval is required with respect to several listed items. Proceeds from the liquidation may be used to reduce the total outstanding loan balance, except that, if SBA has purchased the guaranteed portion, SBA shall share the liquidation proceeds ratably with the preferred lenders. Upon termination of a liquidation, the lender must provide SBA with a detailed accounting.

Accordingly, pursuant to the authority contained in Section 5(b)(7) of the Small Business Act [15 U.S.C. *et. seq.*], it is proposed to amend Part 122, Chapter I, Title 13 of the Code of Federal Regulations as follows:

1. Present Part 122 is amended by designating it as Subpart A.

2. A new Subpart B, to include §§ 122.100–122.108 (including Tables A & B), is added to read as follows:

PART 122—BUSINESS LOANS

Subpart A—General Procedures

* * * * *

Subpart B—Delegation of Authority to Certain Lending Institutions

Sec.

122.100 Captions.
122.101 Statutory provision.
122.102 Objectives.
122.103 Limitation.
122.104 Definitions.
122.105 Eligibility of preferred lender program status.
122.106 Loan processing.
122.107 Loan administration.
122.108 Liquidation procedures and responsibilities.

Table A Volume criteria for certification of preferred lenders.

Table B Volume criteria for re-certification of preferred lenders.

Authority: 15 U.S.C. 634(b)(7), Pub. L. 96–302, approved July 2, 1980 (94 Stat. 833,838).

§ 122.100 Captions.

Where captions are inserted as headings, they are inserted for convenience, and are not a part of these regulations.

§ 122.101 Statutory provision.

The statutory provision is found at 15 U.S.C. 634(b)(7) (94 Stat. 838).

§ 122.102 Objectives.

The intent of Congress and of the provisions of this Subpart B is to delegate to certain lending institutions, herein called Preferred Lenders, limited

loan processing, administration and liquidation authority. SBA's own authority is conditioned and limited by law, and such delegation is confined within such conditions and limits, and such further conditions as herein set forth. SBA shall deny its liability on Guaranteed Loans when statutory conditions or limitations of the Act are violated, and in cases of negligence, fraud or material misrepresentation, including the willful omission of a material fact necessary to make a statement not misleading. Where an alleged fact is peculiarly within the knowledge of a loan applicant, and the Preferred Lender has no reason to discredit such allegation, the Preferred Lender may rely on such allegation: *Provided,* That such allegation is made subject to the criminal provisions of Title 18, U.S.C. and Section 16 of the Act.

§ 122.103 Limitation.

The delegation of SBA's authority to Preferred Lenders shall be limited to Guaranteed Loans, and is further limited by § 122.107(b) and § 122.108(c) below. Within these limitations, Preferred Lenders shall process, administer and liquidate all Guaranteed Loans under the provisions of this Subpart and of the participation agreement.

§ 122.104 Definitions.

Defined terms are capitalized through this subpart.

"*Act*" means the Small Business Act, 15 USC 631 *et seq.*

"*Preferred Lender*" is a lending institution subject to continuing supervision and examination by a State or Federal chartering, licensing, or similar regulatory authority satisfactory to SBA. Certification authorizes such lender to process, administer and liquidate its Guaranteed Loans pursuant to the Act, to this Subpart and to the participation agreement with SBA.

"*Guaranteed Loan*" means a deferred participation loan pursuant to §§ 7(a) and 13 of the Act [15 USC 636(a)], not including group loans under Subsection 7(a)(5), see §§ 120.2 and 122.9 of this Chapter.

"*Small Business Concern*" means a concern (and its affiliates) defined as in § 3(a) of the Small Business Act, [15 USC 632(a)], and the regulations thereunfer (including, but not limited to, applicable size standards, Part 121 of this Chapter).

§ 122.105 Eligibility of preferred lender.

SBA will require a Preferred Lender to meet the following basic requirements:

(a) *Participation with SBA.* Lender shall have been an active participant in SBA's Guaranteed Loan program (as defined in Table A below) for not less than five (5) years.

(b) *Average Loan Activity.* Lender shall maintain an average loan activity for each three-year period in accordance with Table B below.

(c) *Loss Ratio.* The percentage of loss on lender's commercial loans which are not Guaranteed Loans shall not exceed an average of one percent (1%) per year for the previous three years.

(d) *SBA Purchases.* The purchase by SBA of Guaranteed Loans from lender over SBA's three fiscal years immediately preceding lender's application has been (in dollar amounts) at least twenty percent below the average purchase rate experienced by the SBA office serving the territory in which lender's principal office is located.

e. *Acceptance of Responsibility.* Unless SBA requests otherwise, in writing, Lender shall accept in all respects such authority and responsibilities as SBA hereby delegates to it: *Provided,* That SBA agrees to remain available for consultations and advice as lender deems appropriate.

(f) *Complete Packages.* Lender shall have demonstrated, to SBA's satisfaction, that it has the consistent ability to present complete and well-analyzed loan packages to SBA.

(g) *Lawful Operations.* Lender shall have demonstrated to SBA's satisfaction that it has complied with SBA's regulations and published policies, in addition to showing that it complies with other applicable law: *Provided,* That SBA shall have the responsibility for borrower's compliance with the non-discrimination provisions of Title 13 CFR Parts 113 and 117 (when promulgated) of this Chapter.

(h) *SBA Priorities.* Lenders shall demonstrate, to SBA's satisfaction, that it will extend assistance to creditworthy Small Business Concerns engaged in pursuits, or owned and operated by groups, on SBA's priority list. At present, SBA assigns priority to energy, job creation, high technology, innovation, export and community development. SBA further assigns priority to women, the disadvantaged, veterans and the handicapped. SBA may, from time to time, subsequent to the effective date of these regulations, establish (as appropriate and on as localized a basis as is practicable) loan objectives for such priority pursuits or groups, and attainment of such objectives will be a factor when SBA evaluates the performance of the Preferred Lender.

(i) *Quality of Lending.* By becoming a Preferred Lender, Lender shall be deemed to have affirmed that it will follow generally accepted standards of loan making, servicing and collection employed by prudent lenders, and in no event apply lower standards for Guaranteed Loans than for its own loans.

(j) *Regulatory Reports.* By becoming a Preferred Lender, Lender shall be deemed to have agreed that State or Federal chartering, licensing, or similar regulatory authority may furnish to SBA copies of examination reports and other information affecting SBA.

(k) *Inspection.* Lender shall agree in writing that representatives of SBA shall have access, during normal business hours, to audit and inspect all documents in the Lender's possession relating to Guaranteed Loans.

(l) *Past Denial Liability.* Lender must not have suffered a partial or total denial of liability or termination of guaranty (except upon the lender's request) on any Guaranteed Loan during the preceding five calendar years.

(m) *Waiver.* The Associate Administrator for Financial Assistance may waive any requirement of this Section for good cause shown in furtherance of the objectives of the Small Business Act.

(n) *No Entitlement.* Approval of lenders by SBA pursuant to this Subpart is discretionary and may be withdrawn if, upon evaluation, a Preferred Lender is found deficient in meeting the responsiblities specified in this Subpart.

§ 122.106 Loan processing.

(a) *Loan Approval.* A Preferred Lender is responsible for all decisions relating to eligibility, size, creditworthiness, loan closing and compliance with all requirements of law or SBA regulations, such as, for example, terms and conditions prescribed in § 120.3 of this Chapter relating to maturities, guaranty fees and interest rates, service and applicant's fees, and insurance. The Preferred Lender's approval of a loan must be evidenced by the signatures of two loan officers or by its loan committee.

(b) *Credit Allocations.* Each Preferred Lender shall receive a periodic allocation of credit which shall be its maximum authority to commit SBA on Guaranteed Loans for the period. Such lender's allocation shall be increased only by written authority of SBA and shall not be restored by payments received on SBA-related loans; however, loan cancellations shall be credited to the lender's allocation of SBA's credit if the cancellation occurs in the same SBA Fiscal Year as the cancelled loan originally was approved and debited to the allocation's account.

(c) *Limitations on Preferred Lender's authority.*

(1) Within the allocation described in paragraph (b) of this section, the Preferred Lender is authorized to approve loans to a borrower and its affiliates (as defined in § 121.3–2(a) of this Chapter), if the aggregate of such loans does not exceed the lesser of (i) $300,000 or (ii) the amount which the SBA district or branch office, serving the territory where such borrower is located, is authorized to approve. The amount of $300,000 in (i) above applies to the total amount of a loan, and does not refer to SBA's guaranteed share.

(2) A Preferred Lender shall obtain written SBA consent before approving any loan request.

(i) if the loan applicant has received financial assistance from SBA other than through a Guaranteed Loan from such lender, or a disaster loan or other financial assistance under Secs. 5(e), 7(b), or 7(g) of the Act, see Parts 131 and 123 of this Chapter;

(ii) to effect a change of ownership;

(iii) for recreational or amusement enterprises;

(iv) for private or membership organizations;

(v) to pay off a creditor who is inadequately secured and is in a likely position to suffer a loss;

(vi) to provide funds for, or replace, working capital used for distribution or loans to owners, partners or shareholders of the Small Business Concerns [See also § 120.2(d)(1)(ii)];

(vii) to refund a debt of a small business investment company licensed by SBA under Title III of the Small Business Investment Act, 15 U.S.C. 661 *et seq.*;

(viii) for investment in real or personal property other than for purposes of growth, modernization or expansion of the loan applicant. Examples of proscribed loan purposes include rental or leasing property, relending or reinvesting (including insurance companies and agents);

(ix) for any broadcaster, producer or distributor of print media, film, records, tape, or live performance of art or entertainment;

(x) for oil and natural gas exploration (i.e. 'wildcatting');

(xi) to any concern whose income (or that of its principals) in whole or in part is derived from gambling;

(xii) the effect of which would be to create or encourage a monopoly in violation of § 120.2(d)(8) of this Chapter;

(xiii) to any concern engaged in illegal activity or in the production, servicing or distribution of products or services used in connection with an illegal activity;

(xiv) to any concern if any of its principals has been convicted of a felony, is imprisoned, on parole, on probation or is appealing a felony conviction;

(xv) to any cooperative.

(d) *Refinancing.* Up to twenty-five percent (25%) of any loan made pursuant to this Subpart B may be used to refinance existing debt, but the exposure of the Preferred Lender and its Affiliates after such refinancing shall at least equal such lender's and Affiliates outstanding loans or ten percent (10%) of such loan whichever is more. Payment of trade accounts payable shall not be considered debt payment for the purposes of this subsection.

§ 122.107 Loan adminsitration.

(a) *Servicing.* SBA authorizes Preferred Lenders to take [on or after the effective date of this regulation] such servicing actions as herein specified on all Guaranteed Loans.

(b) *Standard.* Each Preferred Lender shall follow, in servicing such loans, generally accepted standards of loan servicing employed by prudent lenders.

(c) *Scope of Service.* Subject to limitations hereafter described, each Preferred Lender shall have the authority and responsibility with respect to each Guaranteed Loan, to administer such loan in a manner reasonably comparable to that of its non-SBA portfolio. The Preferred Lender (1) shall hold the note, instruments of hyporthecation, and all other agreements and documents obtained by it in connection with such loan, subject, however, to paragraphs (d) (2) and (3) of this section; (2) shall receive all payments of principal and interest on such loan and shall be responsible for all loan servicing [including (but not limited to) collection follow-up, borrower's services and accounting controls] until such time as the SBA expressly accepts responsibility for service; and (3) shall have the authority to sell the guaranteed portion of each SBA guaranteed loan in the secondary market, subject to prior SBA review.

(d) *Limitations on Servicing.* Each Preferred Lender shall be required to obtain the prior written consent of SBA only if it plans to:

(1) Release or waive any claim arising out of the loan against any borrower, guarantor, obligor, or standby creditor;

(2) Sell any primary obligation or other evidence of indebtedness of loans guaranteed by SBA to any one other than another Preferred Lender;

(3) Sell any primary obligation or other evidence of indebtedness of loans guaranteed by SBA for a sum less than the total amount due thereon;

(4) Accept a compromise settlement of an indebtedness owed to the Preferred Lender on loans guaranteed by SBA;

(5) Advance funds for any purpose (for example, preservation of collateral) if such funds are to be chargeable to SBA or added to the outstanding loan balance; and

(6) Take or consent to any action that benefits or confers a preference on the Preferred Lender or its Associates.

(e) *SBA Assistance.* SBA shall continue its policy to aid and assist Small Business Concerns to discharge their financial obligations and to advise Small Business Concerns in the management, production and financial aspects of their business in order to encourage the development of sound and growing Small Business Concerns. Towards this end, SBA shall continue to make available the support assistance of SBA loan officers, management assistance officers etc. at the request of Small Business Concerns or their lenders. The moratorium provisions of Sec. 5(e) of the Act, 15 U.S.C. 634(e) and Part 131 of this Chapter shall be applicable to loans under this Subpart.

(f) *Purchase by SBA.* If a Small Business Concern defaults on a loan being serviced by a Perferred Lender for more than sixty (60) calendar days, or if SBA otherwise determines to purchase the guaranteed portion of a loan, the purchase provisions of § 122.10(b) shall apply.

(g) *Negligence by Preferred Lender.* If a Preferred Lender is negligent in its servicing responsibilities under this subpart B, SBA may remove the financial institution as a Preferred Lender, and deny liability pursuant to § 122.102.

§ 122.108 Liquidation procedures and responsibilities.

(a) *Policy.* It is SBA policy, in liquidation activities, to take severe corrective action in a careful and considered manner. Once a final decision to liquidate is made, prompt action is necessary to ensure maximum recovery in the minimum time with equity to the affected borrower and guarantors During such proceedings SBA remains alert to the possible resolution of the borrower's problem and eventual return to regular servicing, and will make special efforts to retain the small firm in existence as a viable business entity rather than to allow a piecemeal sale of assets with the resulting loss to the local economy as well as to SBA. Keeping the foregoing in mind, Preferred Lenders shall have the authority to liquidate Guaranteed Loans, subject to these regulations.

(b) *Scope.* Subject to the limitations listed in paragraph (c) of this section and the limitations in this paragraph, each Preferred Lender shall have the responsibility to resolve problems and to protect its interest and that of SBA with respect to any Guaranteed Loan after a plan of liquidation pursuant to paragraph (c) of this section has been agreed upon. The Preferred Lender, after ensuring that it is in compliance with the plan of liquidation and with all state and local laws and customs pertaining to liquidation, shall have the responsibility to work on legal and credit considerations which include sending notices to borrowers and guarantors, workouts, taking possession, care and protection of collateral, appraisals, foreclosures, all sales related activities (*e.g.* advertising, determination of sales methods, accounting for proceeds), establishing deficiencies, as well as litigation actions. SBA's prior written consent shall be required only if the Preferred Lender:

(1) plans to accelerate the maturity of any note or sue upon any loans instrument, or

(2) proposes to take actions contrary to, or in conflict with, the liquidation plan.

(c) *Plan.* Before any determination of liquidate is made, a written liquidation plan shall be developed by the Preferred Lender for the written concurrence of SBA. Such plan shall, at a minimum, reflect due consideration of the possibility of a work-out, the extent, nature and collateral for any non-SBA lending by the Preferred Lender to the borrower/guarantors, the estimated cost (*e.g.* legal fees) of the planned actions, method of public offering, the bonded auctioneer, the estimated overall recovery, protective bids and the time necessary to complete this effort The plan should also cover possible litigation. As needed, the plan may be amended with the written concurrence of SBA and the Preferred Lender. In implementing the plan, the Preferred Lender shall provide to SBA copies of pertinent letters, notices, pleadings, liquidation sale materials and such other documents as SBA may request. SBA encourages Preferred Lenders to consult freely with SBA.

(d) *Proceeds from Liquidation.* If the Preferred Lender is solely responsibile for the liquidation of the loan, it may apply the proceeds derived from the liquidation to reduce the total outstanding loan balance. If, however, the Preferred Lender has elected to make demand upon SBA under SBA regulations to purchase the guaranteed portion of an SBA guaranteed loan, the proceeds derived from the liquidation shall be shared ratably by it and SBA. If the Preferred Lender has not previously done so, it may upon completion of the liquidation make demand upon SBA for payment of SBA's share of the deficiency.

(e) *Accounting.* Upon the completion of a liquidation, the Preferred Lender shall provide SBA with a detailed accounting.

Dated: January 9, 1981.

A. Vernon Weaver,

Administrator.

[Catalog of Federal Domestic Assistance No. 59.012 (Small Business Loans)]

Table A.—*(Re: § 122.105(b)); Active Participant in SBA's Guarantee Loan Program*

Lender's deposits range	*(1 and 2) number of loans
Less than $50 million	40
$50 million to $100 million	44
$100 million to $150 million	48
$150 million to $200 million	52
$200 million to $250 million	56
$250 million to $300 million	60
$300 million to $350 million	64
$350 million to $400 million	68
$400 million to $450 million	72
$450 million to $500 million	76
$500 million to $550 million	80
$550 million to $600 million	84
$600 million to $650 million	88
$650 million to $700 million	92
$700 million to $750 million	96
$750 million to $800 million	100
$800 million to $850 million	104
$850 million to $900 million	108
$900 million to $950 million	112
$950 million to $1 billion	116
$1,950 million to $2 billion	196
$2,950 million to $3 billion	276
$3,950 million to $4 billion	356
$4,950 million to $5 billion	436
$9,950 million to $10 billion	836

*1. Minimum Number of SBA Loan Disbursements Required over the immediately preceding 5 of SBA's Fiscal Years. 2. For each additional $50 million deposit-size increment, there is a requirement for an additional 4 SBA loans over the 5-years.

Table B.—*(Re: § 122.105(c)); Average Loan Activity for Each Three-Year Period (Subsequent to Becoming a Preferred Lender)*

Lender's deposits range	*(1 and 2) number of loans
Less than $50 million	72
$50 million to $100 million	78
$100 million to $150 million	84
$150 million to $200 million	90
$200 million to $250 million	96
$250 million to $300 million	102
$300 million to $350 million	108
$350 million to $400 million	114
$400 million to $450 million	120
$450 million to $500 million	126
$500 million to $550 million	132
$550 million to $600 million	138
$600 million to $650 million	144
$650 million to $700 million	150
$700 million to $750 million	156
$750 million to $800 million	162
$800 million to $850 million	168
$850 million to $900 million	174
$900 million to $950 million	180
$950 million to $1 billion	186
$1,950 million to $2 billion	306
$2,950 million to $3 billion	326
$3,950 million to $4 billion	546
$4,950 million to $5 billion	666

Table B.—*(Re: § 122.105(c)); Average Loan Activity for Each Three-Year Period (Subsequent to Becoming a Preferred Lender)*—Continued

Lender's deposits range	*(1 and 2) number of loans
$9,950 million to $10 billion	1,266

*1. Minimum Number of SBA Loan Disbursements Required of Lender to be eligible for SBA's Re-Certification (after 3 of SBA's full Fiscal Years, subsequent to the Lender's Certification.) 2. For each additional $50 million deposit-size increment, there is a requirement for an additional 6 SBA loans over 3 years.

[FR Doc. 81-1728 Filed 1-16-81; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. 1

[Summary Notice No. PR-81-1]

Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rule making (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rule making procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials of certain petitions previously received. The purpose of ths notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Publication of this notice and any information it contains or omits is not intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and be received on or before: January 30, 1981.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Adminstrtion, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No.——, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA

Headquarters Building (FOB 10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephoine (202) 426–3644.

This notice is published pursuant to pargraphs (b) and (f) of § 11.27 of Part ,11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on January 2, 1981.

John H. Cassady,

Acting Assistant Chief Counsel, Regulations and Enforcement Division Federal Aviation Administration.

Petitions for Rulemaking

Docket No.	Petitioner	Description of the rule requested
19948	Eastern Air Lines	Description of petition: Reconsideration of the Final Rule delaying the introduction of widebody airaft operations at Washington National Airport from January 5 to April 26, 1981. Regulations affected: 14 CFR Parts 93 and 159. Petitioners reasons for rule: The continued ban of widebody aircraft service at National are contrary to the public interest, unjustifiable by substantial evidence of record before the FAA, and an abuse of the FAA's rulemaking authority.

Additional information: The regulations implementing the Metropolitan Washington Airports (MWA) Policy were issued on September 15, 1980 (45 FR 62398, September 18, 1980) and were to become effective on January 5, 1981, amont other things, the regulatins would allow widebody aircraft to use Washington National Airport. Public Law 96–400 prohibited the full implementation of the MWA policy until April 26, 1981. The FAA has determined that the effective date of MWA policy should be changed from January 5 to April 26 and no positions of the policy should be implemented before that date (45 FR 71251, October 27, 1980). The FAA has not been presented with adequate reasons to implements portins of the policy while the other interrelated elements are deferred. Furthermore, insufficient time remains to receive input from the public in time to grant the Petitioners request to allow wide body aircraft into National beginning January 5, 1981.

[FR Doc. 81–1717 Filed 1–16–81; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 80–ARM–15]

Establishment of Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) proposes to establish a control zone at Provo, Utah, to provide additional controlled airspace for aircraft executing the new instrument landing system (ILS) standard instrument approach procedure (SIAP) developed for the Provo Municipal Airport, Provo, Utah.

DATES: Comments must be received on or before February 17, 1981.

ADDRESSES: Send comments on the proposal to: Chief, Air Traffic Division, Attn: ARM–500, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colorado 80010.

A public docket will be available for examination by interested persons in the docket of the Regional Counsel, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colorado 80010.

FOR FURTHER INFORMATION CONTACT: Pruett B. Helm, Airspace and Procedures Specialists, Operations, Procedures and Airspace Branch (ARM–530), Air Traffic Division, Federal Aviation Administration, Rocky Mountain Region, 10455 East 25th Avenue, Aurora, Colorado 80010; telephone (303) 837–3937.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Division, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colorado 80010. All communications received will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The Federal Aviation Administration (FAA) is considering an amendment to subpart F of Part 71 of the Federal Aviation Regulations (14 CFR 71) to establish a control zone at Provo, Utah. This proposal is necessary to provide additional controlled airspace for aircraft executing the new ILS standard instrument approach procedure developed for the Provo Municipal Airport, Provo, Utah. Accordingly, the Federal Aviation Administration proposes to amend subpart F of Part 71 of the Federal Aviation Regulations (14 CFR 71) as follows:

By amending subpart F, § 71.171 so as to establish the following control zone to read:

Provo, Utah

Within a 5-mile radius of Provo Municipal Airport (latitude 40°12'56", longitude 111°43'14" W.). This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time thereafter to be continuously published in the Airport/Facility Directory.

Drafting Information

The principal authors of this document are Pruett B. Helm, Air Traffic Division, and Daniel J. Peterson, Office of the Regional Counsel, Rocky Mountain Region.

This amendment is proposed under authority of section 307(a) of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1348(a)), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which

frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation, and a comment period of less than 45 days is appropriate.

Issued in Aurora, Colorado on January 6, 1981.

Walter A. Barbo,

Acting Director.

[FR Doc. 81-1716 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 80-ARM-22]

Williston, North Dakota; Alteration of Control Zone and Transition Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) proposes to alter the control zone and 700′ and 1,200′ transition areas at Williston, North Dakota, to provide additional controlled airspace for aircraft executing the new VOR/DME runway 29 standard instrument approach procedure (SIAP) developed for the Sloulin Field International Airport, Williston, North Dakota.

DATES: Comments must be received on or before Feburary 23, 1981.

ADDRESSES: Send comments on the proposal to: Chief, Air Traffic Division, Attn: ARM-500, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colorado 80010.

A public docket will be available for examination by interested persons in the office of the Regional Counsel, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colorado 80010.

FOR FURTHER INFORMATION CONTACT: Pruett B. Helm, Airspace and Procedures Specialist, Operations, Procedures and Airspace Branch (ARM-530), Air Traffic Division, Federal Aviation Administration, Rocky Mountain Region, 10455 East 25th Avenue, Aurora, Colorado 80010; telephone (303) 837-3937.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Division, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colorado 80010. All communications received will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The Federal Aviation Administration is considering an amendment to Subparts F and G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the control zone and the 700′ and 1,200′ transition areas at Williston, North Dakota. This proposal is necessary as the present control zone and the 700′ and 1,200′ transition areas are inadequate in size to contain the new VOR/DME runway 29 standard instrument approach procedure developed for the Sloulin Field International Airport, Williston, North Dakota. Accordingly, the Federal Aviation Administration proposes to amend Subparts F and G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

By amending Subpart F, § 71.171 so as to alter the following control zone to read:

Williston, North Dakota

With a 5-mile radius of the Sloulin International Airport (latitude 48°10′37″ N., longitude 103°38′18″ W.); within 1.5 miles each side of the Williston VORTAC 136° radial, extending from the 5-mile radius area to 1.5 miles southeast of the Williston VORTAC, and within 2 miles north and 3 miles south of the 126° bearing from the Sloulin International Airport, extending from the 5-mile radius area to 10 miles southeast of the airport. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will, thereafter, be continuously published in the Airport/Facility Directory.

By amending Subpart G, § 71.181 so as to alter the following transition area to read:

Williston, North Dakota

That airspace extending upward from 700′ above the surface within a 10-mile radius of the Sloulin Field International Airport (latitude 48°10′37″ N., longitude 103°38′18″ W.); within 3.5 miles each side of the Williston VORTAC 316° radial, extending from the 10-mile radius area to 11.5 miles northwest of the VORTAC; within 3.5 miles north and 5.5 miles south of the 126° bearing from the Sloulin Field International Airport extending from the 10-mile radius area to 16 miles southeast of the airport; and that airspace extending upward from 1,200′ above the surface within a 25-mile radius of the Williston VORTAC (latitude 48°15′12″ N., longitude 103°45′01″ W.) extending from the west edge of V-439 clockwise to the north edge of V-430, and within 45 miles of the Williston VORTAC extending from the south edge of V-430 clockwise to the east edge of V-439 excluding the Watford and Newtown 1,200′ transition areas.

Drafting Information

The principal authors of this document are Pruett B. Helm, Air Traffic Division, and Daniel J. Peterson, office of the Regional Counsel, Rocky Mountain Region.

(Section 307(a) of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1348(a)), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation, and a comment period of less than 45 days is appropriate.

Issued in Aurora, Colorado on January 9, 1981.

Arthur Varnado,

Director.

[FR Doc. 81-1754 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 80-ASW-57]

Andrews, Texas; Proposed Alteration of Transition Area:

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The nature of the action being taken is to proposed alteration of the transition area at Andrews, Tex. The intended effect of the proposed action is to provide controlled airspace for aircraft executing instrument approach procedures to the Andrews County Airport. The circumstance which created the need for this action is that a review of the controlled airspace revealed there is an excess of designated airspace for the protection of aircraft executing instrument approaches to the airport.

DATES: Comments must be received on or before February 18, 1981.

ADDRESSES: Send comments on the proposal to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101.

The official docket may be examined at the following location: Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Forth Worth, Texas. An informal docket may be examined at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, Texas 76101; telephone: (817) 624-4911, extension 302.

SUPPLEMENTARY INFORMATION: Subpart G, § 71.181 (45 FR 445) of FAR Part 71 contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting Instrument Flight Rules (IFR) activity. Alteration of the transition area at Andrews, Tex., will necessitate an amendment to this subpart.

Comments Invited

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. All communications received on or before February 18, 1981, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comment, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any persons may obtain a copy of this notice of proposed rule making (NPRM) by submitting a request to the Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, or by calling (817) 624-4911, extension 302. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should contact the office listed above.

The Proposal

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area at Andrews, Tex. The FAA believes this action will enhance IRF operations at the Andrews County Airport by providing controlled airspace for aircraft executing proposed instrument approach procedures. Subpart G of Part 71 was republished in the Federal Register on January 2, 1980 (45 FR 445).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 712.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 445) by deleting the present description and substituting the following:

Andrews, Texas

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Andrews County Airport, Andrews, Texas (latitude 32°19'53"N., longitude 102°31'38"W.), and within 3 miles each side of the 355° true bearing from the Andrews County NDB (latitude 32°20'56"N., longitude 102°32'10"W.), extending from the 7-mile radius area to 8.5 miles north of the Andrews County NDB.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); and Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and comment period of less than 45 days is appropriate.

Issued in Fort Worth, Texas on January 7, 1981.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 81-1758 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-ASW-56]

Midland, Texas; Proposed Alteration of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The nature of the action being taken is to propose alteration of the transition area at Midland, Tex. The intended effect of the proposed action is to provide controlled airspace for aircraft executing instrument approach procedures to the Midland Regional, Odessa-Schlemeyer, Midland Airpark, and Mabee Ranch Airports. The circumstance which created the need for this action is that a review of the airspace revealed there is an excess of airspace needed for protection of aircraft executing instrument approach procedures to the four airports.

DATES: Comments must be received on or before February 18, 1981.

ADDRESSES: Send comments on the proposal to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101.

The official docket may be examined at the following location: Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas.

An informal docket may be examined at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; telephone: (817) 624-4911, extension 302.

SUPPLEMENTARY INFORMATION: Subpart G, § 71.181 (45 FR 445) of FAR Part 71 contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft

conducting Instrument Flight Rules (IFR) activity. Alteration of the transition area at Midland, Tex., will necessitate an amendment to this subpart.

Comments Invited

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. All communications received on or before February 18, 1981, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, or by calling (817) 624–4911, extension 302. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should contact the office listed above.

The Proposal

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area at Midland, Tex. The FAA believes this action will enhance IFR operations at the Midland regional, Odessa-Schlemeyer, Midland Airpark, and Mabee Ranch Airports by providing controlled airspace for aircraft executing proposed instrument approach procedures. Subpart G of Part 71 was republished in the **Federal Register** on January 2, 1980 (45 FR 445).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 445) by deleting the present description and substituting the following:

Midland, Texas

That airspace extending upward from 700 feet above the surface within a 9.5-mile radius of the Midland Regional Airport (31°56'32"N., 102°12'07"W.), and within 9.5-mile radius of the Midland Airpark Airport (32°01'45"N., 102°06'15"W.), and within 9.5-mile radius of the Odessa-Schlemeyer Airport (31°55'00"N., 102°23'15"W.), and within a 7-mile radius of the Mabee Ranch Airport (32°12'56"N., 102°09'46"W.).

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); and Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Fort Worth, Texas on January 7, 1981.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 81-7759 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 80-ASW-59]

Big Lake, Texas; Proposed Designation of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The nature of the action being taken is to propose designation of a transition area at Big Lake, Tex. The intended effect of the proposed action is to provide controlled airspace for aircraft executing a new instrument approach procedure to the Reagan County Airport. The circumstance which created the need for this action is the proposed establishment of a nondirectional radio beacon (NDB) on the Reagan County Airport.

DATES: Comments must be received on or before February 18, 1981.

ADDRESSES: Send comments on the proposal to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101.

The official docket may be examined at the following location: Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas.

An informal docket may be examined at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; telephone: (817) 624–4911, extension 302.

SUPPLEMENTARY INFORMATION: Subpart G, § 71.181 (45 FR 445) of FAR Part 71 contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting Instrument Flight Rules (IFR) activity. Designation of a transition area at Big Lake, Tex., will necessitate an amendment to this subpart.

Comments Invited

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. All communications received on or before February 18, 1981, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at ths time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region,

Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, or by calling (817) 624–4911, extension 302. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should contact the office listed above.

The Proposal

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate a transition area at Big Lake, Tex. The FAA believes this action will enhance IFR operations at the Reagan County Airport by providing controlled airspace for aircraft executing proposed instrument approach procedures using the proposed NDB. Subpart G of Part 71 was republished in the **Federal Register** on January 2, 1980 (45 FR 445).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 445) by adding the following:

Big Lake, Texas

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Big Lake, Texas, Reagan County Airport, (latitude 31°11'51", longitude 101°28'21") and within 3 miles each side of the 345° bearing from the NDB (latitude 31°11'33"N., longitude 101°28'08"W.) extending from the 7-mile radius area to 8.5 miles northwest of the NDB.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); and Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Fort Worth, Texas on January 7, 1981.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 81-1762 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulation No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled Income

AGENCY: Social Security Administration, HHS.

ACTION: Proposed Rule.

SUMMARY: These proposed regulations reflect the provisions of two public laws. Section 101(a)(2)(B) of Pub. L. 96–222 amends section 1612(a)(1) of the Social Security Act by adding a new type of earned income—advance payments by employers and refunds of Federal income taxes made by reason of the earned income credits provisions of the Internal Revenue Code of 1954. Section 202 of Pub. L. 96–265 also amends the same section, 1612(a)(1) of the Act, by designating as earned income all payments for services performed in a sheltered workshop or work activities center.

DATES: Your comments will be considered if we receive them no later than March 20, 1981.

ADDRESSES: Send your written comments to Social Security Administration, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203.

Copies of all comments we receive can be seen at the Washington Inquiries Section, Office of Government Affairs, Department of Health and Human Services, Switzer Building, Room 1212, 330 C Street, S.W., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Rita Hauth, Legal Assistant, Room 4234, West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–7112.

SUPPLEMENTARY INFORMATION: We plan to revise our recodified regulations on income under the Supplemental Security Income program, Part 416 of the Code of Federal Regulations. The recodified regulations, Subpart K of Part 416, were published October 3, 1980 (45 FR 65541). These revisions are necessary because of recently enacted legislation. The effect of the public laws is significant because the amount of income individuals have is a factor in determining eligibility for SSI and the amount of benefits payable. The law and regulations classify income as either earned or unearned and provide greater exclusions from earned income than from unearned income. Thus, a beneficiary who receives a given amount of earned income can receive a higher benefit than another who receives a like amount of unearned income.

Sections 416.1110 and 416.1111 of the regulations are being amended to include two changes in the definition of earned income because of the enactment of Pub. L. 96–222 and Pub. L. 96–265. The amended § 416.1110 describes the new types of earned income and § 416.1111 tells how we count that income to determine the amount of benefits payable.

Pub. L. 96–222, Section 101(a)(2), adds a new type of earned income for SSI purposes—refunds of Federal income taxes made under the earned income credits provisions of § 43 of the Internal Revenue Code of 1954 and advance payments of these credits made by employers under § 3507 of the same code. These payments are earned income as of January 1, 1980. The retroactive effective date of this law fills the gap that occurred because section 105(f) of the prior statute, Pub. L. 95–600, included an expiration date of December 31, 1979 for exclusion of these payments for SSI purposes. If the new statute had not been enacted, SSA would have counted the earned income credits as unearned income when the exclusion expired. This is because the payments would not meet the definition of earned income under the SSI program prior to enactment of the new statute. Thus, individuals who receive payments of earned income credits in 1980 or later would have received lower benefits since unearned income is subject to fewer exclusions than earned income.

Earned income credits are paid to people who meet certain conditions of family composition and amount of income. The credits can be received in a single payment subsequent to the filing of an income tax return as an addition to any regular income tax refund due the individual. As an alternative, they may be advanced to individuals by employers over a period of employment during the tax year under procedures established by the Internal Revenue Service. If the advanced payments turn out to be incorrect because the employer advanced more than was due, SSA adjusts benefits at the time the correct amount is established. The new statute states that the adjustment will be made in benefits payable to the individual. SSA will carry out this provision under the rules in Subpart E of the Regulations (20 CFR, Part 416). These rules provide that an SSI underpayment will be made to the underpaid individual or, if the individual is deceased, to his or her eligible spouse.

Pub. L. 96–265, section 202, states that beginning October 1, 1980, payment for services performed in a sheltered

workshop or work activities center constitutes earned income. Since payments for these services are now earned income, there is no need to distinguish them from payments received from other employers and, therefore, no need to define what constitutes a sheltered workshop or work activities center. Prior to Pub. L. 96–265, these payments were either earned income or unearned income depending on whether the individual's effort constituted employment or therapy. Thus, if two beneficiaries receive payments in the same workship, one may have been receiving earned income as an employee and the other unearned income because he or she was in a rehabilitative training program. The second beneficiary received a lower benefit because unearned income is subject to fewer exclusions. Beneficiaries found the different treatment hard to understand and considered it unfair. Also, agencies concerned with the handicapped individuals have commented adversely. SSA was obliged to develop cases extensively to determine whether the income received in a sheltered workshop or work activities center was earned or unearned. The new law and regulations will advantage beneficiaries as well as end these administrative problems.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program)

Dated: December 10, 1980.

William J. Driver,

Commissioner of Social Security.

Approved: January 12, 1981.

Patricia Roberts Harris,

Secretary of Health and Human Services.

Part 416 of Title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart K of Part 416 is revised to read as follows:

Authority: Secs. 1102, 1601, 1602, 1611, 1612, 1613, 1614 and 1631 of the Social Security Act as amended; Sec. 211 of Pub. L. 93–66; 49 Stat. 647, as amended, 86 Stat. 1465, 1466, 1468, 1470, 1471, 1473, 1475, 87 Stat. 154; 42 U.S.C. 1302, 1381, 1381a, 1382, 1382a, 1382b, 1383c and 1383. Sec. 202 of Pub. L. 96–265, 94 Stat. 449; 42 U.S.C. 1382c.

2. Section 416.1110 is amended by revising the material preceding paragraph (a) and by adding new paragraphs (c) and (d) to read as follows:

§ 416.1110 What is earned income.

Earned income may be in cash or in kind and consists of the following types of payments:

* * * * *

(c) *Refunds of Federal income taxes and advance payments by employers made in accordance with the earned income credit provisions of the Internal Revenue Code.* Refunds on account of earned income credits are payments made to you under the provisions of section 43 of the Internal Revenue Code of 1954, as amended. Earned income credits may be paid to you separately or included with the Federal income tax refund you receive because of overpayment of your income tax. (Federal income tax refunds made on the basis of taxes you have already paid are not income to you as stated in § 416.1103(d).) Advance payments of earned income credits are made by your employer under the provisions of section 3507 of the same code. Earned income credit payments are made to you if you meet certain requirements of family composition and income limits. These earned income credit payments are earned income beginning January 1, 1980.

(d) *Payments for services performed in a sheltered workshop or work activities center.* Payments for services performed in a sheltered workshop or work activities center are what you receive for participating in a program designed to help you become self-supporting. Beginning October 1, 1980, these payments are earned income.

3. Section 416.1111 is being revised by redesignating paragraph (c) as paragraph (e) and adding new paragraphs (c) and (d) to read as follows:

§ 416.1111 How we count earned income.

* * * * *

(c) *Refunds of Federal income taxes and advance payments by employers made under the earned income credit provisions of the Internal Revenue Code.* We count payments advanced by your employer and refunds of Federal income taxes made under the earned income credit provisions of the Internal Revenue Code of 1954 in the quarters in which you receive them. You receive refunds in a single quarter if they are paid as a result of the filing of your income tax return and as an addition to the refund of taxes withheld by your employer. You receive payments advanced by your employer along with your wages spread over the period of your employment. If we do not pay you the correct amount of benefits (that is, we withheld too much from your benefits) because your employer has advanced you more than was actually due, SSA will make up the difference in benefits when the correct amount of your earned income credits is determined by the Internal Revenue Service (see § 416.542 for the rules on underpayments). If your employer advanced less than you were actually due we will count the additional amount in the quarter in which you receive it from Internal Revenue Service.

(d) *Payments for services in a sheltered workshop or activities center.* We count payments you receive for services performed in a sheltered workshop or work activities center when you receive them or when they are set aside for your use. We determine the amount of the payments for each calendar quarter.

* * * * *

[FR Doc. 81–1567 Filed 1–16–81; 8:45 am]

BILLING CODE 4110–07–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 51

[LR–48–80]

Windfall Profit Tax Administrative Provisions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Amendment of proposed rulemaking by cross-reference to amended temporary regulations.

SUMMARY: In the Rules and Regulations portion of this **Federal Register**, the Internal Revenue Service is issuing temporary excise tax regulations that relate primarily to administrative aspects of the tax imposed by title I of the Crude Oil Windfall Profit Tax Act of 1980. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by March 20, 1981.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–48–80), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: David B. Cubeta of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3297).

SUPPLEMENTARY INFORMATION:

Initial Regulatory Flexibility Analysis

The amendments to the temporary regulations are published in response to public comment received after the temporary regulations were originally

published on April 4, 1980 (45 FR 23384) and are designed to relieve many of the compliance problems raised in the comments. The rules will apply to all entities, large and small, engaged in the production or purchase of domestic crude oil and related activities. The preamble to the temporary regulations, contained in the Rules and Regulations portion of this **Federal Register**, explains the amendments, describes the reporting and recordkeeping rules, and discusses the various alternatives considered.

Comments and Public Hearing

Before the adoption of the final regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend part 150 of title 26 of the Code of Federal Regulations. The final regulations, which are proposed to be based on the temporary regulations, would amend 26 CFR Part 51.

For the text of the temporary regulations, see FR Doc. 81–1850 (T.D. 7755) published in the Rules and Regulations portion of this issue of the **Federal Register.**

William E. Williams,

Acting Commissioner of Internal Revenue.

[FR Doc. 81–1851 Filed 1–14–81; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 8

Practice Before the Board of Service Contract Appeals

AGENCY: Office of the Secretary, Labor.

ACTION: Withdrawal of proposed regulations.

SUMMARY: It had been proposed to create a new Board of Service Contract Appeals and to give it broad jurisdiction to hear the various kinds of issues which can arise under the Service Contract Act. The appeals would arise from either rulings of the Wage and Hour Administrator or from the decisions of the administrative law judges. Because of concerns expressed during the notice and comment period, this proposal is now withdrawn. An appeal to the Secretary of Labor has been substituted as Subpart F of the revision of 29 CFR Part 6.

FOR FURTHER INFORMATION CONTACT: Gail V. Coleman, Counsel for Contract Labor Standards, General Legal Services, Office of the Solicitor, Department of Labor Building, 200 Constitution Avenue, NW, Washington, D.C. 20212. Phone 202–523–8268.

SUPPLEMENTAL INFORMATION: On April 22, 1980, a proposal was published (45 FR 27410) to create a Board of Service Contract Appeals to hear appeals from rulings of the Wage and Hour Division and from decisions by administrative law judges involving Service Contract Act matters and related Contract Work Hours and Safety Standards Act matters. Great concern was expressed in the comments received that such a formal appeal mechanism would create unacceptable delays in areas of procurement requiring quick decisions, such as wage determinations. There was also concern expressed regarding the creation of another formal review body.

Upon reflection, the Department has decided to withdraw the proposal and to substitute what should be a more expeditious appeal to the Secretary. These regulations are being published as a new Subpart F to 29 CFR Part 6.

Signed at Washington, D.C. this 14th day of January, 1981.

Ray Marshall,

Secretary of Labor.

[FR Doc. 81–1928 Filed 1–15–81; 9:55 am]

BILLING CODE 4510–23–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Surface Coal Mining and Reclamation and Enforcement Under Federal Program for Illinois

AGENCY: Office of Surface Mining Reclamation and Enforcement, Department of the Interior.

ACTION: Notice of intent to prepare Federal program, Suspension of schedule for resubmission of Illinois Program and Notice of Public comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) was advised by the State of Illinois of the existence of an injunction issued on December 11, 1980, by the Seventh Circuit Court for Sangamon County, Illinois, enjoining the State from resubmitting a State program to the Department of the Interior. Accordingly, the Secretary of the Interior is temporarily suspending the Illinois schedule for resubmission and is initiating action to prepare a federal program for the regulation of surface coal mining on non-Federal and non-Indian lands in Illinois. The Federal program will not be implemented before December 31, 1981, unless the injunction ends sooner or is no longer determined effective under Section 503(d) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* In any event, Illinois will be given the opportunity to resubmit a state program before a Federal program is implemented. If Illinois does resubmit, its program will be reveiwed in accordance with the Secretary's regulations. A Federal program will be implemented only if the State fails to resubmit, or if the resubmitted program is disapproved. Public comment is also being sought on the preparation of a Federal program for Illinois and on Illinois's actions under the interim program.

DATE: Public comments must be received by OSM by 5:00 p.m., February 18, 1981.

ADDRESSES: Information and comments should be sent to: Office of Surface Mining, Room 153, South Interior Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240

FOR FURTHER INFORMATION CONTACT: Carl C. Close, Assistant Director, OSM, State and Federal Programs, 1951 Constitution Avenue, NW., U.S. Department of the Interior, Washington, D.C. 20240, (202) 343–4225.

SUPPLEMENTARY INFORMATION: Under the Surface Mining Control and Reclamation Act of 1977, a State which seeks to regulate surface coal mining and reclamation operations within its border may apply to the Secretary of the Interior for approval of a State program. In order for a program to be approved, a State must develop a program that contains laws and regulations which are consistent with the Act and the regulations of the Secretary of the Interior. Section 503 of the Act provides that once a State makes a program submission, the Secretary of the Interior has six months in which to consider the State's application. At the end of that six-month period, the Secretary has to decide whether to approve, conditionally approve, approve in part and disapprove in part, or completely disapprove the State program submission. If the Secretary only partially approves or completely disapproves the State program

submission, the State has sixty days to revise and resubmit its program. The Act then gives the Secretary sixty days to review the resubmitted program and make a final decision. If, after the end of this ten month period, the Secretary is unable to approve or conditionally approve the State program, he is required to promulgate a Federal program.

As announced in the **Federal Register** Notice of October 31, 1980, 45 FR 72468, the Secretary of the Interior reviewed the State of Illinois's initial program submission and partially approved and partially disapproved that program. Illinois had until December 31, 1980, to resubmit a revised program.

By letter dated December 22, 1980, Bradley Evilsizer, Director of the Illinois Department of Mines and Minerals, informed the Office of Surface Mining that the Illinois Department for Natural Resources and Environmental Protection was enjoined on December 11, 1980, by the Seventh Circuit Court of Sangamon County, Illinois, from submitting to the Secretary of the Interior a State program for the regulation of surface coal mining and reclamation operations. The injunction issued by the Seventh Circuit Court enjoins the Illinois resubmission for six months, at which time the court will further consider the matter. Illinois did not resubmit a program by its December 31, 1980, deadline (60 days after the Secretary's partial approval).

Section 503(d) of the Surface Mining Control and Reclamation Act provides:

> * * * [T]he inability of State to take any action, the purpose of which is to prepare, submit on enforce a State program, or any portion thereof, because the action is enjoined by the issuance of an injunction by any court of competent jurisdiction shall not result * * * in the imposition of a Federal program. Regulations of the Surface Coal Mining and Reclamation operations covered or to be covered by the State program subject to an injunction shall be conducted by the State pursuant to Section 502 of the Act, until such time as the injunction terminates or for one year, whichever is shorter, at which time the requirements of Section 503 and 504 shall again be fully applicable.

The Secretary has completed all the actions in reviewing the Illinois program that can be done without further participation by Illinois. Because the Secretary of the Interior has been notified that Illinois is enjointed from taking further formal action, the Secretary has temporarily suspended the State program approval process for Illinois as of December 11, 1980, (the date of the injunction), which was the 41st day of the 60 days that Illinois had for resubmission.

The effect of this action is that federal enforcement of the interim program requirements, e.g., two federal inspections per year of each mine or regulated facility, will continue until the injunction is lifted, expires, or is determined not to invoke the operation of Section 503(d). Since the Act allows the State access to its reserved portion of the Abandoned Mine Land Fund only after it has achieved regulatory primacy, Illinois's access to the Fund must be delayed. The amount currently reserved for Illinois is $18,357,342.97.

The Secretary has considered various options in rescheduling Illinois's State program review. First, because the 60 day resubmission period expired on December 31, 1980, and because the injunction gives Illinois more time than the 60 days normally allowed, Illinois could be required to resubmit its State program on the day the injunction is lifted. However, an immediate deadline for resubmission after the injunction is lifted appears abrupt and would ignore the fact that Illinois still had 19 days remaining in its 60-day resubmittal period when the injunction was issued. Second, Illinois could be given 60 days after the lifting of the injunction to resubmit its State program. However, 60 additional days appears excessive, because (1) Illinois has already had 41 days to develop its resubmission, (2) it would be unfair to other States which only had 60 days to resubmit and (3) the operation of the injunction has already given Illinois considerably more time than the normal 60 days to develop an acceptable program. Third, Illinois could be given the 19 days that it had remaining to resubmit its program. This would take into account the time that Illinois already had for resubmission, would be fair to other States involved in the process, and would be a reasonable deadline for the State to meet.

The Secretary has chosen the third option. Beginning on December 11, 1981, or, if the injunction is lifted or determined to be ineffective before the date, then on the date when the injunction is lifted or determined ineffective, Illinois will have 19 days to resubmit an acceptable program. In any event, the deadline for Illinois' resubmission will not be later December 31, 1981. The Secretary will make every effort to notify Illinois by letter prior to the date for resubmission in order to assist Illinois in meeting the deadline.

The legislative history of Section 503(d) indicates that its purpose is to avoid penalizing States which make good faith efforts to comply with the Act but are prevented by court action from achieving full compliance. Where, however, attendant circumstances lead the Secretary to determine that an injunction does not invoke the operation of Section 503(d), or that the State has failed to make a good faith effort to comply with the Act, the Secretary will not suspend the statutory timetable for State programs beyond the date of such determination. The Secretary has not yet determined, at this time, whether Section 503(d) is applicable in Illinois. The Secretary is reviewing the circumstances under which the Illinois injunction was entered and the jurisdictional competence of the Illinois court to hear the matter. The Secretary believes that the delay and relief available under Section 503(d) are limited to those States which are seeking in good faith to prepare and adopt a permanent surface coal mining and reclamation program. Section 503 is not meant to be used as an artifice or device to avoid the requirements of the Surface Mining Act. Section 503(d) does not provide general authority to extend the statutory timetable established under the Act.

Accordingly, the Secretary requests public comment on the issues bearing upon the applicability of Section 503(d) in Illinois. If, after review of those comments and other information, the Secretary determines that Section 503(d) is inapplicable to Illinois under the circumstances, Illinois will have 19 days from the effective date of such determination within which to resubmit an acceptable State program. If it fails to do so, the Secretary will implement a Federal program for Illinois in accordance with Section 504 of the Act. Until a determination is made, the Secretary will presume that Section 503(d) applies, and thus will suspend the running of the resubmission period provided by Section 503(c). However, the Secretary expressly reserves the right to take appropriate action at any time if he concludes that the circumstances surrounding the entry of the injunction warrant doing so.

Section 503(d) also requires a State which is subject to an injunction prohibiting resubmission of a state program to regulate surface coal mining and reclamation operations pursuant to Section 502 of the Act (the interim program) until such time as the injunction terminates or until one year after the injunction is entered, whichever comes first. The Secretary construes Section 503(d) of the Act to authorize implementation of a Federal program if a State fails to implement Section 502 during the term of an injunction. Thus, while the Secretary fully endorses the intent of Congress to have the State assume regulatory primacy under the Act, he also is

required to implement a Federal program in cases where that becomes necessary because of a State's failure to carry out its responsibilities under Section 502.

Consequently, the Secretary is also examining the compliance by Illinois with Section 502 of the Surface Mining Control and Reclamation Act and the interim program regulations issued by the Department of the Interior related to Section 502 (42 FR 62639, December 13, 1977). Within the next three months and after receipt of public comments and completion of this preliminary analysis, the Secretary will decide what further administrative steps are necessary. At that time, he may conclude that there is no basis for further examination because Illinois is adequately enforcing the requirements of Section 502 of the Act; alternatively, he may decide that there is the need for a public hearing or additional public comment. If the Secretary ultimately determines there is a lack of compliance, he will recommence the State program review process after appropriate notice to Illinois.

One additional effect of the injunction, if it runs a full year, is to delay the permanent program in Illinois for a period of approximately eight to twelve months beyond that applicable to most other States in the country. In addition, if Illinois is ultimately unsuccessful in obtaining approval of its program, the Secretary will then have to adopt a Federal program for that State. This could cause an additional delay of six months or more if the process for adoption of the Federal program were delayed until after the injunction is lifted.

To reduce the potential delay in the application of the permanent surface coal mining reclamation program in Illinois if a Federal program becomes necessary, the Secretary has decided to begin preparation of a Federal program for Illinois within the next three months. This action is considered necessary both to reduce the time during which the environmental objectives established by Congress are not fully achieved because a permanent program has not been implemented and to reduce the potential for competitive economic disadvantages among states because implementation of permanent programs in the different states are unlikely to be concurrent. The Secretary will not actually implement this program until Illinois either fails to meet the 19 day deadline to resubmit its program or resubmits but fails to obtain approval of its program.

In the meantime, the Secretary has instructed the Director of the Office of Surface Mining to make every effort during the period of the injunction to accomplish the following: (1) work with Illinois toward correcting the remaining deficiencies in its proposed program to the extent that Illinois can participate in such an effort, given the existence of the injunction; (2) ensure that the Federal enforcement program under Section 502 is diligently pursued in order to obtain compliance with the provisions of the act and the interim program regulations; and (3) determine whether Illinois is adequately carrying out its responsibilities under Section 502 of the Act.

A major purpose of this notice is to seek public comment on preparing a Federal program in Illinois and to receive specific suggestions for how the Secretary of the Interior ought to adopt or modify the permanent program regulations to meet the local conditions in Illinois. Section 504(a) of the Act and 30 CFR 736.22(a)(1) require that each Federal program consider the nature of the topography soils, climate and biological chemical, geological, hydrological, agronomic and other physical conditions of the State involved. For important information, the reader is referred to "General Background on the Permanent Program" and "Criteria for Promulgating Federal programs" previously published in the Federal Register on May 16, 1980 (45 FR 32328). That notice explains how the Secretary will consider unique conditions in a State, how existing State laws will be considered, and what standards will be used in adopting regulations. The reader should also refer to the Secretary's decision concerning the Illinois program published in the **Federal Register** on October 31, 1980 (45 FR 72468 *et seq.*).

This notice describes the administrative actions being taken in response to the injunction entered against Illinois. The Secretary is also exploring appropriate courses of action in the Courts, and may seek to initiate a new proceeding or participate in existing actions related to the Illinois program.

This action of proposing the preparation of a contingent Federal program for Illinois is not significant under the criteria of Executive Order 12044 and 43 CFR Part 14 and does not require preparation of regulatory analysis, nor is this action a major Federal action signficantly effecting the environment under the National Environmental Policy Act.

PUBLIC COMMENT PERIOD: The comment period announced in this notice will extend until February 18, 1981. All written comments must be received at the address given above by 5:00 p.m. on the date.

Comments on the preparation of Federal program received after that hour will not be considered in drafting the proposed Federal program; they will be considered to the extent applicable in subsequent actions under that program.

Dated: January 9, 1981.

Joan Davenport

Assistant Secretary, Energy and Minerals.

[FR Doc. 81-1781 Filed 1-16-81; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CAD 81-003]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Charleston County, S.C.

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the South Carolina Department of Highways and Public transportation, the Coast Guard will consider amending the regulations governing the operations of the Ben M. Sawyer Bridge, mile 462.2, and the Wappoo Cut Bridge, mile 470.8, across the Atlantic Intracoastal Waterway (AIWW). This would eliminate morning and evening closed periods on weekends and legal holidays, but add afternoon restrictions on those days that would only require the draws to open on the hour and half hour to allow accumulated vessels to pass. This would accommodate heavy afternoon and evening vehicle traffic. In addition, the morning closed period on the Wappoo Cut Bridge would be extended to accommodate an altered traffic pattern. On both bridges, commercial vessels, except tugs with tows, would no longer be allowed to pass during closed or restricted periods. This action may relieve vehicular traffic during the morning rush hour on the Wappoo Cut Bridge and may provide relief for the heavy weekend vehicular traffic on both bridges, and may still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before February 20, 1981.

ADDRESS: Comments should be submitted to and are available for examination from 7:30 a.m. to 4 p.m., Monday through Friday, at the office of the Commander (oan), Seventh Coast Guard District, 51 Southwest First Avenue, Miami, Florida 33130.

FOR FURTHER INFORMATION CONTACT: James R. Kretschmer, Bridge Administrator, Bridge Section (oan), Room 1006, Federal Building, 51 Southwest First Avenue, Miami, Florida 33130, telephone: (305) 350–4108.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identify the bridge and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped self-addressed envelope or post card.

The Commander, Seventh Coast Guard District will evaluate all communications received and determine a course of final action on the proposal. The proposed regulations may be changed in the light of comments received.

Drafting information

The principal persons involved in drafting this proposal are: Ensign Jane L. Hamilton, Bridge Administration Officer, Office of Aids to Navigation Bridge Section and Lieutenant John M. Griesbaum, Office of Commander, Seventh Coast Guard District, Legal Office.

Discussion of the Proposed Regulations

Drawbridge regulations which currently govern the operation of the Ben M. Sawyer and Wappoo Creek bridges would be modified by replacing morning and evening closed periods Saturdays, Sundays, and legal holidays with an afternoon restricted period that would run from 2 p.m. to 6 p.m. with openings on the hour and half hour. This modification would provide for more openings on both bridges on weekends. The morning closed period on the Wappoo Creek bridge which currently runs from 7 a.m. to 9 a.m. would be modified to run from 6:30 a.m. to 9 a.m. The list of vessels currently allowed to pass during the closed or restricted periods would be modified to exclude all commercial vessels except tugs with tows.

These modifications are being considered to more closely match and relieve peak vehicular traffic periods on both bridges. Vehicular traffic on the Ben Sawyer Bridge from Monday through Friday between the hours of 7 a.m. and 9 a.m., has increased from an average of 538 vehicles per hour to an average of 925 vehicles per hour, a 72% increase in traffic flow. A similar increase has occurred from 4. p.m. to 6 p.m., Monday through Friday. On Saturdays, Sundays, and legal holidays from 2 p.m. to 6 p.m. traffic has increased a total of 69%. From an average 898 vehicles per hour to an average of 1,523 vehicles per hour. The Wappoo Creek Bridge between the hours of 6:30 a.m. and 9 a.m. has shown an increase of 12% from an average of 2,330 vehicles per hour to an average of 2,606 vehicles per hour. A similar increase has occurred from 4 p.m. to 6 p.m., Monday through Friday. On Saturdays, Sundays, and legal holidays from 2 p.m. to 6 p.m., traffic has increased a total of 10% from 2,387 vehicles per hour to 2,623 vehicles per hour. The traffic counts taken when the existing regulations were established were used as a basis for comparison.

The Coast Guard is therefore presenting this proposal for comment from affected and interested parties.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations be amended as set forth below:

1. By revising § 117.365 to read as follows:

§ 117.365 Sullivan's Island Narrows, AIWW, mile 462.2, Ben M. Sawyer Bridge, State Road 703 between Sullivan's Island and Mount Pleasant, SC.

(a) The owner of or agency controlling the bridge need not open the draw from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m., Monday through Friday. On Saturdays, Sundays, and legal holidays from 2. p.m. to 6 p.m. the draw need open only on the hour and half-hour to pass accumulated vessels. However, the draw shall open promptly upon signal for the passage of tugs with tows, vessels owned and operated by the United States, and vessels in distress. The opening signal from these vessels is four blasts of a whistle, horn, or by shouting.

(b) The owner of or agency controlling the bridge shall post on both sides of the bridge, signs that state the essential features of the regulations in this section. These signs shall be of such size that they may be easily read from an approaching vessel at any time.

2. By revising § 117.370 to read as follows:

§ 117.370 Wappoo Creek, AIWW, mile 470.8, Wappoo Creek Bridge, State Road 171/700, Charleston, SC.

(a) The owner of or agency controlling the bridge need not open the draw from 6:30 a.m. to 9 a.m. and from 4 p.m. to 6 p.m., Monday through Friday. On Saturdays, Sundays, and legal holidays from 2 p.m. to 6 p.m. the draw need open only on the hour and half-hour to pass accumulated vessels. However, the draw shall open promptly upon signal at any time for the passage of tugs with tows, vessels owned and operated by the United States, and vessels in distress. The opening signal from these vessels in four blasts of a whistle, horn, or by shouting.

(b) The owner of or agency controlling the bridge shall post on both sides of the bridge, signs that state the essential features of the regulations in this section. These signs shall be of such size that they may be easily read from an approaching vessel at any time.

(33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05–1(g)(3))

Dated: January 1, 1981.

B. L. Stabile,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 81–1950 Filed 1–16–81; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF EDUCATION

Office for Civil Rights

34 CFR Part 104

Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance

AGENCY: Department of Education.

ACTION: Notice of intent to develop regulations.

SUMMARY: The Secretary of Education provides notice that the Department intends to amend regulations under Section 504 of the Rehabilitation Act of 1973, as amended, to define the rights of hearing-impaired persons to access to television programs.

DATE: All comments in response to this Notice must be received on or before March 5, 1981.

ADDRESS: Comments should be addressed to Mr. Edward A. Stutman, Office for Civil Rights, Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Mr. Edward W. Stutman telephone (202) 245–0781 (VOICE or TTY).

SUPPLEMENTARY INFORMATION: Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), provides as follows:

> No otherwise qualified handicapped individual in the United States * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Final regulations implementing the statute were issued on May 4, 1977 by the Department of Health, Education, and Welfare. 45 CFR Part 84. On May 9, 1980, the new Department of Education reissued these regulations as 34 CFR Part 104. 45 FR 30936. These regulations apply to all recipients of financial assistance from the Department, and define and forbid acts of discrimination against qualified handicapped persons in the operation of assisted programs and activities.

The Secretary of Education is currently one of several defendants in a lawsuit filed in Federal district court on behalf of two hearing-impaired individuals and an organization of hearing-impaired persons, *Greater Los Angeles Council on Deafness, Inc., et al. v. Community Television of Southern California, et al.* (C.D. Cal., Civil No. CV-78-4715R). The plaintiffs have requested the court to order the Department to withhold financial assistance to broadcast entities that fail to caption their programs. The district court has ordered the Department to publish compliance standards under Section 504 governing the access to public television programming by hearing-impaired persons. An appeal is pending in the United States Court of Appeals for the Ninth Circuit.

The Department intends to amend its Section 504 regulations by adding provisions setting forth the rights of persons with impaired hearing to access to television programs.

The Department of Education provides funds for the production of television programs. The programs are generally made available, at no cost or at less than fair market value to broadcasters or to systems of broadcasters. The Department intends to publish detailed provisions concerning the Section 504 obligations that the availability of these programs may impose. In doing so, the Department will use its normal rulemaking procedures, including publication of a proposed regulation in the **Federal Register** with an opportunity for public comment. Before issuing a proposed regulation, the Department is requesting public comment on several issues which the regulation may address. In addition, commenters are invited to provide information on the costs that regulating in this area may impose on the broadcasting industry.

Specifically, the Department requests comment on each of the following questions:

1. Should the Department pursue its intention to issue detailed regulations on the Section 504 obligations of television broadcasters and systems of broadcasters? Are there other means of defining and ensuring compliance with these obligations?

2. What is the nature and extent of the benefit derived by broadcasters from the availability of television programs produced with Department of Education funds?

3. What is the nature and extent of the benefit derived by systems of broadcasters, such as the Public Broadcasting Service (PBS) and regional networks, from the availability of these programs?

Section 504 by reason of the benefits referred to above? For example, would broadcasters and systems of broadcasters be required to make some or all programs that they broadcast or distribute accessible to persons with impaired hearing by reason of the availability of programs produced with Department funds? By what regulatory standard should any obligation to make programs accessible be determined?

5. What differences, if any, should there be in the Department's treatment of commercial and non-commercial broadcasters and systems of broadcasters? Why?

6. What are the advantages and disadvantages of using the various available methods of making television programs accessible to persons with impaired hearing? Currently available methods include open captioning, closed captioning, and sign language interpreting. Commenters are invited to consider, with regard to these and other possible methods, such factors as effectiveness in making programs accessible to the greatest possible number of hearing-impaired persons, the extent to which the method adversely affects the video portion of programs, cost availability of resources (such as captioning capacity or qualified interpreters), and anticipated technological developments. Are particular methods better suited for some programs than others?

7. Should the Department limit the methods which may be used? If so, which method or methods should the Department select, and why?

8. Should the Department differentiate between various types of programs in setting standards for program accessibility? Examples of such programs include live programs, programs broadcast shortly after being recorded, programs intended only for local use, and programs recorded before a certain date. If so, what should be the basis for distinctions? Commenters are invited to consider such factors as technological feasibility, cost, availability of resources to provide access, and size of potential audience.

9. How soon after publication should any requirements for program accessibility take effect?

Dated: January 13, 1981.

Shirley M. Hufstedler,

Secretary of Education.

[FR Doc. 81-1780 Filed 1-16-81; 8:45 am]

BILLING CODE 4000-01-M

---

34 CFR Part 322

Training Programs for Teachers of Handicapped Children in Areas With a Shortage

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking: Cross-reference.

SUMMARY: The Secretary proposes new regulations for the program to train teachers of handicapped children in areas with a shortage.

The text of the regulations on which the Secretary invites comments is published in the Rules and Regulations section of this issue of the **Federal Register.** They have been adopted as final regulations and will govern these programs until the Secretary issues new regulations based on public comment.

DATES: All comments, suggestions, or objections must be received on or before March 5, 1981.

ADDRESSEES: Comments should be addressed to: William Wolfe, Budget Officer, Office of Special Education, U.S. Department of Education, 400 Maryland Avenue, S.W., (Room 4130, Donohoe Building), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: William Wolfe, Telephone: (202) 245-2709.

Invitation To Comment

For additional details on how to comment, see the Preamble of the final regulations for these programs published in this issue of the **Federal Register.**

Dated: January 13, 1981.

Shirley M. Hufstedler,

Secretary of Education.

(No Catalog of Federal Domestic Assistance Number has been assigned)

[FR Doc. 81-1681 Filed 1-16-81; 8:45 am]

BILLING CODE 4000-01-M

---

34 CFR Part 366

Centers for Independent Living Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking: Cross-reference.

SUMMARY: The Secretary proposed regulations for the Centers for Independent Living Program in Part 366 of Title 34 of the Code of Federal Regulations:

The Secretary invites comments on these proposed regulations.

The texts of the regulations on which the Secretary invites comments are published in the Rules and Regulations section of this issue of the **Federal Register.** They have been adopted as final regulations and will govern these programs until the Secretary issues new regulations based on public comment.

DATES: All comments, suggestions, or objections must be received on or before March 20, 1981.

ADDRESSES: Comments should be addressed to: Mr. Harold F. Shay, Director, Division of Manpower Development, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, Room 3321, Mary E. Switzer Building, 330 C Street, SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Mr. Harold F. Shay, Telephone: (202) 245–0079.

Invitation to Comment: For additional details on how to comment, see the Preamble of the final regulations for these programs published in this issue of the **Federal Register.**

(Catalog of Federal Domestic Assistance Numbers 84.132, Centers for Independent Living)

Dated: January 12, 1981.

Shirley M. Hufstedler,

Secretary of Education.

[FR Doc. 81–1787 Filed 1–16–81; 8:45 am]

BILLING CODE 4000–01–M

---

34 CFR Parts 617, 618, 619, 620, and 621

Financial Assistance for Construction, Reconstruction, and Renovation of Higher Education Facilities; Correction

AGENCY: Department of Education.

ACTION: Correction.

SUMMARY: In the regulations published in the **Federal Register** on December 30, 1980, pages 86340–86359, a technical correction needs to be made.

FOR FURTHER INFORMATION CONTACT: Thomas F. McAnallen, Telephone: (202–245–3253).

SUPPLEMENTARY INFORMATION: On page 86340, column 1, *For Further Information Contact,* the telephone number is corrected to read: (202) 245–3253.

Dated: January 12, 1981.

Stewart A. Baker,

Deputy General Counsel for Legislation and Regulations.

[FR Doc. 81–1841 Filed 1–16–81; 8:45 am]

BILLING CODE 4000–01–M

Office of Student Financial Assistance

34 CFR Part 683

Parent Loans for Undergraduate Students (PLUS) Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes regulations to implement the Parent Loans to Undergraduate Students (PLUS) Program. These proposed regulations will implement the provisions of the Education Amendments of 1980 authorizing a program of loan insurance for parents who wish to borrow to meet the educational costs of dependent undergraduate students attending postsecondary schools.

DATES: Comments must be received on or before March 20, 1981.

ADDRESSES: Written comments should be addressed to Jane A. Bryson, Chief, Guaranteed Student Loan Policy Section, Division of Policy and Program Development, Office of Student Financial Assistance, Department of Education, 400 Maryland Ave., SW., (Room 4310, ROB–3), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Jane A. Bryson or Anne Carlucci. Telephone (202) 245–2475.

SUPPLEMENTARY INFORMATION:

Background

The Education Amendments of 1980 added provisions to Part B of Title IV of the Higher Education Act of 1965 authorizing expansion of the present Guaranteed Student Loan (GSL) Program, under which the Federal Government insures or reinsures loans made to students, to include loans made to parents of dependent undergraduate students. The Act specifies that unless otherwise stated, PLUS loans shall have the same terms, conditions, and benefits as those available to students under the GSL Program. The Act:

1. Limits the amount a parent may borrow to $3,000 per academic year on behalf of each dependent student, with an aggregate maximum of $15,000 for each student;

2. Limits the combined amount a parent and student may borrow in an academic year to the student's estimated cost of attendance less estimated financial assistance;

3. Sets the initial interest rate for these loans at 9 percent, but provides that, based on 91-day Treasury bill rates, the interest rate may in the future be reduced to 8 percent for certain loans;

4. Prohibits the payment of interest benefits on behalf of parent borrowers (although lenders will qualify for special allowance payments);

5. Requires that repayment begin within 60 days of the loan's disbursement;

6. Requires the Secretary of Education to define the term "parents of a dependent undergraduate student"; and

7. Provides that the terms "student" and "student borrower" in the Act include a parent borrower, wherever necessary to carry out the PLUS program provisions.

Under the PLUS program, as under the GSL program, loans may be insured by either a State or private nonprofit guarantee agency or by the Federal Government. However, the circumstances under which the Federal PLUS program may operate are statutorily different from those permitting the Federal Insured Student Loan Program (FISIP) to operate. The Federal Government reimburses a guarantee agency for up to 100 percent of its losses on default claims, pays the agency certain administrative cost allowances, and provides advances to strengthen the agency's reserve fund.

The Federal PLUS program operates in the following circumstances:

1. In a State that is not served by a State or private nonprofit guarantee agency.

2. In a State served by a State or private nonprofit guarantee agency, if such agency, has not authorized a PLUS program by May 1, 1981, and is not prohibited from doing so by State law.

3. If the State guarantee agency is prohibited by State law from authorizing a PLUS program, one hundred and twenty days after the adjournment of the next regular session of the State legislature which convenes after January 1, 1981.

Therefore, if a State guarantee agency is currently prohibited by State law from authorizing a PLUS program, it is possible that the PLUS program will not be available in that State for several months, or even years, depending upon the date of adjournment of the next regular session of the State legislature.

Even where there are no State legal prohibitions to implementing the PLUS program, a period of time will be required in most States after the guarantee agency authorizes the

program before it can be implemented. The amount of time will vary from State to State depending on how long the agency requires to issue its own regulations, print and distribute forms, provide orientation to lenders, and develop computer software programs.

Major Provisions of the Regulations

To the extent possible, the Secretary has modeled the PLUS program regulations, which are found in 34 CFR Part 683, after the existing GSL regulations, which were formerly in 45 CFR Part 177 but are now in 34 CFR Part 682, in an effort to initiate the program with a minimum amount of confusion. However, in extending program to parents, several issues have arisen that are unique to the PLUS program and which require further regulations. Prior to formulating new policies, the Secretary consulted with representatives from various groups that participate in the GSL program and will play active roles in the PLUS program. Their opinions and recommendations were taken into consideration in establishing the regulations.

There are several provisions in the GSL regulations which the Secretary realizes may need revision, and a Notice of Proposed Rulemaking (NPRM) is scheduled to be published in the spring which will address these areas and subject them to public comment. However, in an effort to adhere as closely as possible to existing program regulations, the Secretary is not incorporating those proposed revisions into this regulation. The following summarizes the major changes from the GSL to the PLUS program regulations and cites the provisions due for revision in the upcoming NPRM.

1. *Definition of Parent.*—By statute the Secretary is responsible for defining the term "parent." The Secretary has defined "parent" as a persons natural or adoptive mother or father or legal guardian, which is consistent with the definition used for other ED financial aid programs.

Unlike loans under the GSLP, in the PLUS program there may be two eligible borrowers for a single loan: mother and father. Therefore, these regulations permit, but do not require, co-makers (persons who are jointly liable) on PLUS loans. It is important to note that if there are co-makers, both parties to the loan are equally liable and, therefore, both must qualify for any special benefit associated with the loan, such as deferment and cancellation provisions. Endorsers (persons who are secondarily liable) are prohibited by statute on Federal PLUS loans, and a matter of guarantee agency policy or State law on guarantee agency loans.

2. *Federal Reinsurance.*—PLUS loans guaranteed by State and private nonprofit guarantee agencies are eligible for Federal reinsurance on the same basis as GSLs. Guarantee agencies that meet certain statutory criteria qualify to receive reimbursement of 80 percent of their default losses (reinsurance). In addition, guarantee agencies which meet additional criteria may receive reimbursement of up to 100 percent on their losses (supplemental reinsurance).

It has been suggested that a guarantee agency establish its eligibility for reinsurance or supplemental reinsurance jointly for both the GSL and PLUS programs. There are two ways in which this could be done: An agency which qualified for supplemental reinsurance on GSLs would automatically qualify for supplemental reinsurance on PLUS loans; or an agency which could not qualify for supplemental reinsurance for either GSL or PLUS loans would be eligible only for 80 percent reinsurance on both. Although this policy would be most advantageous administratively for both the Department of Education and the guarantee agencies, it is contrary to the statutory provisions governing reinsurance. Therefore, these regulations require the guarantee agency to qualify for Federal reinsurance separately for the GSL and PLUS programs. With separate eligibility criteria it is possible, although not probable, that a guarantee agency may not qualify, or wish to qualify, to enter into the same reinsurance agreement for both the GSL and PLUS programs.

In this event these regulations impose additional recordkeeping requirements on that guarantee agency.

3. *Lender Agreements.*— New Section 433A of the Act requires that the Secretary of Education enter into agreements with all eligible lenders in both the Federal and guarantee agency programs to ensure that each lender provides thorough and accurate loan information to student and parent borrowers.

The Secretary has recently revised the Federal contract of insurance to fulfill this requirement under the Federal Insured Student Loan Program (FISLP) and the Federal PLUS program. In addition, the Secretary has provided the required agreement for all guarantee agency lenders. No PLUS program loan or GSL may be insured, guaranteed, or endorsed for a lender without an executed contract or agreement on file with the Secretary.

This new statutory provision has been incorporated into the PLUS program regulations. It does not appear in current GSL regulations but will be added when the NPRM is published this spring.

4. *Insurance Premium.*—The insurance premium rates which the guarantor may charge the lender under the PLUS program are the same as those authorized under the GSL program: one-fourth of 1 percent per year for a loan insured by the Federal Government under the FISIP and 1 percent per year for a loan guaranteed by a State or private nonprofit guarantee agency. Under the student loan program, the Federal Government and many guarantee agencies charge the insurance premium from the date of disbursement to the anticipated graduation date plus 12 months. In the event an agency also charges a premium during the repayment period, GSL regulations require it to make a refund if the borrower prepays, defaults, dies, becomes totally and permanently disabled, or if the loan is discharged in bankruptcy. The refund requirement proved to be a costly and troublesome procedure; therefore to avoid making refunds no guarantee agency charges the premium during the repayment period.

Under the PLUS program the loan is in repayment from the date of disbursement. Therefore, there is not a formula parallel to the one used in the GSLP which can be applied to PLUS loans. Under the Federal PLUS program the Secretary plans to charge the insurance premium on the declining principal balance over the life of the loan, which would result in a maximum premium of approximately $37. The same policy under a guarantee agency program which charges 1 percent would result in a maximum premium of approximately $150. Some guarantee agencies suggested that the PLUS program insurance premium be charged on the declining principal balance for the life of the loan or for five years, whichever is less, with no refunds required for any reason. The Secretary is concerned with the financial burden which may be imposed on the borrowers under guarantee agency programs by charging the 1 percent premium over the life of the loan. The policy suggested by the agencies appears to be a fair and equitable one and the Secretary would like to promote that policy among the agencies. However, the Secretary is reluctant to regulate that policy without a notice of proposed rulemaking. Therefore, in these regulations the Secretary has taken a more liberal position and permits the insurance premium to be charged on the declining principal balance for the life of the loan (not to exceed 10 years) with no refunds required.

5. *Deferment and Cancellation Provisions.*—Borrowers under the PLUS program are entitled to the same deferment and cancellation provisions as authorized under the GSL program. In the event a borrower is eligible for an authorized deferment at the time the loan is made (e.g., in military service), the borrower is entitled to an immediate deferment. However, it should be pointed out that if the loan was obtained jointly with a co-maker, both parties to the loan must qualify before a deferment can be granted. If there is an endorser, who is secondarily liable, only the borrower need qualify for the deferment or cancellation. With co-makers, the borrower that does not qualify for a deferment would be required to make the scheduled payments on the loan. Likewise, with respect to cancellation because of death or total and permanent disability, if there are co-makers, both borrowers must be eligible for the cancellation; otherwise the borrower not eligible for the cancellation would be required to make the scheduled payments. Also, if one borrower's loan is discharged in bankruptcy, the co-maker is responsible for repayment of the loan. It should be noted that the deferment and cancellation provisions apply solely to the parent borrower, as the condition of the student has no bearing on the status of the PLUS loans.

The deferment and cancelation provisions are identical to those in the GSL regulations. Five new deferment provisions authorized by the Education Amendments of 1980 are included; those new provisions also are being added to GSL regulations by final regulation with invitation to comment.

6. *Check Disbursement.*—Under the student loan regulations, all FISLP checks are mailed directly to the school for delivery to the borrower. This fulfills the statutory requirement that the school which the borrower attends is to be notified of the amount of the loan and the name of the lender.

The Secretary has modified the check disbursement procedure for Federal PLUS loans to require that all loan checks be sent directly to the parent. The lender must notify the school of the name of the student for whom the loan was intended and the amount of the loan. In all cases, the check must be payable to the parent, who is the person obligated to repay the loan, and must require the parent's endorsement. Unlike the student borrower, who must be enrolled at the school for which the loan was intended, the parent borrower will not be at the school to directly receive the check. Processing checks through the mail, especially in cases of jointly payable checks, would be a cumbersome and administratively burdensome process for both parents and schools.

Since the option for an insurer to require that the check be mailed to the school for delivery to the borrower is a statutory provision, it is retained in these regulations as an option for guarantee agencies. However, guarantee agencies are urged to carefully review the ramification this procedure would have on the parent loan program before adopting it. The Secretary has included provisions in the regulations, similar to the GSL regulations, for schools and lenders must process the checks, should an agency require that parent loan checks to be sent to the school.

7. *School Responsibilities.*—Because only parents of a dependent student may borrow under the PLUS program a determination will have to be made as to whether the student for whom the parent is borrowing is, in fact, dependent. This determination will be made by the school. In most cases, the information will be readily accessible from the financial aid application the student has already submitted to the school. In the event the student has not applied for other aid, the school is required to have the student complete a separate form to be kept in the student's file which establishes whether the student is dependent or independent based upon the definition contained in these regulations. The definition of "dependent student" in these regulations is consistent with the definition used by all other ED student aid programs.

8. *Future Proposed Changes.*— A. *Rule of 78's.* Currently GSL regulations do not prohibit lenders from using the "Rule of 78's" in their various loan computations. Some lenders, but not all, use this method for computing the rebate of unearned interest to borrowers who prepay their loans, or for determining the outstanding principal balance and earned interest for purposes of the special allowance and Federal interest benefits. Because of some significant developments in the program since the Rule of 78's was first permitted, and because of the dramatic differences in the results often obtained by the Rule of 78's when compared to an actuarial method, the Secretary is considering discontinuing the future use of the Rule of 78's in the GSLP and PLUS programs. Therefore, although lenders are advised that they are not prohibited from using the Rule of 78's in the PLUS program under these regulations, they are encouraged to employ an actuarial method for computing interest at the very outset of their participation in the PLUS program to avoid difficulties in the future if the use of the Rule of 78's is prohibited. Lenders are advised that the Secretary shortly will propose a rule which prohibits future use of the Rule of 78's in the GSLP and PLUS programs.

B. *Social Security and Veterans Benefits.* For purposes of GSL, social service benefits such as veterans and social security payments are not included in calculating a student's estimated financial assistance. There has been some concern that excluding such benefits results in a duplication of government assistance. This provision is retained in the PLUS program regulations but will be open for comment in the upcoming NPRM.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before the 45th day after publication of this document will be considered in any future revisions of the final regulations.

All comments submitted in response to these final regulations will be available for public inspection, during and after the comment period, in Room 4130, Donohoe Building, 6th & D Streets, SW., Washington, D.C. between 8:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Comments are particularly invited on whether the regulations in this document require any information that is already being gathered by or is available from any other agency or authority of the United States.

Information Requirements

The Department particularly requests comments on whether the proposed regulations in this document would require submission of information that is already being gathered by or is available from any other agency or authority of the United States.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (Pub. L. 96–354, enacted Sept. 19, 1980) requires each Federal agency to prepare an initial regulatory flexibility analysis and a final regulatory flexibility analysis for each set of regulations that—

(1) Is published as a notice of proposed rulemaking after January 1, 1981; and

(2) Has a significant economic impact on a substantial number of small entities (small businesses, small organizations, or small governmental jurisdictions).

Because the Department has not yet established its own definitions of "small organization" and "small governmental jurisdiction," as contemplated by the Act, it is not possible to prepare a full initial regulatory flexibility analysis at this time. Further, since the regulations in this document are required by statute to be published immediately, it is impracticable to delay publication while the necessary definitions are being developed.

In these circumstances, the Regulatory Flexibility Act permits a waiver or delay of the initial regulatory flexibility analysis. If it is determined that these regulations are subject to that Act, the Secretary will prepare the necessary analyses at a later date.

As an interim measure, this document, to the maximum extent possible, includes information of the kind contemplated by the Regulatory Flexibility Act, including the reasons for the regulations, the objectives and legal basis for the regulations, and any significant issues and alternatives for consideration by the public. To assist the Department in determining whether the Regulatory Flexibility Act applies to these regulations, and in complying with the Act's requirements, public comment is especially invited on the following matters:

(1) The number and kind of small entities (small businesses, small organizations, or small governmental jurisdictions) affected by the regulations;

(2) The reporting, recordkeeping, and compliance burdens imposed by the regulations on small entities;

(3) The type of professional skills necessary for preparation of any reports or records required by the regulations;

(4) Any Federal rules that may duplicate, overlap, or conflict with the regulations; and

(5) Any significant alternatives that would accomplish the purposes of the applicable statute but would minimize any significant economic impact of the regulations on small entities.

The Secretary is particularly interested in suggestions on alternatives such as the following:

- The establishment of differing reporting or compliance requirements or timetables that take into account the resources available to small entities.
- The clarification, consolidation, or simplification of compliance and reporting requirements for small entities.
- The use of performance rather than design standards.
- an exemption for small entities from coverage by part or all of the regulations.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

Dated: Januray 13, 1981.

Shirley M. Hufstedler,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.032, Parent Loans for Undergraduate Students)

The Secretary proposes to add a new 34 CFR Part 683 to Title 34 of the Code of Federal Regulations to read as follows:

PART 683—THE PARENT LOANS FOR UNDERGRADUATE STUDENTS PROGRAM

Subpart A—Purpose and Scope

Sec.

683.1 The parent loans for undergraduate students program.
683.2 Guarantee agency programs.
683.3 The Federal PLUS program.
683.4 Applicability of subparts of this regulation.

Subpart B—General Provisions

683.10 General definitions.
683.11 Parent and student eligibility.
683.12 Statement of educational purpose.
683.13 Permissible charges to parents.
683.14 Special allowance payments to lenders.
683.15 Prohibited transactions.
683.16 Provision of loan information by lenders.
683.17 Treatment of refunds by lenders.

Subpart C—Guarantee Agency Programs

683.30 Agreements between a guarantee agency and the Secretary.
683.31 Basic PLUS program agreement.
683.32 Death, disability, and bankruptcy payments.
683.33 Applicability of GSL Federal advance funds provisions.
683.34 Federal reinsurance agreement.
683.35 Supplemental Federal reinsurance.
683.36 Administrative cost allowances for guarantee agencies.
683.37 Records, reports, and inspection requirements for guarantee agency programs.

Subpart D—Federal Insured Parent Loans for Undergraduate Students Program

683.50 Circumstances under which loans may be insured.
683.51 Extent of Federal insurance.
683.52 Application to become a lender under the Federal PLUS program..
683.53 The lender insurance contract.
683.54 Issuance of Federal loan insurance.
683.55 Limitations on maximum loan amounts..
683.56 Insurance premiums.
683.57 Repayment of loans.
683.58 Deferment.
683.59 Due diligence in making and disbursing a loan.
683.60 Due diligence in collecting a loan.
683.61 Forbearance.
683.62 Assignment of a loan.
683.63 Death, disability, and bankruptcy.
683.64 Cessation of lender collection activity in certain cases.
683.65 Procedures for filing claims.
683.66 Determination of amount of loss on claims.
683.67 The Secretary's collection efforts after payment of a default claim.
683.68 Records, reports, and inspection requirements for lenders.

Subpart E—Requirements, Standards, and Payments for Participating Schools

683.80 Participation agreement between an eligible school and the Secretary for participation in the PLUS Program.
683.81 Agreement between the Secretary and a school that makes or originates PLUS loans.
683.82 Providing information to prospective students.
683.83 Correspondence school schedule requirements.
683.84 Certifications by a participating school in connection with a parent's loan application.
683.85 Administrative cost allowance to participating schools.
683.86 The parent loan check.
683.87 Refund policy.
683.88 Determining the date of a student's withdrawal.
683.89 Payment of a refund to a lender.
683.90 Termination of a school's lending eligibility.
683.91 Records, reports and inspection requirements for participating schools.

Subpart F—Limitation, Suspension, or Termination of Lender Eligibility Under the Federal Parent Loans for Undergraduate Students Program

683.100 Purpose and scope.
683.101 Definitions of terms used in this subpart.
683.102 Effect on prior participation.
683.103 Informal compliance procedure.
683.104 Emergency action.
683.105 Suspension proceedings.
683.106 Limitation or termination proceedings.
683.107 Initial and final decisions.
683.108 Verification of mailing dates.
683.109 Effect of suspension or termination proceeding.
683.110 Limitation.
683.111 Reimbursements, refunds, and offsets.
683.112 Reinstatement after termination.
683.113 Removal of limitation.
Appendix A—Standards for Acceptable Refund Policies by Participating Schools.

Authority: Title IV, Part B, of the Higher Education Act of 1965, as amended (20 U.S.C. 1071–1087–3a), unless otherwise noted.

Subpart A—Purpose and Scope

§ 683.1 The parent loans for undergraduate students program.

(a) The Parent Loans for Undergraduate Students (PLUS) program makes low interest loans

available to the parents of dependent students in undergraduate study at postsecondary schools. A parent borrower must use the loan funds to pay for the student's educational costs. Lenders loan their own funds, and the Federal Government or a guarantee agency insures against loss. The program has two parts: guarantee agency programs and the Federal PLUS program.

(1) State agencies or private nonprofit agencies guarantee loans and are reimbursed by the Secretary for part or all of the insurance claims they pay to lenders. Guarantee agency programs must meet certain Federal requirements, but there may be variation among programs in such areas as the loan maximums and the parent's or the student's eligibility.

(2) The Federal PLUS program operates in States not served by guarantee agencies and in certain prescribed circumstances in which a guarantee agency program does not serve the parents of eligible students in a State. The Secretary directly insures lenders against losses on Federal PLUS loans.

(b) *Participation in the PLUS program.* (1) Banks, savings and loan associations, credit unions, pension funds, insurance companies, schools, State agencies and, in certain instances, the Student Loan Marketing Association may be lenders. The Student Loan Marketing Association and some State agencies purchase and hold loans and function as secondary markets.

(2) Most colleges and universities, and many vocational, technical, and correspondence schools are eligible to participate as educational institutions.

(3) Only the parents of dependent undergraduate students who meet certain requirements, including enrollment at a participating school, may borrow. Information for parents and students about the PLUS program and the Guaranteed Student Loan program (GSLP) is available on request from the Department of Education.

(4) All lenders, schools, parents, and students must meet certain requirements in order to participate in the PLUS program. These regulations contain all of the eligibility requirements for the Federal PLUS program and Federal eligibility requirements for participation in guarantee agency programs. Each guarantee agency may establish additional requirements within these Federal limits.

(c) *Repayment.* The parent who borrows under the PLUS program is obligated to repay the lender the full amount borrowed, plus interest. Unlike the interest on a student loan under the GSLP, interest on a PLUS loan is not subsidized by the Secretary and the parent borrower must begin payment on the loan within 60 days after the loan is disbursed. In some cases repayment may be deferred for a time, but the parent is still responsible for repaying the entire loan amount plus interest. The parent's obligation to repay is cancelled only if he or she dies or becomes totally and permanently disabled or if the the loan is discharged in bankruptcy.

(d) *Default.* If a parent defaults on a loan, the Secretary or the guarantee agency pays the lender the amount of its loss. The parent then owes the debt to the Secretary or the guarantee agency. The Secretary or guarantee agency actively attempts to collect the debt.

(20 U.S.C. 1071 to 1087–3a)

§ 683.2 Guarantee agency programs.

(a) The Secretary pays special allowance to lenders on guarantee agency loans. The Secretary also pays a PLUS borrower's loan obligation if the borrower dies, or becomes totally and permanently disabled, of if the loan is discharged in bankruptcy.

(b) The Secretary pays 80 percent of the guarantee agency's default losses under a reinsurance agreement. If the guarantee agency meets additional requirements, the Secretary pays up to 100 percent of the agency's default losses, depending on its default experience.

(c) The Secretary encourages State and private nonprofit guarantee agencies to establish PLUS programs. Federal loan advances are available to help start or strengthen an agency's reserve fund, which backs its PLUS and GSLP loan guarantees. Administrative cost allowances based upon the dollar amount of the GSLP and PLUS loans guaranteed are also available to the agencies.

(d) To administer a PLUS program and to qualify itself and lenders for these benefits, an agency must meet the requirements under subparts B, C, and E.

(20 U.S.C. 1071, 1072, 1078–1, 1078–2, 1082, 1087, 1087–1)

§ 683.3 The Federal PLUS program.

(a) *Where does the Federal PLUS program operate?* The specific conditions under which the Federal PLUS program may operate in a State are given in § 683.50. In general, the Federal PLUS program is available to all lenders in a State if there is no guarantee agency program in that State which insures parent loans.

(b) *Payments to lenders.* Lenders qualify for the payment of special allowance on Federal PLUS loans. The Secretary pays a borrower's loan obligation if the borrower dies or becomes totally and permanently disabled or the loan is discharged in bankruptcy. The Secretary also pays the lender's insurance claim if the borrower defaults.

(c) To qualify for Federal insurance and special allowance benefits, the lender must meet certain requirements established by law and these regulations.

(20 U.S.C. 1071 to 1087–3a)

§ 683.4 Applicability of subparts of this regulation.

Subpart B contains general provisions that are applicable to all PLUS program participants. In addition, guarantee agency programs are subject to Subparts C and E, and the Federal PLUS program is subject to Subparts D, E, and F. Schools are governed by Subpart E.

(20 U.S.C. 1071 to 1087–3a)

Subpart B—General Provisions

§ 683.10 General definitions.

Academic year: (a) A period of time, typically eight or nine months, in which a full-time student is expected to complete the equivalent of at least two semesters, two trimesters or three quarters at a school using credit hours; or

(b) At least 900 clock hours of training for a program at a school using clock hours; or

(c) Eighteen months for a correspondence program.

Act: Title IV, Part B of the Higher Education Act of 1965, as amended (20 U.S.C. 1071 *et seq*).

Borrower: One or more of a student's parents to whom a PLUS loan is made. If the loan is made to two parents, each parent is liable for repayment of the entire amount of the loan, including interest, and the loan is eligible for deferment, cancellation, and forbearance benefits only if both parents qualify for such benefits.

Clock hour: A period of time that is the equivalent of—

(a) A 50 to 60 minute class, lecture, or recitation; or

(b) A 50 to 60 minute faculty supervised laboratory, shop training, or intership.

Commercial lender: A commercial bank, savings and loan association, credit union, or mutual savings bank.

Default: The failure of a borrower to make an installment payment when due, or to meet other terms of the promissory note under circumstances where the Secretary or the pertinent guarantee agency finds it reasonable to conclude that the borrower no longer intends to

honor the obligation to repay, provided that this failure persists for—

(a) 120 days for a loan repayable in monthly installments; or;

(b) 180 days for a loan repayable in less frequent installments.

Dependent student: A student who is not an independent student

Disbursement: The transfer of funds by a lender to a borrower by means of issuing a check or draft payable to the order, and requiring the personal endorsement, of the borrower.

Due diligence: The utilization by a lender in the making and collection of PLUS loans of practices at least as extensive and forceful as those generally practiced by financial institutions for consumer loans. The procedures for establishing due diligence under the Federal PLUS program are described in § 683.59 and § 683.60. The procedures for establishing due diligence under a guarantee agency program are set forth by the guarantee agency.

Endorser: An individual who is secondarily liable for the loan obligation.

Enrolled: The status of a student who—

(a) Has completed the registration requirements at the school he or she is attending and has commenced the attendance period; or

(b) Has been admitted into a correspondence study program and has submitted one lesson, completed by him or her after acceptance for enrollment and without the help of a representative of the school.

Estimated cost of attendance: (a) A student's cost of attendance includes—

(1) Tuition and fees normally assessed a full-time student at the institution at which the student is in attendance;

(2) An allowance for books, supplies, transportation, and miscellaneous personal expenses;

(3) An allowance for room and board costs incurred by the student which—

(i) Beginning in academic year 1981–82 shall be an allowance of not less than $1,100 for a student without dependents residing at home with parents;

(ii) For students without dependents residing in institutionally owned or operated housing, shall be a standard allowance determined by the institution based on the amount normally assessed most of its residents for room and board;

(iii) For all other students without dependents, shall be a standard allowance determined by the institution based on the expenses reasonably incurred by such students for room and board; and

(iv) For students with dependents, shall be an allowance based on the expenses reasonably incurred by such students for room and board;

(4) For a student engaged in a program of study by correspondence, only tuition and fees and, if required, books and supplies, and travel, and room and board costs incurred specifically in fulfilling a required period of residential training;

(5) For a student enrolled in an academic program which normally includes a formal program of study abroad, reasonable costs associated with such study;

(6) For a student with dependent children, an allowance based on the expenses reasonably incurred for child care; and

(7) For a handicapped student, an allowance for those expenses related to his handicap, including special services, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies.

(b) *Adjustments.* The institution, in individual cases, may adjust the cost of attendance if—

(1) The financial aid administrator believes the cost of attendance determined in accordance with paragraph (a) does not accurately reflect the student's actual cost of attendance; and

(2) The institution documents all adjustments in writing with an accompanying explanation and makes them part of the institution's records.

Estimated financial assistance: For the period for which a loan is sought, the estimated amount of assistance that a school is aware a student has been or will be awarded in Federal, State, or privately supported scholarship, grant, work, or loan programs. Any PLUS loans applied for by the student's parents on that student's behalf may be considered financial assistance. The following may not be considered financial assistance:

(a) Veterans' benefits.

(b) Students' benefits under Social Security.

(c) Resources or financial support from the student or the student's family.

Full-time student: (a) A student enrolled in an institution of higher education (other than a correspondence school) who is carrying a full-time academic workload as determined by the school, under standards applicable to all students enrolled in that student's particular program. The student's workload may include any combination of courses, work experience, research, or special studies, whether or not for credit, that the school considers sufficient to classify the student as a full-time student; or

(b) A student enrolled in a vocational school (other than a correspondence school) who is carrying a workload of not less than 24 clock hours per week or 12 semester or quarter hours of instruction, or its equivalent.

Graduate or professional student: A student who—

(a) Is pursuing a program, or has a bachelor's degree and is enrolled in courses which are normally part of a program, leading to a graduate or professional degree or certificate at an institution of higher education; and

(b) Has successfully completed the equivalent of at least three years of full-time study at an institution of higher education either prior to entrance into the program or as part of the program itself.

Guarantee agency: A State or private nonprofit agency that administers a loan insurance program under the Act.

Guaranteed Student Loan program (GSLP): A loan program as described in 34 CFR Part 682 in which the Federal Government insures low-interest, long-term educational loans to eligible students. Loans are made under the GSLP by eligible lending institutions, such as commercial lenders, pension funds or insurance companies.

(a) Under the Federal Insured Student Loan program (FISLP), loans are directly insured by the Federal Government.

(b) Under guarantee agency programs, loans are insured by State agencies or private nonprofit agencies and are re-insured by the Federal government.

Half-time student: An enrolled student who is carrying a half-time academic workload as determined by the school, and that amounts to at least one half the workload of a full-time student. A student enrolled solely in an eligible program of study by correspondence is considered a half-time student.

Holder: An eligible lender in possession of a PLUS loan.

Independent student (effective for loans to be used for any period of instruction which begins not later than June 30, 1981):

(a) A student who for 1979 and 1980—

(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by his or her parent(s);

(2) Has not received and will not receive financial assistance of more than $750 in each year from his or her parent(s);

(3) Has not lived and will not live for more than six weeks in each year in the home of his or her parent(s).

(b) However, the Secretary considers that a student will not have been claimed as an exemption by a parent, will not have received more than $750 from a parent and will not have lived in

the parent's home for more than six weeks if that parent dies before the student submits his or her application.

Independent student (effective for loans to be used for any period of instruction which begins on or after July 1, 1981, but not later than June 30, 1982):

(a) A student who for 1980 and 1981—

(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by his or her parent(s);

(2) Has not received and will not receive financial assistance of more than $1,000 in each year from his or her parent(s);

(3) Has not lived and will not live for more than six weeks in each year in the home of his or her parent(s).

(b) However, the Secretary considers that a student will not have been claimed as an exemption by a parent, will not have received more than $1,000 from a parent, and will not have lived in the parent's home for more than six weeks if that parent dies before the student submits his or her application.

Institution of higher education:

(a) An institution that—

(1) Is in a State;

(2) Admits as a regular student only a person who has a certificate of graduation or its equivalent from a secondary school;

(3) Is legally authorized in each State in which it is physically located to provide, and provides within that State, a program of post-secondary ecucation that—

(i) Awards a bachelor's degree; and

(ii) Provides not less than a two year program which is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5)(i) Is accredited by a nationally recognized accrediting agency or association approved by the Secretary for this purpose; or

(ii) If not so accredited—

(A) Is an institution which the Secretary determined will meet the accreditation standards of such an agency or association within a reasonable period of time; or

(B) Is an institution whose credits are transferrable, for credit on the same basis, to at least three institutions that are so accredited; or

(iii) If the Secretary determines that there is no nationally recognized accrediting agency or association qualified to accredit the type of school applying for eligibility, is approved by an advisory committee that the Secretary established, in accordance with the standards of content, scope and quality that the Committee prescribes for that purpose.

(b) The term also includes an institution that provides not less than a one year program of training to prepare students for gainful employment in a recognized occupation and, with the exception of paragraph (a)(3), meets the other requirements of paragraph (a) of this section.

(c) The Secretary publishes a list of nationally recognized accrediting agencies or associations that the Secretary has determined to be reliable authorities as to the quality of education or training offered.

Legal guardian: An individual who is appointed by a court as a "legal guardian" of a person and who is specifically required by the court to use his or her own financial resources to support that person.

Lender: A lender, including a subsequent holder, that is—

(a) A National or State chartered bank, a mutual savings bank, a savings and loan association, or a credit union that—

(1) Is subject to examination and supervision in its capacity as a lender by an agency of the United States or of the State in which its principal place of operation is established; and

(2) Does not make or hold loans to students and parents under the GSLP and the PLUS programs that total more than one-half of its consumer credit loan dollar volume, including home mortgages, unless it is a bank that is wholly owned by a State; or

(b) A pension fund as defined in the Employees Retirement Income Security Act; or

(c) An insurance company that is subject to examination and supervision by an agency of the United States or a State; or

(d) In any State, a single agency of the State or a single private nonprofit agency designated by the State; or

(e) For purposes only of purchasing and holding loans made by other lenders under this program, the Student Loan Marketing Association or an agency of any State functioning as a secondary market; or

(f) For purposes of making loans of last resort under section 428(h) or section 439(q) of the Act—

(1) the Student Loan Marketing Association or

(2) a State or private nonprofit guarantee agency; or

(g) For purposes of making consolidation loans under section 439(o) of the Act, the Student Loan Marketing Association; or

(h) A participting school that—

(1) Is not a correspondence school. An eligible school that offers both correspondence study and noncorrespondence study programs may be an eligible lender only for parents of students enrolled in the noncorrespondence study programs; and

(2) Employs at least one full-time financial aid administrator.

National of the United States: (a) A citizen of the United States.

(b) A person who, though not a citizen of the United States, owes permanent allegiance to the United States.

Origination: A special relationship between a school and a lender, in which the lender delgates to the school substantial functions or responsibilities normally performed by lenders before making loans. In this situation, the school is considered to have "originated" a loan made by the lender. The Secretary determines that "origination" exists if—

(a) A school determines who will receive a loan and the amount of the loan; or

(b) The lender has the school verify the identity of the borrower or complete forms normally completed by the lender.

Parent: A person's mother or father or legal guardian. An adoptive parent is considered to be the person's mother or father.

Participating school: A school that has entered into an agreement with the Secretary under § 683.80 to participate in the PLUS program.

Post deferment grace period: The six-month period following a deferment period during which time payments of principal and interest are suspended.

School: (a) An educational institution that is—

(1) An institution of higher education or a vocational school; or

(2) With respect to students who are nationals of the United States, a school outside the United States that is comparable to an institution of higher education or to a vocational school and that has been approved by the Secretary for purposes of the PLUS program.

(b) The term includes only those individual units or programs within a school that have been determined by the Secretary to meet all the requirements for school eligibility.

(c) A school that employs or uses commissioned salespersons to promote the availability of the GSLP or the PLUS program is not eligible to participate in either program. For this purpose—

(1) A "commissioned salesperson" is one who receives compensation in any form or amount that is related to, or calculated on the basis of, student applications for enrollement, student enrollments, or student acceptances for enrollment; and

(2) "Promote the availability" means provide prospective or enrolled students

or their parents with application forms, names of eligible lenders or other information designed to encourage the parents of eligible students to seek GSLP or PLUS loans. This term does not include providing general financial aid information to prospective or enrolled students or their parents.

School lender: Any participating school that has been approved as a lender and has entered into a contract of insurance under the Federal PLUS program or a guarantee agency PLUS program.

State lender: In any State, a State agency or a single, private nonprofit agency designated by the State that has been approved as a lender and has entered into a contract of insurance under the Federal PLUS program or a guarantee agency PLUS program.

Totally and permanently disabled: Unable to engage in any substantial gainful activity because of a medically determinable impairment that is expected to continue for a long and indefinite period of time or to result in death.

Undergraduate student: A student who is not a graduate or professional student.

Vocational school: (a) A business or trade school, or technical institution, or other technical or vocational school that—

(1) Is in a State;

(2) Admits as a regular student only a person who

(i) Has completed or left elementary or secondary school; and

(ii) Has the ability to benefit from the training offered by the school.

(3) Is legally authorized in each State in which it is physically located to provide, and provides within that State, a program of postsecondary vocational or technical education that—

(i) Is designed to provide occupational skills more advanced than those generally offered at the high school level and to fit individuals for useful employment in recognized occupations; and

(ii) Provides no less than 300 clock hours of classroom instruction or its equivalent, or in the case of a program offered by correspondence, requires not less than an average of 12 hours of preparation per week over each 12-week period and completion in not less than 6 months; and

(iii) In the case of a flight school program, maintains current valid certification by the Federal Aviation Administration;

(4) Has been in existence for 2 years or has been specially determined by the Secretary to be a school meeting the other requirements of this paragraph and to be eligible to participate in the PLUS program; and

(5)(i) Is accredited by a nationally recognized accrediting agency or association recognized by the Secretary for this purpose; or

(ii) In the case of a public institution offering postsecondary vocational education, is approved by a State approval agency recognized by the Secretary for this purpose; or

(iii) If the Secretary determines that there is no nationally recognized accrediting agency or association qualified to accredit the type of school applying for eligibility, is approved by a State approval agency recognized by the Secretary for this purpose; or

(iv) If the Secretary determines that there is no nationally recognized accrediting agency or association or State approval agency qualified to accredit or approve the type of school applying for eligibility, is approved by the National Advisory Committee on Accreditation and Institutional Eligibility, in accordance with the standards of content, scope, and quality that the Committee prescribes for that purpose. A school that has been approved by the Committee must, in order to remain an eligible school, become accredited within 3 years after the Secretary has designated a nationally recognized accrediting or State approval agency for the type of school applying for eligibility.

(b) For the purpose of this definition, the Secretary publishes a list of nationally recognized accrediting agencies or associations and State approval agencies that the Secretary has determined to be reliable authorities as to the quality of education or training offered.

(20 U.S.C. 1071–1087–3a; 1088, 1088a, 1088f, 1088f–1, 1089.)

§ 683.11 Parent and student eligibility

(a) *Parent eligibility.* A parent is eligible to receive a PLUS loan if the parent—

(1) Is borrowing to pay for the educational costs of an eligible student (as described in paragraph (b) of this section); and

(2) Meets one of the following qualifications:

(i) Is a national of the United States.

(ii) Is a permanent resident of the United States.

(iii) Is in the United States for other than a temporary purpose and can provide evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident.

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands; and

(3) Except as described in paragraph (d) of this section, is not in default on any PLUS loan received for attendance at the school in which the student is enrolled or is accepted for enrollment; and

(4) Except as described in paragraph (d) of this section, is not in default on any GSLP loan received for attendance at the school in which the student is enrolled or is accepted for enrollment; and

(5) Except as provided in paragraph (d) of this section, is not in default on any National Defense or Direct Student Loan (NDSL) made by the school in which the student is enrolled or is accepted for enrollment; and

(6) Except as provided in paragraph (e) of this section, does not owe a refund on a Pell Grant, a Supplemental Educational Opportunity Grant (SEOG), or a State Student Incentive Grant (SSIG) received for attendance at the school in which the student is enrolled or is accepted for enrollment.

(b) *Student eligibility requirements.* A student is eligible to have his or her parent receive a PLUS loan to pay for his or her educational costs if he or she—

(1) Is a dependent student; and

(2) Is enrolled or accepted for enrollment as an undergraduate student in a participating school as at least a half-time student; and

(i) If currently enrolled, is in good standing and maintaining satisfactory progress as determined by the school;

(ii) If enrolled or accepted for enrollment in a vocational school, is attending neither elementary nor secondary school and has the ability to benefit from the training offered, as required under the definition of "vocational school" in § 683.10;

(iii) If enrolled or accepted for enrollment in a school outside the United States, is a national of the United States; and

(3) Meets one of the following qualifications:

(i) Is a national of the United States.

(ii) Is a permanent resident of the United States.

(iii) Is in the United States for other than a temporary purpose and can provide evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident.

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands; and

(4) If enrolled in a flight school program at a vocational school or an institution of higher education—

(i) Plans to pursue or is pursuing a full-time program leading to commercial flight ratings;

(ii) Has completed ground school training or is taking it concurrently with flight training;

(iii) Holds a private pilot's certificate or has sufficient flight hours to qualify for such certificate; and

(iv) Holds at least a Class-II medical certificate; and

(5) Except as described in paragraph (d) of this section, is not in default on any PLUS loan received for attendance at the school in which the student is enrolled or is accepted for enrollment; and

(6) Except as described in paragraph (d) of this section, is not in default on any GSLP loan received for attendance at the school in which the student is enrolled or is accepted for enrollment; and

(7) Except as described in paragraph (d) of this section, is not in default on any NDSL loan made by the school in which the student is enrolled or is accepted for enrollment; and

(8) Except as described in paragraph (e) of this section, does not owe a refund on a Pell, SEOG, or SSIG Grant received for attendance at the school in which the student is enrolled or is accepted for enrollment; and

(9) Authorizes the school to return any refund attributable to the PLUS loan to the lender.

(c) In determining whether a parent or student is in default on a PLUS, GSLP, or NDSL loan, a school may rely on that parent's or student's written statement that he or she is not in default, unless the school has information to the contrary.

(d) *Effect of default on eligibility.* (1) If a parent is in default on a PLUS, GSLP, or NDSL loan that was received for attendance at the same school, or if the student on whose behalf the parent is borrowing is in default on a GSLP or NDSL loan that was received for attendance at the same school, that parent may receive a PLUS loan only under the following conditions:

(i) *Parent Loans for Undergraduate Students or Guaranteed Student Loans.* A Parent or student who is in default on a PLUS or a GSLP loan may be eligible under the PLUS program if the Secretary or a guarantee agency (for a loan insured by that guarantee agency) determines that the parent or the student has made satisfactory arrangements to repay the defaulted loan.

(ii) *National Defense Student Loan or National Direct Student Loan.* A parent or student who is in default on a NDSL loan may be eligible under the PLUS program if the parent or student has made arrangements, satisfactory to the school or the Secretary, to repay the defaulted loan.

(2) The Secretary does not consider a PLUS, GSLP, or NDSL loan that is discharged in bankruptcy to be in default for purposes of this section.

(e) *Effects of indebtedness for refund on eligibility.* A parent or student who receives an overpayment of a grant may be eligible under the PLUS program under the following conditions:

(1) *Overpayment of a Pell Grant.* If the parent or student is overpaid on a Pell Grant, that parent or student may still be eligible under the PLUS program if—

(i) The parent or student is otherwise eligible; and

(i) The parent or student is otherwise eligible; and

(ii) The overpayment can be eliminated in the award period in which it occurred by adjusting the subsequent Pell Grant payments for that award period.

(2) *Overpayment of a Pell Grant due to school error.* If the parent or student is overpaid as a result of school error, and the overpayment cannot be eliminated by adjusting subseqent Pell Grant payments in the award year, that student or parent may still be eligible under the PLUS program if—

(ii) The parent or student acknowledges in writing the amount of the Pell Grant overpayment and agrees to repay it in a reasonable period of time.

(3) *Overpayment on a Supplemental Educational Opportunity Grant.* If the parent or student is overpaid on a SEOG Grant, that parent or student may still be eligible under the PLUS program if—

(i) The parent or student is otherwise eligible; and

(ii) An adjustment in subsequent financial aid payments (other than Pell Grants) eliminates the overpayment in the same award year in which it occurred.

(f) For purposes of this part—

(1) "Overpayment of a grant" means that a parent or student received payment of a grant greater than the amount he or she was entitled to receive;

(2) "Pell Grant" means a grant authorized under Title IV–A–1 of the Higher Education Act of 1965;

(3) "National Defense Student Loan" means a loan made under Title II of the National Defense Education Act;

(4) "National Direct Student Loan" means a loan made under Title IV–E of the Higher Education Act of 1965;

(5) "State Student Incentive Grant" means a grant authorized under Title IV–A–3 of the Higher Education Act of 1965; and

(6) "Supplemental Educational Opportunity Grant" means a grant authorized under Title IV–A–2 of the Higher Education Act of 1965.

(20 U.S.C. 1077, 1078, 1078–2, 1085, 1091).

§ 683.12 Statement of educational purpose.

(a)(1) No loan may be insured under this program unless the parent declares in a written statement that the loan proceeds will be used solely for costs of attendance at the school that the student on whose behalf the parent is borrowing is or will be attending.

(2) The statement must be in a form approved by the Secretary.

(b) The parent must file his or her statement with the lender. The lender shall retain a copy of the statement as required in § 683.68 or by a guarantee agency that insures the loan.

(20 U.S.C. 1078–2, 1082, 1091).

§ 683.13 Permissible charges to parents.

(a) *Interest*—(1) *Rate.* (i) Exclusive of any insurance premium, and unless affected by Section 427A(b) of the Act, a lender shall charge an interest rate of 9 percent per year on the unpaid principal balance of a PLUS loan.

(ii) The unpaid principal balance of a loan may include capitalized interest under circumstances described in paragraph (a)(3) of this section.

(2) *Method of calculation.* The lender shall calculate the interest from the date of disbursement of funds to the borrower. In calculating the interest, the lender may use either of the following methods:

(i) The "Approximate Time-Ordinary Interest" method; or

(ii) The "Exact Time-Exact Interest" method. Use of the "Banker's Rule" ("Exact Time-Ordinary Interest") is prohibited because this method results in an actual rate in excess of the allowable rate of interest.

(3) *Capitalizing interest.* "Capitalization" means increasing the unpaid principal of a loan through the addition of accrued interest to the previously unpaid principal balance.

(i) *Federal PLUS Program.* For a PLUS loan insured under the Federal program, a lender may capitalize accrued interest covering any period in which the borrower is unable or is not required to make payments.

(ii) *Guarantee agency PLUS Programs.* For a PLUS loan insured under a guarantee agency program, a lender may add accrued interest and unpaid insurance premiums to the borrower's unpaid principal balance as authorized by guarantee agency policy.

(4) *Payment.* Interest is payable by the borrower in installments over the life of

the loan. However, a lender may permit a borrower to postpone payment of interest as described in paragraph (a)(3) of this section. This accrued interest either may be paid when payment of principal begins or resumes or may be capitalized.

(b) *Insurance premium.* (1) The term "insurance premium" covers those charges made by the guarantee agency or the Secretary to the lender to insure the lender of a PLUS loan against losses it may suffer if the borrower defaults or has filed a bankruptcy petition. The insurance premium also may be used by the guarantee agency or the Secretary to cover costs incurred in the administration of the applicable loan insurance program. Premiums may not be retained by the lender to cover the costs of making a loan or for any other purpose.

(2) Specific rules on insurance premiums, including the rate that may be charged the lender and passed on to the borrower, the method of calculation, and refund requirements are contained in § 683.31 for PLUS loans insured under guarantee agency programs, and § 683.56 for Federal PLUS loans.

(c) *Late charges.* To the extent provided in the promissory note and permitted by State law, the lender may require that the borrower pay a late charge if the borrower fails to pay any or all of a required installment payment within 10 days after its due date or fails to provide written evidence that verifies eligibility for authorized deferment of the payment. The late charge may not exceed 5 cents for each dollar of each installment due or $5 for each installment, whichever is less.

(d) *Collection charges*—(1) *Permissible charges.* If provided in the note, the lender also may require that the borrower pay the lender for certain reasonable costs incurred by the lender or its agent in collecting any installment not paid when due. These costs may include attorney's fees, court costs, telegrams, and long-distance phone calls.

(2) *Non-permissible charges.* Other than those authorized by this secion, no charges may be passed on to the borrower, either directly or indirectly. Examples of charges that are not permitted are as follows:

(i) Normal collection costs associated with preparing letters or notices or making personal contacts or local telephone calls.

(ii) Fees charged by a servicing or collection or skip tracing agency, to the extent they exceed permissible charges.

(iii) Loan origination fees.

(20 U.S.C. 1077, 1077a, 1078, 1078–2, 1079, 1082, 1087–1)

§ 683.14 Special allowance payments to lenders.

(a) *General.* (1) The Secretary pays a special allowance to lenders on all PLUS loans. The special allowance is equal to a percentage of the average unpaid balance of principal, including capitalized interest, for all PLUS loans a lender has held during a 3-month period. The 3-month periods end (1) March 31; (2) June 30; (3) September 30; and (4) December 31 of each year.

(2) If a lender makes or purchases loans with funds obtained from an Authority issuing obligations, the income from which is exempt from taxation under the Internal Revenue Code of 1954, the Secretary pays the special allowance to that lender on those loans only if the Authority had had a plan for doing business approved by the Secretary in accordance with section 420(b) of the Education Amendments of 1980 (Pub. L. 96–374).

(b) *Lender's reports.* To receive the special allowance payment, a lender shall submit periodic reports to the Secretary stating the average unpaid balance of principal for all its PLUS loans. These reports must be in a form prescribed by the Secretary.

(C) *Determining the special allowance rate.* (1) Unless affected by Section 427A(b) of the Act, the percentage rate for the special allowance for a 3-month period is determined by—

(i) Subtracting 5.5 percent from the average of the bond equivalent rates of the 91-day Treasury bills auctioned during the 3-month period;

(ii) Rounding the resulting percent upward to the nearest one-eighth of one percent; and

(iii) Dividing the resulting percent by 4.

(2) After the close of each 3-month period, the Secretary announces the rate of the special allowance for that period.

(D) *Determining the average unpaid balance of principal.* (1) There are two methods a lender may use to determine the average unpaid balance of principal for purposes of the special allowance:

(i) *The average quarterly balance method.* Add the unpaid balance of principal of all loans outstanding on the first day of the 3-month period to the unpaid balance of principal of all loans outstanding on the last day of the period and divide by 2.

(ii) *The average daily balance method.* Add the unpaid balance of principal of all loans outstanding on each day of the 3-month period and divide by the number of days in that period.

(2) The lender may not change its method of determining the average unpaid balance of principal without the prior written approval of the Secretary.

(3) For the purpose of this determination, a loan is considered outstanding if—

(i) The borrower has not repaid the loan;

(ii) The lender has not received payment on a claim for loss on the loan; and

(iii) The lender has not been advised that the Secretary or a guarantee agency has finally refused a claim for loss on the loan.

(e) *Special allowance rates applicable to loans made or purchased with funds obtained from the issuance of obligations that generate tax-exempt income.* (1) The Secretary pays a lender one-half the special allowance rate computed under paragraph (c) of this section for PLUS loans, but no less than the rate specified in paragraph (e)(2) of this section, if that lender makes or purchases those loans with funds obtained by the lender—

(i) From the issuance of obligations the income from which is exempt from taxation under the Internal Revenue Code of 1954; or

(ii) From collections, default reimbursements, interest, special allowances or other income obtained from loans made or purchased with funds obtained as described in subdivision (i) of this subparagraph; or

(iii) From the investment of funds obtained as described in subdivisions (i) or (ii) of this subparagraph.

(2) The minimum special allowance the Secretary pays to a lender for PLUS loans described in paragraph (e)(1) of this section, unless affected by Section 427A(b) of the Act, is 0.5 percent per year.

(f) *Payment of penalty interest.* (1) If the Secretary has not authorized the United States Department of the Treasury to pay special allowance within 30 days after receipt of an accurate, timely and complete request for payment from any lender, the Secretary pays that lender an additional amount known as penalty interest.

(2) *Determining the amount of penalty interest.* (i) Penalty interest is the daily interest that accrues on the special allowance payments otherwise due to the lender. That interest is computed at the daily equivalent rate of the sum of the special allowance on a loan for the 3-month period for which the special allowance is being paid plus the interest rate at which the loan was made.

(ii) The Secretary pays penalty interest for—

(A) The 31st day after receipt of the request for payment or the 31st day after the final day of the period (or periods) covered by the request, whichever is later; and

(B) Each succeeding day until the Secretary authorizes payment. The day on which payment is authorized is also counted.

(20 U.S.C. 1078–2, 1082, 1087–1, Pub. L. 96–374, § 420(b))

§ 683.15 Prohibited transactions.

(a)(1) No points, premiums, payments, or additional interest of any kind may be paid or otherwise extended to any eligible lender or other party in order to—

(i) Secure funds for making PLUS loans; or

(ii) Induce a lender to make loans to either the parents of students of a particular school or the parents of any particular category of students.

(2) The following are examples of transactions which, if entered into for the purposes described in paragraph (a)(1)(i) or (ii) of this section, are prohibited:

(i) Cash payments by or on behalf of a school made to a lender or other party.

(ii) The maintaining of a compensating balance by or on behalf of a school with a lender.

(iii) Payments ostensibly made for other purposes.

(iv) Payments by or on behalf of a school to a lender of servicing costs on loans that the school does not own.

(v) Payment by or on behalf of a school to a lender of unreasonably high servicing costs on loans that the school does own.

(vi) Purchase by or on behalf of a school of stock of the lender.

(b) Except when purchased by the Student Loan Marketing Association or an agency of any State functioning as a secondary market or in other circumstances approved by the Secretary, notes, or any interest in notes, shall not be sold or otherwise transferred at discount if the underlying loans were made—

(1) By a school; or

(2) To parents of students attending a school by a lender having common ownership with that school.

(c) Except to secure a loan from the Student Loan Marketing Association or an agency of a State functioning as a secondary market or in other circumstances approved by the Secretary, a school, or a lender with respect to a loan made to a parent of a student attending a school having common ownership with the lender, may not pledge a loan made under the PLUS program as security for any loan bearing aggregate interest and other charges in excess of the sum of the interest rate applicable to the loan plus the rate of the then most recently prescribed special allowance under § 683.14.

(d) The prohibitions described in paragraphs (a), (b), and (c) of this section apply to any school or lender which would be a party to the prescribed transactions.

(e) The performance by a school of substantial functions or responsibilities normally performed by a lender which results in the school "originating" loans made by the lender is not a prohibited transaction.

(f) *Warranty.* (1) Nothing in this section shall preclude a buyer of loans made by a school from obtaining a warranty from the seller of those loans.

(2) The warranty may cover future reductions by the Secretary or a guarantee agency in computing the amount of insurable loss, if any, on default claims filed on the loans where the reductions are attributable to an act or failure to act of the seller or previous holder.

(3) The warranty shall not cover matters for which a purchaser is charged with responsibility under this Part, such as due diligence in collecting loans.

(g) Section 490(c) of the Act provides that any person who knowingly and willfully makes an unlawful payment to an eligible lender as an inducement to make, or to acquire by assignment, a PLUS loan, shall upon conviction thereof be fined not more than $1,000 or imprisoned not more than one year, or both.

(20 U.S.C. 1078–2, 1082, 1097)

§ 683.16 Provision of loan information by lenders.

By no later than when the note is signed the lender shall provide the borrower with thorough and accurate information regarding a loan made under the PLUS program including—

(a) The annual and aggregate maximum amounts that the parent may borrow under the program;

(b) The terms on which repayment of the loan will begin;

(c) The maximum number of years in which the loan must be repaid;

(d) The interest rate that must be repaid, and the minimum amount of required monthly payment;

(e) Rights or options the borrower may have for deferment, cancellation, prepayment, consolidation, or other refinancing of the loan;

(f) A definition of default and the consequences to the parent if he or she should default, including a description of any arrangements made with credit bureaus; and

(g) To the extent practicable, the effect that the parent's accepting the loan has on the eligibility of the parent for future borrowing under the PLUS program and on the eligibility of that parent and student to receive student financial assistance under the Act.

(20 U.S.C. 1078–2, 1082, 1083a)

§ 683.17 Treatment of refunds by lenders.

(a) A lender shall treat a payment from a school representing a refund to a student whose parent obtained a PLUS loan from that lender as a credit against the amount owed by the parent borrower on the PLUS loan.

(b) If a lender receives from a school a refund payment on a loan that is no longer held by that lender, the lender shall—

(1) Transmit the amount of the refund payment to the holder to whom the loan has been assigned with an explanation of the payment's source; and

(2) Provide simultaneous written notice to the borrower that a payment has been transferred to the new holder.

(20 U.S.C. 1078–2, 1082)

Subpart C—Guarantee Agency Programs

§ 683.30 Agreements between a guarantee agency and the Secretary.

(a) The Secretary enters into agreements with a guarantee agency, enabling the agency to participate in the PLUS program, if the Secretary and the guarantee agency have corresonding agreements in effect under the Guaranteed Student Loan program (GSLP) (34 CFR Part 682) and the Secretary determines that the guarantee agency program meets the requirements of this subpart. Separate agreements, based on various requirements, are necessary for the agency to receive some or all of the benefits available to it.

(b) *Types of agreements.* There are six agreements. Specific requirements for each agreement, and additional requirements for receiving some benefits, are described in this subpart.

(1) *Basic PLUS program agreement.* A guarantee agency must have a basic agreement to participate in the PLUS program in any way. Under this agreement—

(i) Lenders may receive special allowance and penalty interest payments and, through the guarantee agency, death, disability, and bankruptcy claim payments;

(ii) The guarantee agency may apply for the primary administrative cost allowance, and for the agreements listed below.

(2) *Federal advances for reserve fund agreement.* A guarantee agency must have this agreement to receive and use Federal advances to help establish or strengthen the reserve fund that backs the agency's PLUS loan guarantees.

(3) *Additional Federal advances for claim payments agreements.* A guarantee agency must have this agreement to receive and use Federal advances to pay PLUS program insurance claims.

(4) *Reinsurance agreement.* A guarantee agency must have a reinsurance agreement to receive reimbursement of 80 percent of its losses on default claims.

(5) *Supplemental reinsurance agreement.* A guarantee agency, with this agreement, receives reimbursement of up to 100 percent of its losses on default claims.

(6) *Secondary administrative cost allowance agreement.* A guarantee agency establishes this agreement by applying for and receiving the secondary administrative cost allowance.

(c) *Failure to comply with agreements.* If the Secretary finds that a guarantee agency has made incomplete or incorrect statements in connection with an agreement, or has failed to comply with an agreement or with applicable Federal law or regulations, the Secretary takes actions necessary to protect the interests of the United States. These actions may include—

(1) Withholding payments to the guarantee agency;

(2) Requiring reimbursement of payments; or

(3) Suspending or terminating an agreement.

(d) *Remedial actions.*

(1)(i) The Secretary or the guarantee agency may terminate any agreement upon 60 days written notice.

(ii) The Secretary terminates an agreement only under circumstances described in paragraph (c) of this section.

(iii) Termination does not affect obligations incurred under the agreement before the effective date of the termination.

(2) The Secretary's suspension or termination of an agreement, requirement of reimbursement, or withholding of payments is not final until the guarantee agency has been given reasonable notice of the intended action and an opportunity for a hearing. The Secretary withholds payments or suspends an agreement prior to giving notice and opportunity for a hearing only if the Secretary finds this emergency action necessary to prevent substantial harm to Federal interests.

(e) The Secretary's execution of an agreement does not indicate acceptance of any current or past standards or procedures used by the agency.

(f) All the agreements are subject to subsequent changes in the Act or regulations.

(20 U.S.C. 1072, 1078, 1078–1, 1078–2, 1082, 1087, 1087–1)

§ 683.31 Basic PLUS program agreement.

(a) *General.* (1) The basic agreement is required for all participation by a guarantee agency in the PLUS program. In this agreement, the guarantee agency assures the Secretary that its program meets the requirements of paragraph (b) of this section and agrees to maintain the administrative and fiscal standards of paragraph (c) of this section.

(2) The basic agreement shall contain other provisions and be supported by any material required by the Secretary.

(b) *Program requirements.* The guarantee agency ensures, through its policies and the requirements that it imposes on participating lenders, schools, parents, and students, that its program meets the requirements of this paragraph.

(1) *Aggregate loan limits.* The aggregate insured principal amount for all PLUS loans made to a borrower on behalf of one eligible student may not exceed $15,000.

(2) *Annual amounts.* (i) The maximum loan amount authorized for any one academic year must be at least $1,000, but may not exceed $3,000, on behalf of each eligible student.

(ii) If the program insures loans to a borrower on behalf of an eligible half-time student, the loan maximum must be at least $500 for such borrower for each half-time student in any academic year.

(iii) A guarantee agency does not violate paragraphs (b)(2) (i) or (ii) of this section if it makes the maximum loan amounts listed in those paragraphs applicable to either of the following periods:

(A) A period that does not exceed 12 months; or

(B) A period in which the student on behalf of whom the loan is made earns the credits required by the student's school to advance in academic standing, as normally measured on an academic year basis (for example, from freshman to sophomore).

(iv) In no case may the amount of a loan exceed the student's estimated cost of attendance less estimated financial assistance.

(3) *Duration of borrower eligibility.* A parent is eligible to borrow funds on behalf of a dependent undergraduate student in any year of study at a participating school.

(4) *Parent borrower responsibilities.*

(i) The borrower shall promptly notify the lender of any change of his or her name or address.

(ii) The borrower shall give the lender, as part of the loan application process—

(A) The statement, described in § 683.12, that the loan will be used for the cost of the student's attendance;

(B) Information that provides a basis for determining that the parent qualifies as an eligible borrower;

(C) Information concerning the borrower's outstanding PLUS loans received on behalf of the same student;

(D) A statement from the student which authorizes the school to release information contained in the students file relevant to the students' eligibility to have the parent borrow on his or her behalf (e.g., the students' enrollment status, financial assistance or employment).

(E) A statement from the student which authorizes the school to return any refund attributable to the PLUS loan to the lender; and

(F) Information from the school that provides a basis for determining that the student qualifies as an eligible student and the maximum amount the parent may borrow on behalf of the student.

(5) *Disbursement requirements.* (i) The lender shall disburse the loan funds by means of a check payable to the borrower or, if authorized by the borrower in writing, jointly to the borrower and the school that the student on whose behalf the parent is borrowing is to attend. The check must require the personal endorsement of the borrower. For this purpose, a check is a draft drawn on a bank and payable on demand, and deposit of the check by the borrower in his or her own account at a bank or other financial institution constitutes endorsement.

(ii) The borrower must personally endorse the check and may not authorize anyone else to endorse it on his or her behalf.

(iii) Neither a lender nor a school may obtain a borrower's power of attorney or other authorization to endorse a check on behalf of a borrower.

(iv) The lender may not disburse loan funds earlier than is reasonably necessary to meet the student's cost of attendance for the period for which the loan is intended.

(6) *School notification requirements.* For each PLUS loan, as a condition of insurance, the school that certified the student's enrollment shall be notified of the insurance, the name of borrower, the name of the student on whose behalf the loan was made, the amount of the loan, and the name of the lender.

This notification may be made either—

(i) By the lender or the guarantee agency informing the school of these facts no later than 30 days after the initial disbursement of the loan.

(ii) By the lender sending all loan checks to the school for delivery to the borrower, specifying in each case the name of the student on whose behalf the loan is made.

(7) *Commencement of repayment.* The borrower's repayment period shall begin on the day the loan is disbursed. The borrower's first payment shall be due within 60 days after the loan is disbursed.

(8) *Length of repayment period.* In general, the lender must allow the borrower at least 5 years but not more than 10 years to repay a loan, calculated from the beginning of the repayment period. The borrower, however, shall fully repay the loan within 15 years after it is made. There are exceptions, however, to these rules:

(i) If the borrower receives a deferment or has been granted forbearance under procedures approved by the guarantee agency, the period of deferment or forbearance is not counted in the 5-, 10-, and 15-year periods.

(ii) If the minimum annual repayment required in subdivision (iv) of this paragraph would result in complete repayment of the loan in less than 5 years, the borrower is not entitled to the full 5-year period.

(iii) *Prepayment.* The borrower may prepay the whole or any part of the loan at any time without penalty.

(iv) *Minimum annual payment.* During each year of the repayment period, the borrower's payments to all holders of his or her PLUS and GSLP loans must total at least $360 or the unpaid balance of all the loans including interest, whichever amount is less. There are, however, exceptions to this rule:

(A) If the borrower and lender agree, the amount paid may be less.

(B) If the borrower and his or her spouse have separate PLUS loans, or one or more PLUS loans and one or more GSLP loans, their combined annual payment must meet this requirement. The provisions of subparagraphs (A) and (B) may not result in an extension of the 10- and 15-year repayment period maximums, unless forbearance has been granted under procedures approved by the guarantee agency.

(9) *Deferment.* During the repayment period, principal payments are postponed during specified periods and under conditions described in § 683.58. However, during these periods, interest shall accrue and be payable unless the lender capitalizes the interest, if permitted by the guarantee agency.

(10) *Interest.* (i) Exclusive of any insurance premium and unless affected by Section 427A(b) of the Act, a lender shall charge an interest rate of 9 percent per year on the unpaid principal balance of a PLUS loan. The unpaid principal balance of a loan may include capitalized interest to the extent authorized by the guarantee agency.

(ii) No payments to reduce interest costs shall be paid by the Secretary on PLUS loans.

(11) *Insurance premiums.* (i) The guarantee agency may charge an insurance premium to the lender on each loan. This insurance premium may be used only to insure loans and to cover costs incurred by the guarantee agency in the administration of its PLUS loan insurance program. The lender may pass this charge on to the borrower.

(ii) *Rate.* The insurance premium may not exceed one percent per year of the unpaid principal balance of the loan, excluding interest or other charges that may have been added to the principal.

(iii) *Refund requirement.* The insurance premium need not be refunded by either the guarantee agency or lender to the borrower, even if the borrower prepays, defaults, dies, becomes totally and permanently disabled or files a bankruptcy petition.

(12) *Insurance liability.* The guarantee agency must insure at least 80 percent of the unpaid prinicpal balance of each loan insured.

(13) *Guarantee agency administration.* In the case of a State loan insurance program, the program shall be administered by a single State agency, or by one or more private nonprofit institutions or organizations under supervision of a single State agency. For this purpose, "supervision" includes setting policies and procedures for, and having full responsibility for, the operation of the program.

(14) *Loan assignment.* A loan may be assigned only to—

(i) An eligible lender; or

(ii) The guarantee agency, in the case of a borrower's default, death, total and permanent disability, or filing a bankruptcy petition. "Assigned" means any kind of transfer, including transfer as security.

(15) *Loan information.* Each eligible lender shall provide thorough and accurate loan information to borrowers as specified in § 683.16. The lender shall enter into an agreement with the Secretary to ensure that it will provide this information.

(c) *Administrative and fiscal standards required of the guarantee agency.*—(1) *Establishment of procedures.* To enter into a basic PLUS agreement, the guarantee agency shall establish administrative and fiscal procedures that the Secretary may require to ensure proper administration of the agency's loan insurance program.

(2) *Dissemination of standards and procedures.* The guarantee agency shall establish and disseminate to concerned parties its standards and procedures for—

(i) School and lender participation in its program;

(ii) Limitation, suspension, or termination of school and lender participation;

(iii) Approval of forbearance;

(iv) Timely filing of default, death, disability, and bankruptcy claims by lenders; and

(v) Due diligence in making and collecting loans.

(3) *Due diligence.* The guarantee agency shall ensure that due diligence, including resort to litigation as appropriate, will be exercised by lenders in making and collecting loans. The guarantee agency also shall exercise due diligence, including resort to litigation as appropriate, in collecting loans on which default claims have been paid. "Due diligence" is defined in § 683.10.

(20 U.S.C. 1078, 1078–2, 1082; 42 U.S.C. 5055(e))

§ 683.32 Death, disability, and bankruptcy payments.

(a) If a borrower dies or becomes totally and permanently disabled, the Secretary cancels the borrower's obligation on a PLUS loan by paying the lender the amount owed. If a borrower files a petition for bankruptcy, the Secretary pays the amount owed. However, if both parents of a student obtained a loan as co-makers, in order for a loan to qualify for these payments the applicable condition must apply to both parents. The Secretary cancels these loans whether the holder of the loan is a lender or the guarantee agency.

(b) The procedures in § 683.63 concerning death, total and permanent disability, and bankruptcy apply to guarantee agency programs with the following modifications:

(1) The references to the Secretary in §§ 683.63(a)(3) and 683.63(c)(2) shall be understood to mean the guarantee agency if the loan is held by a lender.

(2) References to the Federal PLUS program shall be understood to mean the guarantee agency program.

(3) References to the lender shall be understood to mean the guarantee agency if the loan is held by a guarantee agency.

(c) No death, disability, or bankruptcy claim may be paid if the loan is not considered insurable by the guarantee agency or if a default claim for that loan previously has been disapproved by the guarantee agency.

(d) *Claim procedures for loans held by a lender*—(1) *Claim submission.* (i) The lender shall submit evidence that the borrower has died, became totally and permanently disabled, or has filed a bankruptcy petition to the guarantee agency. The agency shall return to the lender any submission that is not accurate and complete.

(ii) After determining that a claim is valid the guarantee agency may pay the lender the amount authorized by paragraph (d)(2) of this section. The Secretary periodically reimburses the guarantee agency for these payments.

(2) *Amount of claim payment.* The Secretary determines the amount of the loss to be paid the lender according to the standards used to determine claim payments under the Federal PLUS program. These are found in § 683.66 (a) and (b), with the following modifications:

(i) References to Federal PLUS program insurance shall be understood to mean guarantee agency insurance.

(ii) Paragraph (b)(1)(i) of § 683.66 shall be understood to mean the period prescribed by the guarantee agency.

(iii) References to the Secretary shall be understood to mean the guarantee agency in paragraphs (b)(1)(ii) and (iii) of § 683.66.

(e) *Claim procedures for loans held by the guarantee agency.*

(1) The Secretary pays a death, disability, or bankruptcy claim on a loan held by the guarantee agency after payment of a default claim to the lender only if—

(i) The borrower (in the case of co-makers, both parents), dies, become totally and permanently disabled, or files a bankruptcy petition within 15 years of the date the loan was made, exclusive of periods of deferment or periods of forbearance granted by the lender that extend the 15-year period;

(ii) The guarantee agency has not written off the loan as uncollectible; and

(iii) The guarantee agency exercised due diligence in the collection of the loan until the borrower died, became totally and permanently disabled, or filed a bankruptcy petition.

(2) *Amount of claim payment.* (i) The Secretary pays the guarantee agency the amount owed on the loan, including accrued interest. The Secretary pays interest that accrues for a period of up to 60 days from the date the guarantee agency determines that the borrower is dead, totally and permanently disabled, or has filed a bankruptcy petition until the guarantee agency submits the claim to the Secretary. The amount of the payment is reduced by the amount of any reinsurance claim paid by the Secretary for the loan, less any subsequent reimbursement to the Secretary from amounts collected from or on behalf of the borrower.

(ii) If the guarantee agency receives any payments from or on behalf of the borrower on a loan on which the Secretary paid a bankruptcy claim, the guarantee agency shall submit 100 percent of these payments to the Secretary.

(3) If a loan that the Secretary has paid as a bankruptcy claim under this paragraph is not discharged in bankruptcy it will be treated as a default. The guarantee agency shall pay to the Secretary the difference between the amount received from the Secretary as a bankruptcy claim and the amount it would have recieved as default claim. In determining the difference, the guarantee agency shall take into account any payments made by or on behalf of the borrower that the agency would have retained on a default claim but submitted to the Secretary under paragraph (e)(2)(ii) of this section.

(20 U.S.C. 1078–2. 1082, 1087)

§ 683.33 Applicability of GSLP Federal advance funds provisions.

(a) Funds appropriated under Section 422 of the Act may be used for purposes of the PLUS program under the terms and conditions specified in § 682.403 and § 682.404 of the GSLP regulations.

(b) The Secretary considers both PLUS loans and GSLP loans in determining the amount of advance funds an agency is eligible to receive under Section 422(c)(2) of the Act.

(c) A guarantee agency shall include both PLUS loans and GSLP loans in making the calculation required under § 682.404(e)(3) of the GSLP regulations.

(20 U.S.C. 1072, 1078–2, and 1082)

§ 683.34 Federal reinsurance agreement.

(a) The Secretary may enter into a reinsurance agreemetn with a guarantee agency that has a basic PLUS program agreement. Under a reinsurance agreement, the Secretary will reimburse the guarantee agency for 80 percent of its losses on PLUS loans. This agreement is a prerequisite for the supplemental reinsurnace agreement, under which the Secretary reimburses the guarantee agency for up to 100 percent of its losses.

(1) *Defintion of losses.* In this section, "losses" means the amount the agency pays a lender for a default claim minus payments made by, or on behalf of, the borrower after the lender's claim is paid and before the Secretary reimburses the agency. Losses may include unpaid principal and accrued interest.

(2) *Exclusion.* Death and disability claims on loans are not covered by the reinsurance agreement. Claims on loans to borrowers who have filed a bankruptcy petition also are not covered. Those claims are paid under § 683.32.

(b) The Secretary will enter into a reinsurance agreement only if the agreement would be consistent with any State laws or regulations, and with agreements between lenders and the guarantee agency, regarding the maintenance of the guarantee agency's reserve fund.

(c) The Secretary may find that there is a Federal interest in other aspects of the guarantee agency's operations and may review those operations in deciding whether to enter into or extend a reinsurance agreement.

(d) In deciding whether to enter into a reinsurance agreement, or, if an agreement has terminated, whether to make a subsequent agreement, the Secretary may consider the adequacy of—

(1) The lenders' and the guarantee agency's efforts to collect defaulted loans; and

(2) The guarantee agency's efforts to provide PLUS loans for all eligible borrowers.

(e) Losses on loans that are covered by a reinsurance agreement and were outstanding when the reinsurance agreement was entered into are covered by the agreement only if the default occurs after that time or, if later, after the effective date of the agreement.

(f) *Terms and conditions.* The agreement must contain terms and conditions that the Secretary finds necessary to promote the purposes of the PLUS program and to protect the United States from unreasonable loss, including the following terms and conditions:

(1) The guarantee agency shall assure the Secretary that, for every reinsurance claim it submits—

(i) The terms of the loan comply with all Federal requirments;

(ii) All reasonable efforts have been made by the lender that submitted the default claim to collect the loan;

(iii) The loan was in default before the lender was paid for the claim; and

(iv) The agency will make all reasonable efforts to collect the loan after the Secretary pays the reinsurance claim.

(2) The Secretary prescribes the documentation required to receive payment, and the manner in which

payment is made. The Secretary may subtract amounts owed by the guarantee agency from amounts owed to the guarantee agency.

(3) An amount equal to each reinsurance payment shall be credited promptly by the agency to its reserve fund.

(4) Payments made by the borrower to the guarantee agency on a defaulted loan after the Secretary has paid a reinsurance claim on that loan may be applied first to reduce either the principal or interest owed. The borrower's payments may be applied to other charges, such as late charges or attorney's fees, only after the repayment of all principal and interest. If the borrower's repayment schedule or actual payments result in payments that are too small to pay the interest as it accrues, the guarantee agency shall review the borrower's financial situation at least every six months. If feasible, the agency shall adjust the distribution of each payment between principal and interest so that the principal will be paid within a reasonable time.

(5) The guarantee agency shall pay the Secretary an equitable share of any payment made by or on behalf of a defaulted borrower after the Secretary has reimbursed the agency.

(6) Unless the Secretary approves otherwise, the guarantee agency shall submit the Secretary's equitable share of borrower payments to the Secretary within 60 days of its receipt of the payments.

(7) There is no other subrogation of the United States to the rights of the guarantee agency on any loan that is subject to this agreement.

(8) Nothing in a reinsurance agreement shall be construed to keep a lender from granting forbearance to a borrower under published criteria of the guarantee agency.

(g) The "Secretary's equitable share" of borrower payments is defined in Section 428(c)(6) of the Act, and is calculated for a complete fiscal year.

(1) The term "overhead" used in that definition includes space and utilities costs.

(2) By December 31 of the succeeding fiscal year, the guarantee agency must submit to the Secretary, in a manner prescribed by the Secretary, information concerning its total borrower payments received and its total administrative costs of collection of loans and preclaims assistance for default prevention incurred during the fiscal year. If this submission shows that the guarantee agency has not paid all the "Secretary's equitable share" of borrower payments to the Secretary for the fiscal year, the guarantee agency must at that time pay the additional amount due to the Secretary.

(20 U.S.C. 1078, 1078–2, 1082)

§ 683.35 Supplemental Federal reinsurance.

(a) The Secretary may enter into a supplemental reinsurance agreement annually with a guarantee agency that has a reinsurance agreement and that meets the conditions of this section.

(b) *Amount of supplemental reinsurance payments.* (1) The Secretary reimburses a guarantee agency having supplemental reinsurance for 100 percent of its losses, with the following exceptions:

(i) *When reinsurance claims paid by the Secretary to a guarantee agency for any fiscal year reach 5 percent of the "amount of loans in repayment" at the end of the preceding fiscal year.* In this event, the Secretary's reinsurance liability on a claim subsequently paid for that fiscal year will be 90 percent of the amount of the unpaid principal balance plus accrued interest.

(ii) *When reinsurance claims paid by the Secretary to a guarantee agency for any fiscal year reach 9 percent of the "amount of loans in repayment" at the end of the preceding fiscal year.* In this event, the Secretary's reinsurance liability on a claim subsequently paid for that fiscal year will be 80 percent of the amount of the unpaid principal balance plus accrued interest.

(2) *Exception for a new guarantee agency.* For a guarantee agency that entered into a basic agreement under Section 428(b) of the Act after September 30, 1976, or was not actively carrying on a program covered by such agreement on October 1, 1976, the Secretary pays 100 percent of its losses for five consecutive fiscal years beginning with the first year of its operation. The Secretary monitors programs of this type and, if an agency does not prudently administer its program, the Secretary may determine that it does not continue to qualify for this exception.

(c) *Consolidation of the GSLP and PLUS programs for supplemental reinsurance.* (1) If a guarantee agency enters into a supplemental reinsurance agreement for both the GSLP and PLUS programs, that agency shall consolidate the two programs for the purpose of:

(i) Calculating the amount of loans in repayment as described in paragraph (d)(2) of this section, and

(ii) Calculating the extent of the Secretary's liability as described in paragraph (b) of this section.

(2) If a guarantee agency that has a reinsurance agreement for PLUS loans and GSLP loans under § 683.34 enters into a supplemental reinsurance agreement for one but not both of the GSLP and PLUS programs, the guarantee agency shall not consolidate the two programs, but must continue to maintain records on reinsurance separately for each program to enable the Secretary to determine:

(i) The rate of reimbursement to be paid on reinsurance claims under each program, and

(ii) The Secretary's equitable share of collections received after payment of a reinsurance claim under each program.

(d) *Definitions.* (1) "Losses" is defined in § 683.34(a)(1).

(2) For purposes of this section, the "amount of loans in repayment" means the original principal amount of all loans subject to a supplemental reinsurance agreement insured by the agency minus—

(i) The original principal amount of loans on which—

(A) The borrower has not yet reached the repayment period;

(B) Payment in full by the borrower has been made; or

(C) The borrower was in deferment status at the time repayment was scheduled to begin, and remains in deferment status; and

(ii) The amount paid by the agency for insurance claims on loans.

(e) *Program requirements.* To enter into a supplemental reinsurance agreement, a guarantee agency program must meet the following conditions:

(1) *Annual amounts.* The maximum annual PLUS loan amount must be at least $2,500 but not more than $3,000 for a borrower on behalf of each dependent undergraduate student who is carrying at least a half-time workload in an academic year.

(2) *Aggregate loan limits.* The agency shall insure an aggregate unpaid principal amount of at least $12,500 but not more than $15,000 for a borrower on behalf of each dependent undergraduate student.

(3) *Extent of insurance.* The agency shall insure 100 percent of the unpaid principal of loans made by lenders under its program.

(4) *School eligibility.* Except in the case of correspondence schools, the agency's eligibility criteria for schools may not be more stringent than those of the Federal PLUS program. However, the agency may exclude a school if—

(i) The school's eligibility is limited, suspended, or terminated by the Secretary under 34 CFR Part 668, or by the agency under comparable standards and procedures; or

(ii) There is a State constitutional prohibition affecting a school's eligibility.

(5) *Out-of-State schools.* The agency shall insure loans made to borrowers who are legal residents of the State where the agency operates, but who are borrowing for students attending out-of-State schools. In insuring these loans, the agency shall not impose any restrictions not applicable to borrowers who are legal residents of the State and who borrow for students attending in-State schools.

(6) *School lender provisions.* (i) The agency shall provide that a school may be a lender under reasonable criteria unless—

(A) The school's lending eligibility has been limited, suspended or terminated by the Secretary under § 683.90 or Subpart F or by the agency under comparable criteria and procedures; or

(B) There is a State constitutional prohibition affecting the school's lending eligibility.

(ii) The agency may not insure loans made by school lenders that are not located in the geographic area that the agency serves.

(7) *Reports.* The agency shall agree to report to the Secretary by July 1 of each year regarding—

(i) Its school lender eligibility criteria;

(ii) Its procedures for the limitation, suspension, and termination of school lenders;

(iii) A list of all schools that applied for lender eligibility in the preceding 12 months, and a summary of the actions taken on the applications; and

(iv) A list of all eligible school lenders under the agency's programpm.

(f) *Terms and conditions.* The supplemental reinsurance agreement will contain, at a minimum, the following terms and conditions, in addition to other provisions of the basic agreement or the reinsurance agreement that the Secretary includes:

(1) *Adherence to qualifying standards.* The agency shall assure that the program requirements of paragraph (e) of this section are continuously met.

(2) Reports and records. The agency shall make reports and keep records that the Secretary reasonably requires. It shall give the Secretary access to those records to verify their correctness.

(3) *Application of payments.* If a borrower makes payments on a loan after the Secretary has paid a reinsurance claim on that loan, the agency shall return to the Secretary an equitable share of the payments. The "Secretary's equitable share" is defined in Section 428(c)(6) of the Act and is calculated for a complete fiscal year.

(i) The term "overhead" used in that definition includes space and utilities costs.

(ii) By December 31 of the succeeding fiscal year, the guarantee agency must submit to the Secretary, in a manner prescribed by the Secretary, information concerning its total borrower payments received and its total administrative costs of collection of loans and preclaim assistance for default prevention incurred during the fiscal year. If this submission shows that the guarantee agency has not paid all of the "Secretary's equitable share" of borrower payments to the Secretary for the fiscal year, the guarantee agency must at that time pay the additional amount due to the Secretary.

(4) An agreement is renewed only if the agency's program complies with all the terms of the agreement and all pertinent provisions of these regulations.

(5) Before the Secretary pays a supplemental reinsurance claim, the guarantee agency must give the Secretary a statement of its "amount of loans in repayment" at the end of the preceding fiscal year. The method for determining this amount is given in paragraph (d)(2) of this section.

(20 U.S.C. 1078, 1078–1 1078–2)

§ 683.36 Administrative cost allowances for guarantee agencies.

(a) *General.* To the extent that funds are appropriated by Congress in any fiscal year for this purpose, the Secretary may make payments to a guarantee agency having a basic PLUS program agreement for the primary and secondary administrative cost allowances.

(1) *Total payments.* Payments of allowances to a guarantee agency for any fiscal year made under paragraphs (b) and (c) of this section do not exceed, for each allowance, one-half of 1 percent of the total principal amount of loans for which the guarantee agency issued insurance during that fiscal year.

(i) If the amount appropriated for any fiscal year is insufficient to pay all guarantee agencies the full amounts for which they would otherwise be eligible, payments to all agencies are proportionately reduced.

(ii) In the event of such an insufficiency, if additional funds become available for making payments for that fiscal year, additional payments are distributed on the same basis as they were reduced.

(2) *Application.* The guarantee agency shall submit an application for each allowance to the Secretary by January 1 of the fiscal year for which it is requesting the allowance. The application must contain information and assurances that the Secretary reasonably requires, including the following—

(i) Information showing the agency's ability to collect loans and provide preclaim assistance to its lenders, including descriptions of staff size and activities in these areas;

(ii) An estimate of the costs that will be eligible for payments under this section (categorized by the types of costs listed in paragraph (a)(3)(i) of this section);

(iii) Assurances that sufficient administrative and fiscal procedures, including an annual independent audit or, if a State guarantee agency is subject to State audit procedures not under its control, a biennial independent audit, will be used to ensure that the administrative allowances are used in accordance with the provisions of this section, and that the audit report will be made available to the Secretary on request;

(iv) Assurances that the guarantee agency will furnish any further information, including estimates, that the Secretary may reasonably require to carry out the provisions of this section;

(v) For the primary allowance application only, an estimate of the total amount on new loan volume expected to be insured during the fiscal year; and

(vi) For the secondary allowance only, assurance that the agency's program—

(A) Meets all the requirements for a supplemental reinsurance agreement; and

(B) Insures loans to borrowers who are not legal residents of the State, but who are borrowing for students attending participating schools in the State (other than correspondence schools), without imposing any restrictions not imposed on borrowers who are legal residents of the State and who borrow for students attending schools in the State other than correspondence schools.

(3) *Definitions.* (i) The terms "administrative costs of promotion of commercial lender participation," "administrative costs of collection of loans," and "administrative costs of preclaims assistance for default prevention," as used in paragraphs (b) and (c) of this section, are defined in Section 428(f)(3) of the Act. The term "administrative costs of monitoring the enrollment status of students and the repayment status of borrowers," as used in paragraphs (b) and (c) of this section, has the same meaning as "administrative costs of monitoring the enrollment and repayment status of students," as defined in Section 428(f)(3) of the Act, except that the reference to repayment status shall be understood to refer to that of the parent borrowers.

(ii) The term "overhead costs" used in those definitions includes space and utilities costs.

(b) *Primary allowance*—(1) *Basic qualification.* The agency must have a basic PLUS program agreement.

(2) *Use of funds.* The primary allowance must be used by the agency only to meet administrative costs of promotion of commercial lender participation, administrative costs of collection of loans, administrative costs of preclaim assistance for default prevention, administrative costs of monitoring the enrollment status of students and the repayment status of borrowers, and other administrative costs related to the PLUS program of the guarantee agency. Also, these payments must be used to meet only administrative costs not taken into account by the agency under the formula for determining the "Secretary's equitable share" of borrower payments made after the Secretary has paid reinsurance claims to the agency.

(c) *Secondary allowance.* (1) Payment of the secondary allowance is made in addition to payment of the primary allowance.

(2) *Basic qualification.* The agency must have a reinsurance agreement.

(3) *Use of funds.* These payments may be used by the agency only to meet administrative costs of promotion of commercial lender participation, administrative costs of collection of loans, administrative costs of preclaim assistance for default prevention, administrative costs of monitoring the enrollment status of students and the repayment status of borrowers, and other administrative costs related to the program of the guarantee agency. Also, these payments must be used to meet only administrative costs not taken into account by the agency under the formula for determining the "Secretary's equitable share" of borrower payments made after the Secretary has paid reinsurance claims to the agency.

(4) The Secretary's payment of the secondary allowance establishes an agreement between the Secretary and the guarantee agency with respect to the assurances contained in the application.

(20 U.S.C. 1078, 1078–1, 1078–2, 1082)

§ 683.37 Records, reports, and inspection requirements for guarantee agency programs.

(a) *Records.* (1) A guarantee agency shall keep the records specifically required by this section and the records necessary to make reports required by this subpart. The guarantee agency shall retain records for each loan for at least five years after the loan is paid in full or has been determined to be uncollectible. For the purposes of this section, the term "paid in full" includes loans paid by the Secretary on account of the borrower's death, permanent and total disability, or bankruptcy. These records must be as complete and accurate as is necessary to document fully the agency's reports.

(2) The guarantee agency shall require participating lenders to keep records on guaranteed loans as prescribed by the Secretary. These shall include complete and accurate records of each loan account, showing each transaction and affording ready identification of the borrower's status. A lender shall retain records of a loan for at least five years from the date the loan has been paid in full by the borrower or the lender has been reimbursed for a loss on the loan by the guarantee agency. The Secretary may, in particular cases, require the retention of records beyond this 5-year minimum period.

(3) Guarantee agencies and lenders may store records in microfilm or computer format. However, the lender or guarantee agency holding a promissory note shall retain the actual note until the loan is paid in full or determined by the guarantee agency to be uncollectible. When repayment is complete, the lender or guarantee agency shall return the actual note to the borrower and retain a copy of the prescribed period. If a loan is written off as uncollectible, the original note need not be retained, but a copy must be retained for the prescribed period.

(b) *Reports.*

(1) The agency shall submit reports to the Secretary upon request concerning the status of its reserve funds, and the operations of its loan insurance program.

(2) The agency shall submit to the Secretary, at least annually, a report of the total insured loan volume and default volume and rate on all loans insured after December 31, 1980, for each of the following categories of lenders:

(A) Schools.

(B) State or private nonprofit direct lenders.

(C) Commercial financial institutions (banks, savings and loan associations, or credit unions).

(D) All other types of institutions or agencies. Loan volume and default data shall be reported according to the category of original lender, not subsequent holder. If a guarantee agency operates in more than one State, a separate report must be submitted for each State of operation.

(3) The agency shall submit to the Secretary its application forms, promissory notes, regulations, and statements of procedures and standards—including standards for due diligence and timely claims filing—as well as other materials that substantially affect the operation of the agency's program, whenever requested to do so by the Secretary and whenever changes or new materials are proposed. The Secretary reviews these materials for administrtive and fiscal sufficiency and for conformance to statutory and regulatory provisions.

(4) Lenders shall submit to the agency the information necessary for the agency to complete its reports to the Secretary.

(5) The agency shall submit, or require its lenders to submit, upon the Secretary's request, information the Secretary needs to determine the amount of special allowance to be paid on the agency's insured loans.

(c) *Inspections.* (1) A guarantee agency shall give the Secretary, or other agencies of the government designated by the Secretary, access to its records in order to assure the accuracy of the reports described in paragraph (b) of this section.

(2) A guarantee agency shall provide in its agreement with a lender or in its statements of procedures that the lender shall give the Secretary, or other agencies of the government designated by the Secretary, and the agency access to the lender's records in order to assure the accuracy of the reports required under paragraphs (b) (4) and (5) of this section.

(20 U.S.C. 1072, 1078, 1078–2, 1082)

Subpart D—Federal Parent Loans for Undergraduate Students Program

§ 683.50 Circumstances under which loans may be insured.

The Secretary insures PLUS loans made by lenders located in a State in the following curcumstances:

(a) Where no guarantee agency is insuring GSLP loans in that State;

(b) Where a guarantee agency is insuring GSLP loans in that State but is not insuring PLUS loans—

(1) After May 1, 1981; or

(2) In the case of a guarantee agency prohibited by State law enacted prior to January 1, 1981 from insuring PLUS loans, after 120 days following the adjournment of the next regular session of the State legislature which convenes after January 1, 1981.

(20 U.S.C. 1078–2, 1082)

§ 683.51 Extent of Federal insurance.

(a) *General rule.* Except as provided in paragraph (b) of this section, the Secretary's insurance liability on any Federal PLUS loan is 100 percent of the unpaid balance of principal and accrued interest.

(b) *Special provisions for State lenders.* For purposes of this calculation, State lenders may consolidate FISL and PLUS loans.

(1) Except as described in subparagraph (2), of this paragraph, the Secretary's insurance liability is less than 100 percent under the following conditions:

(i) *When the total of default claims for the FISL and PLUS programs paid by the Secretary to a State lender for any fiscal year reaches 5 percent of the amount of the FISL and PLUS loans in repayment at the end of the preceding fiscal year.* In this event, the Secretary's insurance liability on a claim subsequently paid for that fiscal year will be 90 percent of the amount of the unpaid principal balance plus accrued interest.

(ii) *When the total of default claims for the FISL and PLUS programs paid by the Secretary to a State lender for any fiscal year reaches 9 percent of the amount of the FISL and PLUS loans in repayment at the end of the preceding fiscal year.* In this event, the Secretary's insurance liability on a claim subsequently paid for that fiscal year will be 80 percent of the amount of the unpaid principal balance plus accrued interest.

(2) The potential reduction in insurance liability does not apply to a State lender during the first Federal fiscal year of its operation as a lender the FISL or PLUS programs, and during each of the four succeeding fiscal years. If the lender has not previously participated in the FISL program, this 5-year period begins to run with the first Federal fiscal year of the State lender's operation as a lender under the Federal PLUS program.

(3) For purposes of this section, the "amount of loans in repayment" means the original principal amount of both student and parent loans insured by the Secretay minus—

(i) The original principal amount of loans on which—

(A) The borrower has not yet reached the repayment period;

(B) Payment in full by the borrower has been made; or

(C) The borrower was in deferment status at the time repayment was scheduled to begin, and remains in deferment status; and

(ii) The amount paid by the Secretary for insurance claims on loans.

(4) For purposes of this paragraph, payments by the Secretay on a loan that the original lender assigned to a subsequent holder are considered payments made to the original lender.

(20 U.S.C. 1075, 1078–2, 1082)

§ 683.52 Application to become a lender under the Federal PLUS program.

(a) *General.* To participate in the Federal PLUS program, a lender that does not hold a "Federal contract of insurance" must submit an application to the Secretary for an insurance contract. The Secretary responds to the lender's request to participate in the Federal PLUS program within 30 days of receipt of an application.

(b) *Criteria for evaluating an application.* In determining whether to enter into an insurance contract with an applicant and what the terms of that contract should be, the Secretary may consider the following criteria:

(1) Whether the applicant is capable of complying with these regulations as they apply to lenders.

(2) Whether the applicant is capable of implementing adequate procedures for making and collecting loans.

(3) If the applicant has had prior experience with a similar Federal, State or private nonprofit student or parent loan program, the amount and rate of loans that currently are delinquent or in default under that program.

(4) The financial resources of the applicant.

(5) In the case of a school that is seeking approval as a lender, its accreditation status, with the preferred condition being accreditation.

(c) The Secretary may require an applicant to submit sufficient materials with its application so that the Secretary may evaluate it fairly in accordance with these criteria.

(d) *Denial of participation.* (1) If the Secretary decides not to approve the application for an insurance contract, the reason for the decision is included in the Secretary's response.

(2) The Secretary provides an opportunity for the lender to meet with a designated Department of Education official if the lender wishes to appeal the Secretary's decision.

(3) However, the Secretary need not explain the reasons for the denial, or grant the lender an opportunity to appeal, if the lender submits its application within 6 months of a previous denial.

(20 U.S.C. 1078–2, 1082.)

§ 683.53 The lender insurance contract.

(a) *Approval of insurance contract.* (1) If the Secretary approves a lender's application to be a Federal PLUS lender, the Secretary and the lender sign an insurance contract. No loan is insured unless covered by an insurance contract.

(2) In general, under an insurance contract the lender agrees to comply with all laws, regulations and other requirements applicable to its participation as a lender in the Federal PLUS program, and the Secretary agrees to insure each eligible Federal PLUS loan held by the lender against the borrower's default, death, total and permanent disability, or bankruptcy.

(3) The Secretary's insurance liability is the amount of unpaid principal and interest, except for certain loans made by a State lender as provided in § 683.51(b).

(4) The contract may contain a limit on the duration of the contract and the number or amount of Federal PLUS loans a lender may make or hold.

(b)(1) Except as otherwise approved by the Secretary, an insurance contract with a school lender shall limit the PLUS loans made by that school lender which will be covered by Federal loan insurance to those made to parents borrowing on behalf of students—

(i) Who are in attendance at that school; or

(ii) Who are in attendance at other schools under the same ownership; or

(iii) Who are employees, or whose parents are employees, of that school lender or other schools under the same ownership, under circumstances the Secretary considers appropriate for insurance.

(2) A limit imposed under paragraph (a)(4) of this section on a school lender which makes loans to parents of students in attendance at other schools under the same ownership, or to employees or parents of employees of those other schools, may be imposed on a school-by-school basis.

(20 U.S.C. 1078–2, 1079, 1082)

§ 683.54 Issuance of Federal loan insurance.

(a) *Application for insurance.* A lender having an insurance contract shall submit an application to the Secretary for Federal loan insurance on each intended PLUS loan that the lender determines to be eligible for insurance. The application shall be on a form prescribed by the Secretary. The Secretary notifies the lender whether the loan is or is not insurable and the amount of the insurance. No disbursement on a loan made prior to the Secretary's approval of that loan is insurable.

(b) *Conditions of insurance coverage.* The Secretary issues insurance on a PLUS loan in reliance on the implied representations of the lender that all requirements for the initial insurability of the loan have been met. As described in § 683.66, the continuance of the insurance is conditioned upon compliance by all holders of the loan with these regulations. The delegation of

functions to a servicing agency or party does not relieve the lender of its responsibilities in the making and collection of a Federal PLUS loan.

(20 U.S.C. 1078–2, 1079, 1082)

§ 683.55 Limitations on maximum loan amounts.

(a) *Annual amounts.* The Secretary does not insure a loan that would exceed the student's estimated cost of attendance for the academic period for which the loan is intended less estimated financial assistance awarded for that period. The total amount of all PLUS loans made on behalf of an eligible dependent undergraduate student for any academic year of study may not exceed $3,000.

(b) *Aggregate loan limits.* The Secretary does not insure a loan in an amount which, together with all other PLUS loans made on behalf of the eligible dependent undergraduate student on whose behalf the loan is sought, would result in an aggregate loan amount in excess of $15,000.

(c) *Limitation on a loan on behalf of a student enrolled in a correspondence course.* The Secretary does not insure a loan on behalf of a student enrolled in a correspondence course in an amount which exceeds tuition and fees and, if required, books and supplies, and travel and room and board costs incurred specifically in fulfilling a required period of residential training.

(20 U.S.C. 1075, 1078–2, 1079, 1082, 1089)

§ 683.56 Insurance premiums.

(a) *General.* The Secretary charges the lender an insurance premium for each loan that is insured.

(b) *Rate.* The rate of the insurance premium is one-fourth of one percent per year of the loan principal, excluding interest or other charges that may have been added to the principal.

(c) *How the insurance premium is calculated.* (1) The insurance premium is calculated by:

(i) Using the actual repayment period as a base;

(ii) Amortizing the loan in monthly installments over the repayment period;

(iii) Determining one-fourth of 1 percent of each monthly declining balance; and

(iv) Totaling the monthly amounts derived in subdivision (iii) of this subparagraph.

(d) *Collection from lenders.* (1) The Secretary requires the lender to pay the insurance premium when the disbursement is reported. At the Secretary's discretion, the Secretary may collect the insurance premium by offsetting it against amounts payable by the Secretary to the lender.

(2) Insurance coverage on a Federal PLUS loan ceases to be effective when the lender fails to pay the insurance premium within 60 days of the date payment is due. The Secretary may, however, excuse late payment of an insurance premium, and reinstate the insurance on a loan, if the Secretary is satisfied that the loan is not in default and the borrower is not delinquent in making installment payments.

(e) *Collection from borrowers.* The lender may pass along the cost of the insurance premium to the borrower in the form of a one-time charge. The lender may bill the borrower for the insurance premium or may deduct the amount from the loan proceeds. The lender must clearly identify to the borrower the amount of insurance premium and the method of calculation.

(f) *Refund provisions.* The premium is not refundable by the Secretary, and need not be refunded by the lender to the borower, even if the borrower prepays, defaults, dies, becomes totally and permanently disabled, or files a petition for bankruptcy.

(20 U.S.C. 1077, 1078–2, 1079, 1082)

§ 683.57 Repayment of loans.

(a) *Commencement of repayment.* (1) The repayment period begins on the day the loan is disbursed, and interest begins to accrue on that date. the first payment is due within 60 days after the date of disbursement.

(2) If a condition that justifies a deferment of repayment exists when the loan is disbursed, both the deferment and the accrual of interest commence on that date. Repayment resumes following the expiration of the post-deferment grace period.

(b) *Length of repayment period.* In general, a lender shall allow a borrower at least 5 years, but not more than 10 years, to repay a loan, calculated from the beginning of the repayment period. The borrower shall, however, fully repay a loan within 15 years after it is made. There are exceptions, however, to these rules:

(1) If the borrower receives an authorized deferment or has been granted forbearance, as described in § 683.61(c), the periods of deferment or forbearance are generally excluded from determinations of the 5-, 10-, and 15-year periods. However, the 5-, 10-, and 15-year periods include each post-Deferment grace period following each authorized deferment.

(2) If the minimum annual repayment required in paragraph (d) of this section would result in complete repayment of the loan in less than 5 years, the borrower is not entitled to the full 5-year period.

(c) *Prepayment.* The borrower may prepay the whole or any part of a loan at any time without penalty.

(d) *Minimum annual payment.* (1) During each year of the repayment period, a borrower's total payments to all holders of his or her PLUS loans and GSLP loans must total at least $360 or the unpaid balance of all loans, including interest, whichever amount is less. There are, however, two exceptions to this rule:

(i) If the borrower and the lender agree, the amount paid may be less.

(ii) If the borrower and his or her spouse have separate PLUS loans, or one or more PLUS loans and one or more GSLP loans, their combined annual payment must meet this requirement.

(2) The provisions of subparagraphs (1)(i) and (ii) may not result in an extension of the 10- and 15-year repayment period maximums, unless forbearance has been approved under § 683.61(c).

(e) *Student failure to enroll on at least a half-time basis.* If a lender disburses a PLUS loan and later learns that the student on whose behalf the parent borrowed has not been or will not be enrolled on at least a half-time basis at a participating school during the period for which the loan was intended, the lender shall notify the borrower that full payment of the loan is immediately due. If the lender determines such action is necessary to prevent default, the lender may allow the borrower to repay the loan in installments. However, the borrower is not entitled to periods of deferment under § 683.58.

(f) *Repayment schedule.* The repayment schedule may provide for substantially equal installment payments or for installment payments that increase in amount over the repayment period. If a graduated repayment schedule is established, it may not provide for any single installment that is more than 3 times greater than any other installment.

(g) *Supplemental repayment agreement.* (1) For a loan made by a school lender, the lender and the borrower may enter into an agreement supplementing the regular repayment schedule under paragraph (f) of this section. Under a supplemental repayment agreement, the lender agrees that the borrower is deemed to meet the terms of the regular repayment schedule as long as the borrower makes payments in accordance with a separate schedule. However, the regular schedule must provide for equal installments.

(2) The purpose of a supplemental repayment agreement is to extend the 10- and 15-year repayment period maximums and to permit a lender to

offer a borrower a repayment schedule based on other than equal or graduated payments. For example, a supplemental repayment agreement may base the amount of the borrower's payment on the borrower's income.

(3) The agreement and separate schedule must contain terms that the Secretary believes do not unduly burden the borrower and do not subject the Secretary to undue liability. A lender and borrower may not enter into a supplemental repayment agreement unless the lender has obtained the Secretary's prior approval of its terms.

(4) The borrower may not insist upon the establishment of a supplemental repayment agreement.

(5) A lender may assign a loan subject to a supplemental repayment agreement only if the buyer agrees to accept the loan subject to the terms of the supplemental agreement.

(6) For purposes of the special allowance, and the determination of the amount of loss on an insurance claim, the unpaid principal balance of the loan is based on the regular repayment agreement.

(20 U.S.C. 1077, 1078, 1078–2, 1079, 1082.)

§ 683.58 Deferment.

(a) *Borrower eligibility.* (1) A borrower is entitled to have periodic installment payments of principal deferred during authorized periods and during the post-deferment grace period after the completion of each such period or combination of periods. Except as provided in paragraph (e)(4) of this section, a period of authorized deferment begins when the condition entitling a borrower to deferment first exists. Interest accrues and is payable by the borrower during the deferment and post-deferment grace periods. The borrower shall provide to the lender all documentation required to establish eligibility for a specific type of deferment.

(2) A deferment cannot be denied by a lender when the borrower meets the eligibility criteria, even though the borrower may be delinquent, but not in default, in making required installment payments. The 120- or 180-day period required to establish a default does not run during the deferment and post-deferment grace periods. When the post-deferment grace period expires, a borrower resumes any delinquent status that existed when the deferment period began.

(3) A borrower whose loan is in default is not eligible for a deferment unless the borrower has made satisfactory arrangements with the lender to bring the account current.

(4) If both parents of a student have obtained a loan as co-makers, both parents must be eligible for a deferment in order for payments of principal to be deferred.

(b) *Authorized deferments.* Deferment is authorized during periods when a borrower is engaged in at least one of the following activities:

(1)(i) Full-time study at a participating school, unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State; or

(ii) Full-time study at a school which meets the definition of an institution of higher education or a vocational school and is operated by an agency of the Federal government (e.g., the service academies), unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State.

(2) Study under an eligible graduate fellowship program, as described in paragraph (c) of this section.

(3) Up to 3 years of active duty service in the United States Armed Forces or of service as an officer in the Commissioned Corps of the United States Public Health Service.

(4) Up to 3 years of volunteer service under the Peace Corps Act.

(5) Up to 3 years of service as a full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973 (ACTION programs).

(6) Up to 3 years of full-time volunteer service which the Secretary has determined is comparable to service referred to in paragraphs (b)(4) and (b)(5) of this section for a tax-exempt organization, as described in paragraph (d) of this section.

(7) Conscientiously seeking but unable to find full-time employment in the United States over a single period of up to twelve months, as described in paragraph (e) of this section.

(8) Pursuing a course of study under a rehabilitation training program for disabled individuals, as described in paragraph (f) of this section.

(9) Up to 2 years of service as an intern, as described in paragraph (g) of this section.

(10) Up to 3 years during which the borrower is temporarily totally disabled, as described in paragraph (h) of this section, or during which the borrower is unable to secure employment because he or she is caring for a spouse who is temporarily totally disabled, as described in paragraph (i) of this section.

(c) *Graduate fellowship deferment.* To qualify for a deferment for study under a graduate fellowship program, a borrower shall provide the lender with a statement from an official of the borrower's fellowship program certifying that—

(1) The fellowship program—

(i) Provides sufficient financial support to graduate fellows to allow for full-time study for at least six months;

(ii) Requires, prior to the award of that financial support, a written statement from each applicant which explains the applicant's objectives; and

(iii) Requires a graduate fellow to submit periodic reports, projects, or other evidence of the graduate fellow's progress; and

(2) The borrower—

(i) Holds at least a baccalaureate degree conferred by an institution of higher education;

(ii) Is engaged in full-time study, that may be independent of an educational or cultural institution, in an academic or professional subject area for which the borrower has shown an interest and ability; and

(iii) Has been recommended by an institution of higher education for acceptance into the graduate fellowship program.

(d) *Full-time volunteer service for a tax-exempt organization deferment.* To qualify for a deferment for full-time volunteer service for a tax-exempt organization comparable to volunteer service in the Peace Corps or full-time volunteer service in a program administered by the ACTION agency, a borrower shall provide the lender with a statement from an official of the borrower's volunteer program certifying that—

(1) The borrower serves in an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1954;

(2) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human social, and environmental conditions;

(3) The borrower's compensation does not exceed the compensation received by a full-time volunteer in the Peace Corps or in a program administered by the ACTION agency. Compensation includes a subsistence allowance, necessary travel expenses and stipends;

(4) The borrower, as part of his or her duties, does not give religious instruction, conduct worship services, engage in religious proselytizing, or engage in fundraising to support religious activities; and

(5) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(e)(1) *Basic eligibility for an unemployment deferment.* (i) For

purposes of this section, full-time employment involves at least 30 hours of work per week and is expected to last at least 3 months.

(ii) A borrower is entitled to the deferment whether or not he or she has been previously employed. If previously employed, the borrower is entitled to a deferment regardless of the circumstances under which the employment ended.

(iii) An unemployment deferment is not justified if the borrower has sought employment only in kinds of positions or at salary and responsibility levels for which he or she feels qualified by virtue of education or previous experience.

(2) *Submission of request.* To receive an unemployment deferment, a borrower shall submit a request for the deferment in writing to the holder of the loan. To continue the deferment for more than 6 months, the borrower shall submit a second request by the end of that 6-month period. Each request must be signed and dated and contain the following:

(i) A statement from the borrower describing his or her conscientious search for full-time employment.

(ii) The borrower's latest permanent home address and, if applicable the borrower's latest temporary address.

(iii) Certification that the borrower has registered with a public or private employment agency, if one is accessible, specifying its name and address.

(iv) The borrower's agreement to notify the lender promptly when he or she becomes employed full-time.

(3) *Lender's approval or disapproval of request.* (i) The lender must review the borrower's request and notify the borrower of its decision within one month after receipt of the request.

(ii) The lender may rely upon the written statements provided by the borrower, unless the lender has information to the contrary.

(iii) If the lender is satisfied that the borrower has conscientiously searched for full-time employment and otherwise meets the requirements for an unemployment deferment, the lender shall approve the request.

(iv) If the borrower's request does not justify an unemployment deferment, the lender may grant the borrower forbearance if authorized under § 683.61.

(4) *When the unemployment deferment begins.* An unemployment deferment begins—

(i) On the date that the lender approves the request; or

(ii) On a date not in excess of 60 days prior to the lender's approval if the unemployment existed at the earlier date.

(5) *When the unemployment deferment ends.* An unemployment deferment ends on the earliest of—

(i) The date the lender learns that the borrower has become employed full-time;

(ii) One month after the date when a certification of unemployment deferment eligibility is due from the borrower but has not been received; or

(iii) 12 months after the commencement of the deferment period.

(f) *Rehabilitation training program deferment.* (1) To qualify for this deferment—

(i) The borrower must either be receiving or be scheduled to receive services under a program designed to rehabilitate disabled individuals; and

(ii) The borrower's rehabilitation program must meet the Secretary's criteria for approval.

(2) *Criteria for the Secretary's approval of rehabilitation training programs.* The Secretary approves a rehabilitation training program if the organization providing rehabilitation services to the borrower—

(i) Is licensed, approved, certified or otherwise recognized as providing rehabilitation training to disabled individuals by any of the following agencies—

(A) A State vocational rehabilitation agency;

(B) A State agency for drug abuse treatment;

(C) A State agency for mental health services;

(D) A State agency for alcohol abuse treatment; or

(E) The Veterans Administration; and

(ii) Provides or has agreed to provide that borrower with services for his or her rehabilitation under a rehabilitation plan that is—

(A) Written;

(B) Individualized to meet the borrower's needs;

(C) Specific as to the date on which the services to the borrower are expected to end; and

(D) Structured in a way that requires a substantial commitment by the borrower to his or her rehabilitation. The Secretary considers a substantial commitment by the borrower to be a commitment of time or effort that would normally prevent an individual from engaging in full-time employment either because of the number of hours that he or she must devote to rehabilitation or because of the nature of his or her rehabilitation. For the purpose of this paragraph, full-time employment involves at least 30 hours of work per week.

(3) *Qualification for a rehabilitation training program deferment.* (i) To obtain a rehabilitation training deferment, a borrower shall provide the lender with evidence that he or she qualifies for the deferment, in a form approved by the Secretary. The evidence must include—

(A) The statement of the provider of the rehabilitation services certifying that the borrower either is receiving or is scheduled to receive rehabilitation training services from the provider; and

(B) A statement from an agency descirbed in paragraph (e)(2)(i) of this section certifying that the provider from which the borrower is receiving services or is scheduled to receive services meets the requirements of paragraph (e)(2) of this section with respect to that borrower.

(ii) On receipt of the properly completed request, the lender shall grant the borrower a deferment.

(4) *When the rehabilitation training program deferment begins.* The rehabilitation training deferment begins—

(i) In the case of a borrower who is actually receiving rehabilitation services under an approved program, on the date specified in the borrower's rehabilitation plan as the beginning date for his or her receipt of services through that program, but no earlier than November 1, 1978; or

(ii) In the case of a borrower who is requesting deferment based on being scheduled to receive rehabilitation services under an approved program, on the date that the borrower provides the lender with a properly completed request.

(5) *When the rehabilitation training program deferment ends.* Unless the borrower re-establishes his or her eligibility to continue a deferment by repeating the request procedure described in paragraph (f)(3) of this section, the rehabilitation training program deferment ends on the earliest of the following dates:

(i) In the case of a borrower who was granted deferment based on being scheduled to receive rehabilitation services under an approved program, the date the borrower informs the lender that he or she no longer plans to receive rehabilitation services; or

(ii) In the case of a borrower who was granted deferment based on being scheduled to receive rehabilitation services under an approved program, the date three months from the date the borrower submitted a request for a rehabilitation deferment; or

(iii) The date the borrower ceases rehabilitation training; or

(iv) The date specified in the borrower's rehabilitation plan as the

date on which rehabilitation services to the borrower are anticipated to end; or

(v) The date twelve months from the date the borrower begins receiving services.

(g) *Internship deferment.* To qualify for an intership deferment, a borrower shall provide the lender with evidence that he or she is serving in an eligible internship, after obtaining a baccalaureate or professional degree, which the Secretary has determined is required to receive professional recognition required to begin professional practice or service. The Secretary has determined that medical residency is an example of such an internship.

(h) *Borrower's temporary total disability deferment.* (1) To qualify for this deferment the borrower shall give the lender an affidavit of a qualified physician stating that the borrower is temporarily totally disabled.

(2) For purposes of this section, a borrower who is "temporarily totally disabled" is one who, by reason of injury of illness, cannot be expected to be able to attend school or to be gainfully employed during an extended period of time needed to recover from such an injury or illness.

(i) *Deferment for a borrower whose spouse is temporarily totally disabled.* In order to qualify for this deferment the borrower shall give the lender—

(1) An affidavit of a qualified physician stating that the borrower's spouse is temporarily totally disabled. For purposes of this section a spouse who is "temporarily totally disabled" is one who, by reason of injury or illness, cannot be expected to be gainfully employed during an extended period of time needed to recover from such injury or illness and who during that period requires continuous nursing or other similar services; and

(2) A statement from the borrower certifying that he or she is unable to secure employment because he or she is providing this care.

(20 U.S.C. 1077, 1078, 1082, 1085; 42 U.S.C. 5055(e))

§ 683.59 Due diligence in making and disbursing a loan.

(a) *General.* (1) The loan-making process includes the processing of necessary forms, the approval of a borrower for a loan, the determination of the loan amount, the explanation to a borrower of the borrower's responsibilities under the loan, the completion by the borrower of the promissory note, and the disbursement of the loan proceeds.

(2) Except as may be authorized by the Secretary, a lender may not delegate its loan-making functions except to a school with whom the lender has an origination relationship. If an origination relationship exists, the lender may rely in good faith upon statements of the borrower and the student contained in the loan application, but may not rely upon statements made by the school in the application. A non-school lender which does not have an origination relationship with a school may rely in good faith upon statements of the borrower, the student and the school which are contained in the application. A school lender may rely in good faith upon statements made by the borrower and the student in the loan application.

(b) *Processing of forms.* Before making a loan, a lender must, subject to paragraph (a)(2) of this section, determine that all required forms have been accurately completed by the borrower, the student, the school, and the lender. A lender must not ask the borrower to sign any form before all information requested of the borrower on that form has been supplied.

(c) *Approval of borrower and determination of loan amount.* (1) A lender may make a loan only to an eligible parent who is borrowing on behalf of an eligible student. To the extent authorized in paragraph (a)(2), the lender may make this determination based on the information provided by the school, the borrower, and the student on the application form.

(2) In determining the amount of the loan to be made, within the limitations of § 683.55, the lender should review the data on the student's cost of attendance and estimated financial assistance which is provided on the application form. In no case may the loan amount exceed the student's estimated cost of attendance for the academic period for which the loan is intended less estimated financial assistance.

(d) *Borrower interview.* (1) Before making an initial loan to a parent, a lender should meet personally with the parent in order to ensure that the parent understands his or her rights and responsibilities under the loan.

(2) In particular, the lender should explain that the loan funds may be applied only toward educational expenses of the student listed on the application.

(e) *Establishing repayment terms.* When establishing repayment terms, the lender should take into consideration the financial obligations and the current and potential income of the borrower. The lender should design a repyament schedule that retires the loan obligation as soon as possible, as permitted under § 683.57(b), without leading to default caused by the borrower's inability to make payments.

(f) *Providing loan information.* By no later than when the note is signed, the lender shall provide the borrower with information including the repayment schedule concerning his or her rights and responsibilities under the loan, as set forth in § 683.16

(g) *Promissory note.* (1) The lender shall obtain from the borrower an executed promissory note for each loan as proof of the borrower's indebtedness.

(2) The Secretary periodically makes an approved promissory note form available to Federal PLUS lenders. A lender may not add any clauses to, or modify any of the provisions of, the most current promissiory note provided by the Secretary without the Secretary's prior approval.

(3) The lender must give the borrower a copy of each executed note.

(4) The lender shall retain the original promissory note until the loan is paid in full. Within 30 days of the date the loan has been paid in full, the lender shall give the borrower the original promissory note.

(h) *Security, endorsement and co-makers.* (1) A Federal PLUS loan must be made without security.

(2) A Federal PLUS loan must be made without endorsement or other secondary liability on the note.

(3) A Federal PLUS loan may be made to two eligible parents who agree to be jointly liable for repayment of the loan as co-makers.

(i) *Loan disbursement.* (1) A lender may not disburse a loan prior to the issuance of the insurance commitment by the Secretary. The lender shall disburse loan funds by means of a check payable only to the borrower. The check must require the personal endorsement of the borrower. Deposit of the check by the borrower in his or her account at a bank or other financial institution constitutes endorsement for purposes of this paragraph.

(i) The lender shall disburse the loan check directly to the borrower, either in person or by mail. The lender may not disburse the check to the borrower earlier than is reasonably necessary to meet the student's cost of attendance for the period for which the loan is made and in no case, without the Secretary's approval, earlier than 30 days prior to the date on which the student is scheduled to enroll.

(ii) Within 30 days following the date of the disbursement of a loan to a borrower, the lender shall provide the following information to the school that the student is attending:

(A) The name of the student on whose behalf the loan was made:

(B) The name of the borrower; and

(C) The amount of the loan disbursed and the fact that it is a Federal PLUS loan.

(2) Neither a lender nor a school may obtain a borrower's power of attorney or other authorization to endorse a disbursement check on behalf of a borrower. The borrower shall personally endorse the check and may not authorize anyone else to endorse it on his or her behalf.

(3) For purposes of the Federal PLUS program, a check is a draft drawn on a bank and payable on demand.

(4) *Late disbursements.* (i) Under certain circumstances a lender, with the prior approval of the Secretary, may disburse a Federal PLUS loan after the student on whose behalf it is being made has ceased to be enrolled on at least a half-time basis or after the expiration date of the insurance commitment.

(ii) The Secretary will approve a lender's request to make a disbursement under these circumstances only if satisfied that the loan proceeds will be used for the student's cost of attendance for the period of enrollment for which the loan was intended.

(iii) If the lender, after receiving the Secretary's prior approval, makes a late disbursement, the lender shall give notice of that approval to the school at the time it sends the loan check to the school.

(20 U.S.C. 1077, 1078–2, 1080, 1082, 1083, 1085)

§ 683.60 Due diligence in collecting a loan.

(a) *General.* (1) A lender must exercise due diligence in the collection of a Federal PLUS loan. In order to exercise due diligence, a lender, exept as provided in subparagraph (2) of this paragraph, shall implement the following procedures when a borrower fails to honor his or her payment obligation. If two parents are liable for repayment of a loan as co-makers, the lender shall follow these procedures with respect to both parents.

(2) A lender shall respond on a timely basis to written inquiries and other communications from a borrower.

(3) Paragraphs (b) through (f) of this section shall not apply—

(i) After it has been determined, or while a lender is seeking to have a determination made, that a borrower has died, become totally and permanently disabled, or has filed a bankruptcy petition as set forth in § 683.63; or

(ii) After it has been determined that any of the conditions for filing a default claim without previous collection efforts exist, as set forth in §§ 683.64 and 683.66(e).

(b) *Initial delinquency.* When a borrower is delinquent in making a payment, the lender shall remind the borrower within 15 working days of the date the payment was due by means of a letter, notice, telephone call, or personal contact. If payments do not begin or resume, the lender must attempt to contact the borrower at least 3 more times at regular intervals during the rest of the 4-month period that started on the due date of the delinquent payment. These contacts should become progressively more forceful in tone.

(c) *Skip-tracing assistance.* Whenever a lender does not know the borrower's current address, the lender shall attempt to locate the borrower through normal commercial collection techniques, including contacting any other individuals named on the borrower's loan application. If these efforts are unsuccessful, the lender shall attempt to learn the borrower's current address through use of the Department of Education's skip-tracing assistance. The Secretary does not pay insurance on a default claim if the lender did not know the borrower's address but failed to request this skip-tracing assistance. If the lender obtains knowledge of the borrower's address prior to filing a default claim, the lender must attempt to contact the borrower.

(d) *Pre-claim assistance.* When a borrower is 60 days delinquent in making payment, the lender must request pre-claim assistance from the Department of Education. This pre-claim assistance consists of a series of letters being sent to the borrower, urging the borrower to contact the lender and begin or resume payments. The Secretary does not pay insurance on a default claim if the lender failed to request this pre-claim assistance.

(e) *Final demand letter.* A lender must send a final demand letter to the borrower at least 30 days before the lender files a default claim. The lender must allow the borrower at least 30 days to respond to the final demand letter. However, a lender need not send a final demand letter to a borrower whose address is unknown.

(f) *Litigation.* (1) If the borrower's loan is in default and the lender determines that the borrower has the ability to repay the loan, the lender may bring suit against the borrower to recover the amount of the unpaid principal and interest together with reasonable attorney's fees. Prior to bringing suit the lender shall—

(i) Obtain the Secretary's approval. A lender may seek the Secretary's approval to bring suit in anticipation that the lender's collection efforts will be unsuccessful. The Secretary will normally approve a lender's request to bring suit if the Secretary is satisfied that the borrower has the ability to repay the loan and that the collection efforts required by this section have been, or will be, made prior to the lender's bringing suit;

(ii) Notify the borrower that the Secretary's approval to bring suit has been obtained, and that suit will be brought unless the borrower cures the default; and

(iii) Indicate to the borrower that the lender will seek a judgment under which the borrower will be legally liable for payment of reasonable attorney's fees and court costs in addition to the unpaid principal and interest. The lender shall mail the notice to the borrower by certified mail, return receipt requested.

(2) The lender may bring suit if the borrower does not meet the terms of the lender's demand for payment within 10 days following the date of delivery of the notice to the borrower indicated on the receipt.

(3) A lender may first apply the proceeds of any judgment against its reasonable attorney's fees and court costs, whether or not the judgment provides for these fees and costs.

(20 U.S.C. 1078–2, 1080, 1082, 1085)

§ 683.61 Forbearance.

(a) *General.* (1) The Secretary encourages a lender under the Federal PLUS program to grant forbearance for the benefit of a borrower in order to prevent a borrower from defaulting on his or her payment obligations. "Forbearance" means permitting the temporary cessation of payments, allowing an extension of time for making payments, or accepting smaller payments than were previously scheduled.

(2) A lender may grant forbearance under paragraph (b) or (c) whenever poor health or other personal problems affect the ability of the borrower to make scheduled payments. If two parents are liable for repayment of a loan as co-makers, the lender shall grant forbearance only when the ability of both parents to make scheduled payments in adversely affected.

(3) If payments of interest are forborne they may be added to the principal amount of the loan obligation on the date that repayment resumes or at the end of the period of forbearance.

(b) *Basic repayment terms.* A lender may grant forbearance on terms that are consistent with the minimum annual payment requirement and the 10- and 15-year limitations on length of repayment if the lender and the borrower agree in writing to the new terms.

(c) *Inconsistent repayment terms.* A lender may also grant forbearance for a period of up to one year at a time on terms that are inconsistent with the minimum annual repayment requirement and the 10- and 15-year limitations on length of repayment if the lender complies with these requirements:

(1) The lender must reasonably believe that the borrower intends to repay the loan but is currently unable to make payments in accordance with the terms of the loan note. The lender shall state the basis for its belief in writing and maintain that statement in its loan file on that borrower.

(2) Both the borrower and an authorized official of the lender shall sign a written agreement of forbearance.

(3) If the agreement between the borrower and lender provides for postponement of all payments, the lender shall contact the borrower at least every 3 months during the period of forbearance in order to remind the borrower of the outstanding obligation to repay.

(20 U.S.C. 1078–2, 1080, 1082)

§ 683.62 Assignment of a loan.

(a) *General.* A Federal PLUS note may be assigned except to another eligible lender. In this section "seller" means any kind of assignor, "buyer" means any kind of assignee, and "assignment" means any kind of transfer, including assignment as security.

(b) *Procedure.* (1) A Federal PLUS note assigned from one lender to another must be subject to a blanket endorsement together with other Federal PLUS notes being assigned or must individually bear effective words of assignment. Either the blanket endorsement or the note must be signed and dated by an authorized official of the seller.

(2) The buyer must—

(i) Notify the Secretary of the assignment if the right to receive special allowance has been assigned; and

(ii) Ensure that borrower is notified promptly if the assignment results in the borrower being required to make installment payments, or direct other matters connected with the loan, to a party other than the party whom the borrower dealt with before the assignment. The buyer must include in the notice to the borrower a clear statement of all the borrower's rights and responsibilities which arise from the assignment of the loan, including a statement regarding the consequences of making payments to the seller or any prior holder of the loan, subsequent to receipt of the notice.

(c)(1) *Risks assumed by the buyer.* Upon acquiring a Federal PLUS note, a new holder assumes responsibility for the consequences of any previous violation of applicable statutes or regulations or the terms of the note. A Federal PLUS note is not a negotiable instrument, and a subsequent holder is not a holder in due course. If the borrower has a valid legal defense that could be asserted against the original holder, the borrower can also assert the defense against the new holder. If the new holder files a default claim on a loan, the Secretary denies the default claim if there was a legal defect affecting the initial validity or insurability of the loan and to the extent of the borrower's legal defenses. Furthermore, when a new holder files a claim on a Federal PLUS loan, it must provide the Secretary with the same documentation that would have been required of the original lender.

(2) *Special additional rules for assignment of loans made or originated by a school.* The buyer shall not be entitled to rely upon the statements provided by a school in the making or origination of a loan by the school. In addition, the Secretary considers any unpaid tuition refund that was due to the student under § 683.87 before the assignment from a school that made or originated the loan as having been paid to the subsequent holder on the borrower's behalf.

(d) *The Secretary's approval.* (1) The approval of the Secretary is required prior to the assignment of a note to any eligible lender which has not entered into a Federal PLUS insurance contract with the Secretary. The Secretary approves such an assignment only if the Secretary is satisfied that one of the parties to the assignment will comply with all the requirements applicable to lenders under the PLUS program regulations.

(2) Any arrangement where the loan is assigned to an eligible lender that would hold the loan in trust must receive the Secretary's prior approval. A lender that holds a loan as a trustee assumes responsibility for complying with all applicable statutory and regulatory requirements imposed on a holder of a loan.

(e) *Warranty.* (1) Nothing in this section precludes the buyer of a Federal PLUS loan from obtaining a warranty from the seller covering certain future reductions by the Secretary in computing the amount of insurable loss, if any, on a claim filed on the loan.

(2) The warranty may only cover reductions which are attributable to an act or failure to act of the seller or other previous holder.

(3) The warranty may not cover matters that the buyer is responsible for under the PLUS program regulations.

(20 U.S.C. 1078–2, 1079, 1080, 1082)

§ 683.63 Death, disability, and bankruptcy.

(a) *Death.* (1) If a borrower dies, the borrower's obligation to make any further payments of principal and interest on a Federal PLUS loan is cancelled. However, if the loan was obtained by two parents as co-makers, and only one of the borrowers dies, the surviving borrower remains obligated to repay the loan and the loan is not eligible for cancellation.

(2) The lender may not attempt to collect on the loan from the borrower's estate.

(3) The lender may make a determination that the borrower has died on the basis of a death certificate or other proof of death which is acceptable under applicable State law. If a death certificate or other acceptable proof of death is not available, the borrower's obligation on the loan is cancelled only upon a determination by the Secretary on the basis of other evidence that the Secretary finds conclusive.

(4) The lender shall return to the sender any payments received from the estate of the borrower or paid on behalf of the borrower after the date of death.

(b) *Disability.* (1) If the lender determines that a borrower is totally and permanently disabled, the borrower's obligation to make any further payments of principal and interest on a Federal PLUS loan is cancelled. However, if the loan was obtained by two parents as co-makers, and only one of the borrowers becomes totally and permanently disabled, the other borrower remains obligated to repay the loan and the loan is not eligible for cancellation. A borrower is not considered totally and permanently disabled on the basis of a condition that existed prior to his or her loan application unless the borrower's condition has substantially deteriorated since he or she submitted the loan application.

(2) After being notified by the borrower or the borrower's representative that the borrower claims to be totally and permanently disabled, the lender may not attempt to collect on the loan from the borrower. The lender shall promptly request that the borrower or his or her representative obtain a certification from a physician who is a doctor of medicine or osteopathy and legally authorized to practice, on a form provided by the Secretary, that the borrower is totally and permanently

disabled. If the form is not submitted to the lender within 60 days of the date the lender requested it, the lender may resume collection unless the physician has notified the lender that a longer period of time is required to make the determination.

(3) If the lender receives a certification from a physician, as described in paragraph (b)(2), that the borrower is totally and permanently disabled, the lender must return to the borrower any payments that it may have received from or on behalf of the borrower after being notified that the borrower claims to be totally and permanently disabled.

(c) *Bankruptcy.* (1) If a borrower has filed a bankruptcy petition, the Secretary will assume the borrower's liability for unpaid principal and interest. However, if the loan was obtained by two parents as co-makers and only one of the borrowers has filed a bankruptcy petition, the other borrower remains obligated to repay the loan and the Secretary does not assume liability for unpaid principal and interest.

(2) Once a lender determines that a borrower has filed a bankruptcy petition, the lender may not attempt to collect on the loan and must file a bankruptcy claim with the Secretary.

(3) The lender may determine that a borrower has filed a bankruptcy petition upon receipt of notice of the first meeting of creditors from the bankruptcy court.

(4) If the loan obligation is not discharged in bankruptcy, the Secretary shall treat the claim as a default claim. The lender shall not be required to repurchase the loan

(20 U.S.C. 1078–2, 1082, 1087)

§ 638.64 Cessation of lender collection activity in certain cases.

(a) A lender shall cease collection activity on a Federal PLUS loan, and file a default claim with the Secretary within 60 days after the lender determines that any of the following conditions exist, whether or not the borrower is eligible for deferment:

(1) The school in which the student on whose behalf the loan was made was enrolled terminated its teaching activities involving that student during the academic period covered by the loan.

(2) The Secretary—

(i) Has instituted an action to limit, suspend, or terminate the eligibility of the school in which the student, on whose behalf the loan was made, was enrolled for the academic period covered by the loan, or the eligibility of any lender that has held the loan; and

(ii) Has directed that a claim be filed on the loan.

(3)(i) A school or a lender is the subject of a lawsuit or Federal administrative proceeding and the Secretary determines that the proceeding involves allegations that, if proven, would entitle the borrower to refuse to repay all or a portion of the loan, or to obtain a judgment to recover payments made on the loan, or would entitle the student on whose behalf the loan was made to take such action if the loan had been made to the student; and

(ii) The Secretary has directed that a claim be filed on the loan.

(b)(1) If the Secretary finds that a determination made by a lender under this section is correct, the Secretary pays the default claim as otherwise provided for under these regulations.

(2) If the Secretary finds that the lender's determination is not correct, the Secretary refuses payment and the lender shall resume normal collection activity on the loan.

(c) A lender may not, as a result of a default claim filed with the Secretary under this section, make a report to any credit bureau or other third party concerning the borrower's failure to repay his or her loan.

(20 U.S.C. 1078–2, 1080, 1082)

§ 638.65 Procedures for filing claims.

(a)(1) A lender may file an insurance claim for any of the following reasons:

(i) The loan is in default. A loan is not in default until the 120-day or, if applicable, the 180-day period, described in the definition of "default" in § 683.10, has elapsed. If the borrower fails to make an installment payment when due, the 120- or 180-day period begins the day after the due date of that installment.

(ii) Any of the conditions for filing a default claim without collection efforts exist, as set forth in §§ 683,64 and 683.66(e).

(iii) The borrower has died.

(iv) The borrower is totally and permanently disabled.

(v) The borrower has filed a bandruptcy petition.

(2) If a loan was obtained by two parents as co-makers, the applicable condition described above must apply to both parents.

(b) *Filing a claim application.* A lender shall file an insurance claim on a form provided by the Secretary. The lender shall attach to the claim all documentation that the Secretary may require. Failure to submit the required documentation may result in a claim not being honored. The Secretary may also deny a claim that is not filed on time.

(c) *Documentation required for all PLUS program claims.* The Secretary requires the following documentation for all claims:

(1) The original promissory note.

(2) The loan application.

(3) A payment history, as described in § 683.68(a)(1)(viii), if any payments have been made.

(4) A collection history, as described in § 683.68(a)(1)(ix).

(d) *Assignment of note.* The Secretary's payment of a claim is contingent upon receipt of an assignment to the United States of America of all right, title, and interest of the lender in the note underlying the claim. The lender shall agree to reimburse the Secretary for any overpayments of special allowance that the Secretary may have made for the loan.

(e) *Specific procedures applicable to the individual claim categories.* A lender must also comply with the following requirements for filing default, death, disability, and bankruptcy claims:

(1) *Default claims.* (i) Unless a lender has notified the Secretary that it has filed suit against the defaulted borrower, after obtaining the Secretary's approval for the suit, it must file a default claim with the Secretary within 90 days after the loan has been determined to be in default, or the lender has determined that any of the conditions for filing a default claim without collection efforts exist, as set forth in §§ 683.64 and 683.66(e).

(ii) In addition to the documentation required for all claims, the lender must submit with its default claim the following:

(A) A collection history, as described in § 683.68(a)(1)(ix).

(B) A copy of the final demand letter, if required under § 683.60.

(C) The original or a copy of all personal correspondence addressed to or from, or on behalf of, the borrower relevant to the amount owed by the borrower, whether that correspondence involved the original lender, a subsequent holder, or an independent servicing agency.

(D) Evidence of the lender's requests to the Department of Education for pre-claim assistance and, if a request was required under § 683.60(c), skip-tracing assistance.

(iii) If the lender files a default claim on a loan and subsequently receives a notice of the first meeting of creditors in the proceeding of the borrower in bankruptcy, the lender shall promptly forward that notice to the Department of Education. The lender may not file a proof of claim with the bankruptcy court in this situation.

(2) *Death claims.* A lender shall file a death claim with the Secretary within 60 days after the lender determines that a borrower is dead. In addition to the documentation required for all claims, the lender shall submit with its death claim those documents which formed the basis for its determination of death.

(3) *Disability claims.* A lender shall file a disability claim with the Secretary within 60 days after it receives a certification from a licensed physician that a borrower is totally and permanently disabled. In addition to the documentation required for all claims, the lender shall submit with its disability claim a copy of the certification.

(4) *Bankruptcy claims.* A lender shall file a bankruptcy claim with the Secretary within 60 days after the lender receives a notice that the borrower has filed a bankruptcy petition. In addition to the documentation required for all claims, the lender shall submit with its bankruptcy claim to the Secretary the following:

(i) An assignment to the United States of America of its proof of claim.

(ii) Evidence that a bankruptcy petition has been filed and all pertinent documents sent to or received from the bankruptcy court.

(iii) A statement of any facts of which the lender is aware that may form the basis for an objection to the bankrupt's discharge or an exception to the discharge.

(20 U.S.C. 1078–2, 1080, 1082, 1087)

§ 683.66 Determination of amount of loss on claims.

(a) *General.* The amount of loss to be paid on a claim for a Federal PLUS loan shall be equal to the unpaid balance of the principal and interst. The unpaid principal amount of the loan may include capitalized interest.

(b) *Payment of insured interest.* (1) The payment of an approved claim covers the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed the period permitted under paragraph (e) of § 683.65 for filing the claim.

(ii) During a period not to exceed 30 days following the return of the claim to the lender by the Secretary for additional documentation necessary for the claim to be approved by the Secretary.

(iii) Durng the period required by the Secretary to approve the claim and to authorize payment.

(2) The Secretary pays the unpaid interest that accrues during other periods which are tied to the type of claim involved:

(i) The payment on a default claim covers unpaid interest that accrues through the date of default.

(ii) The payment on a bankruptcy claim covers unpaid interest that accrues before the lender receives notice that the borrower filed a bankruptcy petition.

(iii) The payment on a death claim covers unpaid interest that accrues before the lender determines that the borrower is deceased.

(iv) The payment on a disability claim covers unpaid interest that accrues before the lender receives a certification from a physician that the borrower is totallly and permanently disabled.

(c) *Factors affecting the insurability of a loan.* (1) In determining whether to approve an insurance claim for payment, the Secretary considers legal defects affecting the initial validity or insurability of the loan.

(2) The Secretary also deducts from a claim any amount that is not a legally enforceable obligation of the borrower.

(3) The Secretary further considers whether all holders of the loan have complied with the requirements of the Federal PLUS regulations, including those concerned with making and collecting a loan, the timely filing of a claim, and the submission of documents with a claim.

(4) The Secretary does not pay a death, disability, or bankruptcy claim for a loan after a default claim for that loan has been disapproved by the Secretary.

(d) *Special rules for a loan acquired by assignment.* If a claim is filed by a lender that obtained a loan by assignment, that lender is not entitled to any payment under this section greater than that to which a previous holder would have been entitled. In particular, the Secretary deducts from the claim any amounts that are attributable to payments made by the borrower to a prior holder of the loan before the borrower received proper notice of the assignment of the loan.

(e) *Special rules for loans made by school lenders.*

(1) If the loan for which a claim is filed was originally made by a school and the claim is filed by that school, the Secretary deducts from the claim—

(i) An amount equal to any unpaid refund that the school owes the student on whose behalf the loan was made under § 683.87; or

(ii) An amount attributable to any portion of the program of study that the student on whose behalf the loan was made was unable to complete because the school terminated its teaching activities during the period of time for which the parent obtained a Federal PLUS loan. If this situation occurs, the lender shall immediately file a default claim with the Secretary. The Secretary reimburses the lender in an amount which bears the same ratio to the total amount of the claim as the amount of the educational services that the student received before the school terminated its teaching activities bears to the total services which the student would have received, during the period for which the loan was obtained, had the school not terminated its teaching activities.

(2) If the loan for which a claim is filed was originally made by a school but the claim is filed by another lender that obtained the note by assignment, the Secretary deducts from the claim—

(i) An amount equal to any unpaid refund that the school owed the student on whose behalf the loan was under § 683.87 prior to the assignment of the loan to a subsequent holder;

(ii) An amount attributable to any portion of the program of study that the student on whose behalf the loan was made was unable to complete because the school terminated its teaching activities during the period of time for which the borrower obtained a Federal PLUS loan. If this situation occurs, the lender shall immediately file a default claim with the Secretary. The Secretary reimburses the lender in an amount which bears the same ratio to the total amount of the claim as the amount of the educational services that the student received before the school terminated its teaching activities bears to the total services which the student would have received, during the period for which the loan was obtained, had the school not terminated its teaching activities.

(f) *Special rules for a loan originated by a school.* For purposes of this section, a loan which is originated by a school shall be treated in accordance with paragraph (e)(1) of this section as if it were a loan made and still held by a school.

(g) *Circumstances under which defects in claims may be cured or excused.* (1) The Secretary may permit a lender to cure certain defects in a specified manner as a condition for payment of a default claim.

(2) The Secretary may excuse certain defects—

(i) If the holder submitting the default claim satisfies the Secretary that the defect did not contribute to the default or prejudice the Secretary's attempt to collect on the loan from the borrower; or

(ii) If the defect arose while the holder submitting the default claim was holding the loan but the Secretary had previously found that the holder had procedures in effect sufficient to ensure

that such a defect would not normally arise.

(3) The Secretary may also excuse certain defects if the Secretary is satisfied that—

(i) The defect arose while the loan was held by another lender;

(ii) The assignment of the loan was an arm's length transaction;

(iii) The present holder did not know of the defect at the time of the assignment; and

(iv) (A) The present holder could not have become aware of the defect through an examination of the loan documents; or

(B) The present holder had relied on a finding by the Secretary that the lender holding the loan when the defect arose had procedures in effect sufficient to ensure that such a defect would not normally arise.

(20 U.S.C. 1078–2, 1080, 1082)

§ 683.67 The Secretary's collection efforts after payment of a default claim.

After paying a default claim on a Federal PLUS loan, the Secretary attempts to collect from the borrower in accordance with the Federal Claims Collection Standards (4 CFR Parts 101–105). The Secretary attempts collection of all unpaid principal and accrued interest, except in the following situations:

(a) *The borrower has a valid defense on the loan.* In this situation, the Secretary refrains from collection against the borrower to the extent of any defense that the borrower may have.

(b) *A school owes the student on whose behalf the loan was made a refund for the period covered by the loan.* In this situation, the Secretary refrains from collection to the extent of the unpaid refund the school owes the student on whose behalf the loan was made under § 683.87, if the student assigns to the Secretary the right to receive the refund and the borrower agrees in writing to pay the Secretary the remaining portion of his or her indebtedness on the loan.

(c) *The school attended by the student on whose behalf the loan was made closes during the academic period covered by the loan.* (1) In this situation, the Secretary refrains from collection against the borrower to the extent that the student would have had a defense on the loan if the loan was—

(i) Made by the school to the student;

(ii) Part of the same transaction as the enrollment at the school of the student on whose behalf the loan was made; and

(iii) Paid to the school in consideration for the educational services that were to be provided by the school.

(2) As a condition of this forgiveness—

(i) The student on whose behalf the loan was made must assign to the Secretary the right to receive any refund that the school owes the student under § 683.87; and

(ii) The borrower must agree in writing to pay the Secretary the remaining portion of his or her indebtedness on the loan.

(d) *A school or lender is the subject of a lawsuit or Federal administrative proceeding.* In this situation, if the Secretary determines that the proceeding involves allegations that, if proven, would provide the borrower with a full or partial defense on the loan, or would provide the student on whose behalf the loan was made with such a defense if the loan had been made to the student, then the Secretary may suspend collection activity on all or part of a loan until the proceeding ends. The Secretary suspends collection activity only for so long as the Secretary believes that the proceeding is being prosecuted in good faith and that the allegations that relate to the borrower's or student's defense are reasonably likely to be proven. When a final resolution is reached, the Secretary collects from the borrower to the extent appropriate.

(e) *A school or lender is the subject of a limitation, suspension, or termination action by the Secretary.* In this situation, if the Secretary determines that the final outcome of the action could provide the borrower with a full or partial defense on the loan, or would provide the student on whose behalf the loan was made with such a defense if the loan had been made to the student, then the Secretary may suspend collection activity pending the final resolution of the action. When a final resolution is reached, the Secretary collects from the borrower to the extent appropriate.

(f) *The borrower dies, becomes totally and permanently disabled, or has the Federal PLUS loan discharged in bankruptcy.* In this situation, the Secretary terminates all collection activity against the borrower. However, if the loan was obtained by two parents as co-makers, and only one of the borrowers meets one of these conditions, the Secretary continues collection activity against the other borrower.

(20 U.S.C. 1078–2, 1080, 1082)

§ 683.68 Records, reports, and inspection requirements for lenders.

(a) *Records.* (1) A lender shall keep complete and accurate records of each Federal PLUS loan which it holds. The records must be organized in a way that permits ready identification of the current status of each loan. The required records include—

(i) The loan application;

(ii) The original promissory note until it is paid in full, after which a copy is required;

(iii) A record of each disbursement of loan proceeds;

(iv) Notices of changes in a borrower's address;

(v) Evidence of the borrower's eligibility for a deferment;

(vi) The documents required for the exercise of forbearance;

(vii) Documentation of the assignment of the loan;

(viii) A payment history showing the date and amount of each payment received from or on behalf of the borrower, and the amounts attributable to principal and interest;

(ix) A collection history showing the date and subject of each communication with the borrower for collection of a delinquent loan; and

(x) Any additional records as specifically required by these regulations which are necessary to document the validity of an insurance claim or to make any reports required by the Secretary under these regulations.

(2)(i) A lender shall retain the records required for each loan for not less than 5 years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. However, in particular cases the Secretary may require the retention of records beyond this minimum period.

(ii) The lender may store records in microfilm or computer format. However, the holder of a promissory note must retain the original note until the loan is fully repaid. At that time the lender shall return the original note to the borrower, and retain copies for the prescribed period.

(b) *Reports.* A lender shall submit reports to the Secretary at the time and in the manner the Secretary may reasonably require, including but not limited to the following:

(1) The Lender's Manifest.

(2) The Lender's Request for Payment of Interest and Special Allowance.

(3) The Lender's Annual Report on Outstanding Loans.

(c) *Inspections.* Upon request, a lender shall afford the Secretary, the Comptroller General of the United States, and any of their authorized representatives access to its records in order to assure the correctness of its reports.

(20 U.S.C. 1077, 1078, 1078–2, 1079, 1080, and 1082)

Subpart E—Requirements, Standards, and Payments for Participating Schools

§ 683.80 Participation agreement between an eligible school and the Secretary for participation in the PLUS program.

(a) *General.* Participation of a school in the PLUS program means that the parents of a school's students are eligible to receive PLUS loans. To participate in the PLUS program, under either the Federal PLUS program or a guarantee agency program, a school must—

(1) Establish its basic eligibility as an institution of higher education or a vocational school, as defined in § 683.10, through certification by the Division of Eligibility and Agency Evaluation, Office of Postsecondary Education, Department of Education; and

(2) Enter into a written agreement with the Secretary. The agreement must be signed by an appropriate official of the school on a form provided by the Secretary.

(b) *Terms of the agreement.* In the agreement, the school promises to comply with the applicable provisions of—

(1) The Act and the PLUS regulations;

(2) 34 CFR Part 668 (Student Assistance General Provisions); and

(3) 34 CFR Part 678 (Student Consumer Information Services).

(c) *Time to respond.* The Secretary responds to a school's request for an agreement to participate in the PLUS program within 30 days after receiving the request.

(d) *Denial or limitation of participation.* (1) If the Secretary decides not to approve a request for an agreement or approves only limited participation in the PLUS program by the school, the reason for the decision is included in the response.

(2) The Secretary provides an opportunity for the school to meet with a designated Department of Education official, if the school wishes to appeal a decision involving either—

(i) Denial of and agreement for participation; or

(ii) Approval of an agreement that limits the school's participation.

(3) The Secretary does not, however, grant an opportunity for appeal or give reasons for denying the participation, or approving only the limited participation, of a school if the school submits its request within 6 months of a previous denial or limited approval.

(e) *Change in ownership or form of control.* A PLUS program participation agreement automatically terminates when a school changes its ownership or form of control. The termination is effective at the time the change occurs. A new agreement must be signed and approved by the Secretary for the school to participate under the new ownership or form of control.

(f) *Extension of current agreements.* Until the Secretary makes a PLUS program participation agreement available, a school that has entered into an agreement with the Secretary to participate in the GSLP may participate in the PLUS program in accordance with applicable provisions of these regulations.

(20 U.S.C. 1078–2, 1082, 1094)

§ 683.81 Agreement between the Secretary and a school that makes or originates PLUS loans.

(a) *General.* (1) A school must have an agreement with the Secretary in order to make or originate PLUS loans under either the Federal PLUS program or a guarantee agency PLUS program. The definition of origination is in § 683.10.

(2) *Extension of current agreements.* Until the secretary makes a PLUS program origination agreement available, a school that has entered into an agreement with the Secretary to make or originate loans in the GSLP may participate in the PLUS program in accordance with applicable provisions of these regulations.

(b) *Terms of the agreement.* An agreement to allow a school either to make or originate loans contains the following terms:

(1) The school will not make or originate GSL or PLUS loans which would be outstanding or more than 50 percent of its undergraduate students, who are in attendance at that school on at least a half-time basis, or the parents of such students. An exception to this rule, however, is contained in paragraph (d) of this section.

(2) The school will inform any parent who seeks to obtain a PLUS loan for an undergraduate student attending the school, on whose behalf the parent has not previously obtained a PLUS loan made or originated by the school, that the parent must first make a good faith effort to obtain a loan from a commercial lender.

(3)(i) The school will not make or originate a loan for an academic period to a parent described in paragraph (b)(2) of this section until the parent provides the school with evidence of denial of a loan by a commercial lender for the same academic period. Evidence acceptable for this purpose is described in paragraph (c) of this section.

(ii) In determining whether a school has complied in good faith with this requirement, the Secretary may take into consideration any pattern reflected by letters of denial or parents' statements referred to in paragraph (c) of this section that indicate that the school has not given sufficient counseling to parents to seek loans first from a commercial lender. An example of an unacceptable pattern would be if all loan denials to the parents of a school's students were made by a small number of lenders.

(c) *Establishing a loan denial by a commercial lender.* (1) To ensure under paragraph (b)(3) of this section that a parent has sought and been denied a loan from a commercial lender for an academic period, the school shall obtain from the parent—

(i) A written statement from a commercial lender indicating that the lender denied the parent a loan for that academic period; or

(ii) The parent's statement, made under penalty of perjury, indicating both the refusal of a loan by a commercial lender and that lender's refusal to provide a written statement of the denial.

(2) If the parent's statement, is used to establish the denial of a loan, that statement must include—

(i) The name of the lender that denied the loan;

(ii) The approximate date on which the loan was denied;

(iii) The name of the official who communicated the denial to the parent; and

(iv) The parent's signature. The statement must be signed by the parent under penalty of perjury.

(3) The refusal of a lender to make a loan to a parent for the entire amount requested by the parent constitutes a denial of a loan, if the school determines that the parent is eligible for a loan of that amount. If the denial is based upon the parent's inability to obtain the entire amount requested, the school may either—

(i) Make or originate a loan to that parent for the entire amount; or

(ii) Supplement the loan that the commercial lender is willing to make with a second loan to the parent.

(d) *Waiver of the 50 percent lending limit.* A school may request a waiver of the 50 percent lending limit under paragraph (b)(1) if adherence to that limit would create a substantial hardship to the school's present or prospective students or their parents. The Secretary determines whether to grant the school a waiver after considering the following:

(1) The extent to which the school provides, and expects to continue providing, educational opportunities to economically disadvantaged students, as measured by the percentage of these students enrolled at the school who—

(i) Fall within the "low-income family" category used by the Bureau of the Census;

(ii) Would not be able to enroll, or continue their enrollment, at that school without a GSLP or PLUS loan made or originated by the school; and

(iii) Would not be able to obtain a comparable education at another school.

(2) The extent to which the school offers academic programs that—

(i) Are unique in the geographical area the school serves; and

(ii) Would not be available to some students if the school adhered to the 50 percent lending limit.

(3) The quality of improvements expected in the school's—

(i) Management of student financial assistance programs; and

(ii) Conformance with sound business practices.

(20 U.S.C. 1075, 1078, 1078–2, 1082, 1083)

§ 683.82 Providing information to prospective students.

(a) *General.* (1) A school shall present each of its prospective students with a complete and accurate statement containing information about the school. The statement must be in written form and must be presented to the prospective student prior to the time that he or she becomes obligated to pay the school any tuition or fees.

(2) The statement provided by the school must include information pertaining to—

(i) The school's current academic or training programs in which the student has expressed interest;

(ii) The school's faculty in those programs; and

(iii) The school's facilities relating to those programs.

(b) *Providing employment data.* In addition to the information required by paragraph (a) of this section, a school that offers programs or courses of study designed to prepare students for a particular vocational, trade or career field (e.g., truck driving, teaching or pharmacy) shall provide a prospective student in that field with a written statement regarding the employment of students previously enrolled in those programs or courses.

(1) The employment information must include data regarding the percentage of previously enrolled students who entered positions of employment directly related to their enrollment at the school and data regarding the average starting salaries of those students.

(2) The school may provide the prospective student with the most recent comparable regional or national statistical student employment data in lieu of the information about the school's own students if—

(i) After a reasonable effort, the school cannot obtain meaningful data on the employment of its own students; or

(ii) The data the school possesses regarding its own students is more than 3 years old and cannot, after a reasonable effort, be updated.

(3) To the extent that information is available, the school should provide a prospective student with information regarding the long range prospects for employment in the particular vocational, trade or career field that the student intends to prepare for at the school.

(20 U.S.C. 1078–2, 1082, 1085, 1088f–1)

§ 683.83 Correspondence school schedule requirements.

((a) *General.* A school offering a course of study by correspondence shall establish a schedule for submission of lessons by its students. This schedule must be given to a prospective student prior to that person's enrollment.

(b) *Information in the schedule.* The school shall include the following information in its schedule:

(1) The number of lessons in the course.

(2) The intervals at which lessons are to be submitted.

(3) The date by which the course is to be completed.

(4) The period of time within which any resident training must be completed.

(c) *Additional requirements.* The schedule must conform to the requirements set forth in paragraph (a)(3)(ii) of the definition of "vocational school" in § 683.10.

(20 U.S.C. 1078–2, 1082)

§ 683.84 Certifications by a participating school in connection with a parent's loan application.

A school shall accurately and completely fill out its portion of a parent's loan application. The information requested of the school pertains to the following:

(a) The eligibility of the student on whose behalf the loan is sought to have a parent borrow on his or her behalf as determined in accordance with § 683.11.

(b) The parent's eligibility for a loan determined in accordance with § 683.11.

(c) The student's estimated cost of attendance for the period for which the loan is sought.

(d) The student's estimated financial assistance for the period for which the loan is sought.

(20 U.S.C. 1077, 1078, 1078–2, 1085, 1094)

§ 683.85 Administrative cost allowance to participating schools.

(a) *General.* The Secretary pays an administrative cost allowance to a participating school. Payment is based on the number of students enrolled at the school on whose behalf a GSLP loan or PLUS loan is made during the award period.

(b) *Amount of payment.* Each school is paid $10 for each student who received a GSLP loan or whose parent received a PLUS loan on behalf of that student for a period of enrollment beginning in an award period.

(c) *Student count.* Each student can be counted only once in the same award period for purposes of determining the number of students enrolled at a school who have received GSL loans or whose parents have received PLUS loans on their behalf.

(d) *Award period.* For the purpose of this section, "award period" means a 12-month period beginning on July 1 of each calendar year.

(e) *Use of the administrative cost allowance funds.* A school that receives an administrative cost allowance payment shall use those funds to pay for costs of administering the GSLP and PLUS programs under Title IV of the Higher Education Act of 1965.

(f) *Applying for the administrative cost allowance.* To receive the administrative cost allowance payment, a school must submit an application on a form and within the time limit prescribed by the Secretary.

(20 U.S.C. 1078, 1078–2, 1082)

§ 683.86 The parent loan check.

(a) *Purpose.* This section establishes rules for how a school must process a parent's loan check. The school must also comply with any rules for processing a loan check contained in 34 CFR Part 668 (Student Assistance General Provisions). The rules in this section do not apply to a PLUS loan issued by a school lender if the student on whose behalf the loan was made in attending the school that made the loan.

(b) *General.* (1) A check issued by a Federal PLUS program lender is sent directly to the borrower.

(2) A loan check issued by a lender under a guarantee agency program may be sent directly to the borrower or to the school where the student on whose behalf the loan is made is enrolled or will be enrolling.

(3) A loan check that is sent directly to the school is payable either jointly to

the school and the parent or only to the parent.

(4) Generally, the school may only release a check to the parent of a student on whose behalf the loan was made if the student has maintained eligibility for the loan by enrolling or continuing enrollment on at least a half-time basis. Exceptions to this rule are contained in paragraph (f) of this section.

(c) *A check made payable to the parent.* (1) When a school receives a loan check that is payable to the parent of one of its students, the school shall promptly deliver the check to the parent.

(2) If after receiving a check for a parent, the school determines that the student on whose behalf the loan was made has not enrolled as expected, the school must return the check to the lender within 30 days of this determination.

(d) *A jointly payable check.* When a school receives a loan check that is made jointly payable to the school and the parent, the school shall process the check as follows:

(1) Endorse the check on its own behalf and deliver it to the parent; or

(2) Obtain the parent's endorsement, and—

(i) Retain that portion of the loan proceeds currently owed the school for educational costs as described in paragraph (e) of this section; and

(ii) Promptly give the remaining funds to the parent.

(3) If the school receives the check before the student on whose behalf the loan is made enrolls for the academic period for which the loan is intended, the school must hold the check until the student enrolls and then follow the procedures under (d)(1) or (2) of this section. If after receiving a check for a parent, the school determines that the student on whose behalf the loan was made has not enrolled as expected, the school must return the check to the lender within 30 days of this determination.

(e) *Retaining PLUS loan proceeds.* A school may only retain loan proceeds covering costs of attendance owed to the school over that part of the academic year for which substantially all of the school's students have been billed, unless the parent requests in writing that the school retain additional loan proceeds in order to assist in budgeting his or her funds for the remainder of the academic year.

(f) *Processing a late disbursement check.* (1) For purposes of this paragraph, a parent loan check is considered a late disbursement check if the school receives the loan check from the lender either—

(i) After the expiration of the academic period for which the loan was intended (the expiration date of the insurance commitment); or

(ii) Prior to the expiration of the academic period for which the loan was intended but after the student on whose behalf the loan was made ceased to be enrolled at the school on at least a half-time basis.

(2) If the late disbursement check is accompanied by a notice from the lender that the late disbursement has been approved by the appropriate guarantee agency, the school shall follow the applicable procedure described in paragraph (c) or (d) of this section.

(3) If the late disbursement check is not accompanied by the notice described in paragraph (f)(2) of this section, the school shall—

(i) Return the check to the lender within 30 days of its determination that one of the conditions described in paragraph (f)(1) of this section exists;

(ii) Send with the check—

(A) A notice that one of the conditions described in paragraph (f)(1) of this section exists; and

(B) If applicable, information concerning the student's date of withdrawal and costs of attendance owed the school for the period the student was enrolled on at least a half-time basis;

(iii) Advise the parent that the lender may, in accordance with rules established by the guarantee agency similar to those in § 683.59(i)(4), redisburse funds for the student's costs of attendance incurred before the existence of one of the conditions described in paragraph (f)(1) of this section.

(20 U.S.C. 1078, 1078–2, 1082)

§ 683.87 Refund policy.

(a) *General.* (1) A school shall have a fair and equitable refund policy under which it will make a refund of unearned tuition, fees and room and board charges to a student whose parent received a PLUS loan on his or her behalf if the student—

(i) Does not enroll for the academic period for which the loan was intended; or

(ii) Does not complete the academic period for which the loan was made.

(2) The school shall state its refund policy clearly in writing. The school shall include in its refund policy the procedure a student would follow to obtain a refund.

(3) The school shall provide the written statement containing its refund policy to a prospective student prior to the student's acceptance for initial enrollment. The school shall also make its refund policy known to currently enrolled students. If the school changes its refund policy, the school shall ensure that all students are made aware of the new policy.

(b) *Fair and equitable refund policy.* A school's refund policy is fair and equitable if that policy conforms with—

(1) The requirements of applicable State law; and

(2)(i) Specific refund standards set by the school's nationally recognized accrediting agency and approved by the Secretary;

(ii) If no such standards exist, other specific refund policy standards, either contained in Appendix A to this Part or set by another association of institutions of postsecondary education and approved by the Secretary.

20 U.S.C. 1078–2, 1082, 1088f–1(a)(2))

§ 683.88 Determining the date of a student's withdrawal.

(a) *Purpose.* This section establishes rules for how a school must determine the date (to include day, month and year) on which a student withdraws from the school for the purpose of—

(1) Calculating the amount of a refund due the student; and

(2) Reporting that the student has left the school.

(b) *The withdrawal date.* The school shall establish the date of a student's withdrawal as follows:

(1) Generally, the student's withdrawal date is the earlier of—

(i) The date the student notifies the school of his or her withdrawal; or

(ii) The date the school determines that a student has withdrawn.

Paragraphs (b)(2) and (b)(3) contain additional rules applicable to particular situations.

(2) If the student has not returned to school at the expiration of a leave of absence approved under paragraph (c), the student's withdrawal date is the date of the first day of the leave of absence.

(3) If the student is enrolled in a program of study by correspondence, the student's withdrawal date is normally 60 days after the due date of a required lesson that the student failed to submit in accordance with the schedule for lessons established by the school under § 683.83. However, if the student establishes in writing, within the 60-day period, a desire to continue in the program and an understanding that the required lessons must be submitted on time, the school may grant that student a resotration to in-school status. However, the school may not grant the student more than one restoration to in-school status on this basis.

(c) *Leaves of absence.* A student who is absent from school and who has been granted a leave of absence by the school, in accordance with this paragraph, is not considered to have withdrawn from school for purposes of this section. A school may grant a leave of absence to a student provided—

(1) The student has made a written request to be granted a leave of absence;

(2) The leave of absence involves no additional charges by the school to the students;

(3) The leave of absence does not—

(i) Exceed 60 days; or

(ii) Exceed six months if either of the following circumstances exists;

(A) The school is not a correspondence school and the school's next period of enrollment after the start of the leave of absence would begin more than 60 days after the first day of the leave of absence; or

(B) The absence is requested because of the student's medically determinable conditions. In this case, the student must provide the school with a recommendation from a physician for leave of absence longer than 60 days; and

(4) The student has not previously been granted a leave of absence by the school. Additional leaves of absence for a student must be approved by the Secretary.

(20 U.S.C. 1078–2, 1082, 1088f–1(a)(2))

§ 683.89 Payment of a refund to a lender.

(a)(1) A school shall pay that portion of the student's refund that is allocable to a PLUS loan to—

(i) The original lender; or

(ii) A subsequent holder, if the loan has been transferred and the school knows the new holder's identity.

(2) When the school pays refund monies to a lender on behalf of a student whose parent received a PLUS loan on his or her behalf, the school shall provide simultaneous written notice to the parent and the student of this action.

(b) *Calculating what portion of the refund to allocate to the loan.* In determining what portion of a student's refund for an academic period is allocable to a PLUS loan received by the student's parent for the same academic period, the school must follow the procedures established in 34 CFR Part 668 (Student Assistance General Provisions).

(c) *Timely payment of refund.* A school shall pay each refund that is due in accordance with the following:

(1) Within 40 days after the date of the student's withdrawal from the school, as determined in accordance with § 683.88(b); or

(2) In the case of a student who does not return to school at the expiration of an approved leave of absence (see § 683.88(b)), within 40 days after the last day of that leave of absence.

(d) *Transition requirements.* In the event of a school's closure, termination, suspension of operations, or change in ownership, the school or its successors shall make provision for compliance with the requirements of this section with regard to students on whose behalf parents obtained loans for periods of attendance at the school prior to the school's change in status.

(20 U.S.C. 1078–2, 1082, 1094)

§ 683.90 Termination of a school's lending eligibility.

(a) *General.* The Secretary terminates a school's eligibility to make GSLP and PLUS loans, under the Federal PLUS program, the FISLP or a guarantee agency program, if the school reaches the 15 percent limit on loan defaults described in paragraph (b) of this section.

(b) *The 15 percent limit.* (1) The Secretary terminates a school's eligibility to make GSLP and PLUS loans if, during each of the two most recent consecutive one-year periods for which data is available, the total amount of loans described in paragraph (b)(1)(i) of this section is equal to or greater than 15 percent of the total amount of loans described in paragraph (b)(1)(ii) of this section.

(i) The original principal amount of loans the school has ever made that went into default during that period.

(ii) The original principal amount of all loans the school has ever made, including loans in deferment status, that—

(A) Were in repayment status at the beginning of that period; or

(B) Entered repayment status during that period.

(2) In making the determination required by this section, the Secretary considers the status of all GSLP and PLUS loans made by the school, whether the loans are held by the school or a subsequent holder.

(c) *Exception based on hardship.* The Secretary does not terminate a school's lending eligibility under paragraph (a) of this section if the Secretary determines that the termination would result in a hardship condition for the school or its students. The Secretary makes this determination if the school shows that—

(1) Termination is not justified in light of recent improvements the school has made in its collection capabilities that will cause the school's loan delinquency rate to improve within the next year. Examples of these improvements include the following:

(i) Adopting more efficient collection procedures.

(ii) Employing increased collection staff; or

(2) Termination would cause a substantial hardship to the school's current or prospective students or their parents based on—

(i) The extent to which the school provides, and expects to continue to provide, educational, opportunities to economically disadvantaged students, as measured by the percentage of students enrolled at the school who—

(A) Fall within the "low-income family" category used by the Bureau of the Census;

(B) Would not be able to enroll, or continue their enrollment, at that school without a GSLP or PLUS loan from the school; and

(C) Would not be able to obtain a comparable education at another school.

(ii) The extent to which the school offers academic programs that—

(A) Are unique in the geographical area the school serves; and

(B) Would not be available to some students if they or their parents could not obtain loans from the school.

(iii) The quality of improvements the school has made in its—

(A) Management of student financial assistance programs; and

(B) Conformance with sound business practices.

(d) *Termination procedures.* The Secretary does not terminate the lending eligibility of a school under this section until the school has been notified of the impending action and has had an opportunity for a hearing.

(1) *The termination notice.* A Department of Education official designated by the Secretary begins a termination action by sending a notice to the school. The notice is sent by certified mail with a return receipt requested. In the notice, the designated official—

(i) Informs the school of the intent to terminate the school's lending eligibility because of the school's default experience;

(ii) Specifies the proposed effective date of the termination as the next October 1;

(iii) Informs the school that it has 15 days to do the following—

(A) Submit any written material it wants considered in determining whether its lending eligibility should be terminated under paragraph (a) of this section, including written material in support of a hardship exception under paragraph (c) of this section; or

(B) Request a hearing to show why the school should not be terminated.

(2) *If a hearing is not requested.* If the school does not request a hearing but submits written material, the designated official considers that material and notifies the school as to whether the termination action will be taken.

(3) *The hearing.* The designated official schedules the date and place of a hearing for a school that has requested a hearing. The date of the hearing is at least 15 days from the date that the designated official received the request.

(i) A presiding officer (defined in § 683.101) conducts the hearing.

(ii) The presiding officer considers all written material presented before the hearing and any other material presented during the hearing.

(iii) The presiding officer determines if termination of the school's lending eligibility is warranted.

(4) *Review of a termination of a school's lending eligibility.* The decision of the presiding officer, or of the designated official, in the event that the school has submitted written material but has not requested a hearing, is subject to review by the Secretary.

(e) *Reinstatement of lending eligibility.* (1) A school that has its lending eligibility terminated under this section may not make further GSLP or PLUS loans unless it has entered into a new lending agreement with the Secretary under § 683.81.

(2) A new agreement may not take effect unitl at least one year after a school's lending eligibility has been terminated under this section.

(f) *Schools under the same ownership.* If a school makes loans to students or parents of such students in attendance at other schools under the same ownership, the Secretary may make the determinations required by this section by—

(1) Treating all the schools as one; or

(2) Treating each school on a school-by-school basis.

(20 U.S.C. 1078–2, 1082, 1085)

§ 683.91 Records, reports and inspection requirements for participating schools.

(a) *General.* (1) Each school shall establish and maintain proper administrative and fiscal procedures and all necessary records, as set forth in these regulations and 34 CFR Part 668 (Student Assistance General Provisions), in order to—

(i) Protect the rights of parents and students;

(ii) Protect the United States from unreasonable risk of loss due to defaults; and

(iii) Comply with any specific requirements in these regulations and 34 CFR Part 668 (Student Assistance General Provisions).

(2) Each school shall submit such reports, as prescribed by the Secretary, as are necessary to comply with these regulations and 34 CFR Part 668 (Student Assistance General Provisions).

(b) *Loan record requirements.* In addition to records required by 34 CFR Part 668, for each loan received by the parents of its students a school shall maintain a record of—

(1) The name of the borrower;

(2) The name of the student on whose behalf the loan was made;

(3) The name of the lender;

(4) The amount of the loan;

(5) The period for which the loan was intended;

(6) The data used to construct an individual student budget or the school's itemized standard budget used in calculating the student's estimated cost of attendance;

(7) The amount of the student's tuition and fees paid for that period;

(8) The date the student paid the tuition and fees;

(9) The date the school received each loan check, if the loan check was disbursed through the school and the school itself was not the lender;

(10) The date the school gave each loan check to the parent, unless disbursement was made directly to the parent by a lender;

(11) The date the school endorsed each loan check, if the school was a co-payee;

(12) The date of disposition of the loan proceeds, if the school was a co-payee and the parent endorsed the check before the school did.

(c) *Retention requirement for records and reports.*

(1) Unless otherwise directed by the Secretary, the school shall keep all records required under these regulations for 5 years, following the last date of the period for which the loan was intended.

(2) Unless otherwise directed by the Secretary, the school shall also keep, for 5 years after their completion, copies of reports and other forms utilized by the school related to PLUS loans.

(3) In the event of the closure, termination, suspension or change of ownership of a participating school, that school or its successor must make provision for the retention of the records and reports required by these regulations and for access to these records and reports for purposes of paragraph (d) of this section.

(4) Records and reports may be kept on microfilm or computer format.

(d) *Federal audits.* For purposes of audit and examination, the school shall give the Secretary, the Comptroller General of the United States, or any of their duly authorized representatives access to records required by these regulations and by 34 Part 668 (Student Assistance General Provisions) and to any other pertinent books, documents, papers and records.

(e) *Non-Federal audits.* (1) The school shall, in conformance with 34 CFR Part 668 (Student Assistance General Provisions), audit or have audited under its direction, all of the school's PLUS transactions to determine at a minimum—

(i) The fiscal integrity of financial transactions and reports; and

(ii) Whether the transactions are in compliance with the applicable laws and regulations.

(2) Audits shall be performed in accordance with the Department of Education's "Audit Guide for the Guaranteed Student Loan Program."

(3) The school shall have an audit performed at least once every two years. Each audit must cover the entire period of time that elapsed since the last audit that was performed.

(4) The school shall submit the audit report to the appropriate regional office of the Department of Education's Audit Agency for review.

(20 U.S.C. 1078–2, 1082, 1083)

Subpart F—Limitation, Suspension, or Termination of Lender Eligibility Under the Federal Parent Loans for Undergraduate Students Program

§ 683.100 Purpose and scope.

(a) This subpart establishes rules for the limitation, suspension, or termination of the eligibility of an otherwise eligible lender to participate in the Federal PLUS Program. These rules apply to a lender that violates any provision of the Federal PLUS program statute or any regulation, special arrangement, agreement, or limitation prescribed under the Federal PLUS program.

(b) This subpart does not apply to a determination that an organization fails to meet the definition of "lender" in § 683.10, nor to a school's loss of lending eligibility due to its default experience under § 683.86.

(c) This subpart also does not apply to administrative action by the Department of Education, based on any alleged violation of—

(1) Title VI of the Civil Rights Act of 1964, which is governed by 34 CFR Parts 100 and 101;

(2) Title IX of the Education Amendments of 1972 (relating to sex discrimination), which is governed by 34 CFR Part 106; or

(3) The Family Educational Rights and Privacy Act of 1974 (§ 438 of the General Education Provisions Act, as amended) which is governed by 34 CFR Part 99.

(20 U.S.C. 1078–2, 1080, 1082, 1088f–1)

§ 683.101 Definitions of terms used in this subpart.

Designated ED official: An official of the United States Department of Education to whom the Secretary has delegated the responsibility for initiating and pursuing limitation, suspension, and termination procedures.

Limitation: The continuation of a lender's eligibility, subject to compliance with special conditions set by the Secretary as a result of a limitation or termination proceeding.

Presiding officer: An impartial person who has no prior involvement with the facts giving rise to a limitation, suspension or termination proceeding, and who is selected by the Secretary to conduct a hearing.

Suspension: The removal of a lender's eligibility for a specified period of time or until the lender meets certain requirements.

Termination: The removal of a lender's eligibility for an indefinite period of time.

(20 U.S.C. 1078–2, 1080, 1082, 1088f–1)

§ 683.102 Effect on prior participation.

Limitation, suspension, or termination proceedings do not affect a lender's responsibilities, or rights to benefits and claim payments, that are based on the lender's prior participation in the program, except as provided in § 683.109.

(20 U.S.C. 1078–2, 1080, 1082, 1088f–1)

§ 683.103 Informal compliance procedure.

(a) If the Secretary receives a complaint, or other information that the Secretary believes to be reliable, indicating that a lender may be violating applicable laws, regulations, special arrangements, agreements, or limitations, the Secretary may give the lender a reasonable opportunity to—

(1) Respond to the complaint or other information;

(2) Show that the matter has been corrected; or

(3) Submit an acceptable plan to correct the violation and prevent its recurrence.

(b) Limitation, suspension or termination procedures need not be delayed during the informal compliance procedure under paragraph (a) if the Secretary believes—

(1) The delay would harm the Federal PLUS program; or

(2) The informal compliance procedure would not correct the alleged violation.

(20 U.S.C. 1078–2, 1080, 1082, 1088f–1)

§683.104 Emergency action.

(a) The Secretary, through a designated ED official, may take emergency action to stop issuing insurance commitments to a lender if the designated ED official—

(1) Receives information, which the official believes to be reliable, that the lender is violating applicable laws, regulations, special arrangements, agreements, or limitations;

(2) Determines that immediate action is necessary to prevent the likelihood of substantial losses by the Federal Government, students or parents; and

(3) Determines that the likelihood of loss outweighs the importance of following the procedures for limitation, suspension, or termination.

(b) The designated ED official begins an emergency action by notifying the lender, by certified mail with return receipt requested, of the action and the reasons for it. The effective date of the action is the date that the notice is mailed.

(c) An emergency action does not exceed 30 days unless a limitation, suspension, or termination proceeding is begun before that period expires. In that event, the emergency action may be extended until the completion of the proceeding, including any appeal that may be made to the Secretary.

(d) If a limitation, suspension, or termination proceeding is begun, the Secretary provides the lender, upon request, an opportunity to demonstrate that the emergency action is unwarranted.

(20 U.S.C. 1078–2, 1080, 1082, 1088f–1)

§ 683.105 Suspension proceedings.

(a) *Scope and consequences.* A suspension removes a lender's eligibility under the Federal PLUS program for a period of time. That period does not exceed 60 days from the effective date of the suspension unless—

(1) The lender and the designated ED official agree to an extension, if the lender has not requested a hearing; or

(2) The designated ED official begins a limitation or termination proceeding.

(b) *Procedure.* (1) The designated ED official begins a suspension proceeding by sending a notice to the lender by certified mail with return receipt requested. In the notice, the designated ED official—

(i) Informs the lender of the Secretary's intent to suspend the lender's eligibility, cites the consequences of that action, and identifies the alleged violations on which that action is based;

(ii) Specifies the proposed effective date of the suspension, which is at least 20 days after the date of mailing of the notice of intent;

(iii) Informs the lender that the suspension will not take effect on the date specified in the notice if the designated ED official receives, at least five days before that date, a request for a hearing or written material showing why the suspension should not take place; and

(iv) Asks the lender to correct voluntarily the alleged violation(s).

(2) If the lender does not request a hearing but submits written material the designated ED official considers that material and notifies the lender that—

(i) The proposed suspension is dismissed; or

(ii) The suspension is effective as of a specified date.

(3) If the lender requests a hearing by the time specified in paragraph (b)(1)(iii) of this section the designated ED official sets the date and place. The date is at least 15 days after the designated ED official receives the request. No suspension takes place until a hearing is held.

(4) A presiding officer conducts the hearing and a written record of the hearing is made.

(5) At the hearing, the presiding officer shall consider any written material presented before the hearing and all other evidence presented during the hearing.

(6) If the presiding officer concludes that the suspension is warranted, the presiding officer issues an initial decision suspending the lender's eligibility.

(7) The Secretary reviews the initial decision of the presiding officer and issues a final decision. The Secretary adopts the initial decision unless it is clearly unsupported by the evidence.

(c) Notice of the suspension is promptly mailed to the lender. The suspension takes effect either on the date that the initial decision notice is mailed to the lender or on the original proposed effective date stated in the notice of intent, whichever is later.

(d) If the designated ED official begins a limitation or termination proceeding before the suspension period ends, the suspension period may be extended until the completion of that proceeding, including any appeal to the Secretary.

(20 U.S.C. 1078–2, 1080, 1082, 1088f–1)

§ 683.106 Limitation or termination proceedings.

(a) *Scope and consequences.* A limitation or termination either—

(1) Limits in a specified manner the eligibility of a lender to participate in the Federal PLUS program; or

(2) Removes the eligibility of a lender to make any new Federal PLUS loans.

(b) *Procedure.* (1) The designated ED official begins a limitation or termination proceeding, whether or not a suspension proceeding has begun, by sending the lender a notice by certified mail with return receipt requested. In the notice, the designated ED official—

(i) Informs the lender of the Secretary's intent to limit or terminate the lender's eligibility, cites the consequences of that action, identifies the alleged violations on which that action is based, and in the case of a limitation states the limits which may be imposed;

(ii) Specifies the proposed effective date of the limitation or termination, which is at least 20 days after the date of mailing of the notice of intent;

(iii) Informs the lender that the limitation or termination will not take effect on the date specified in the notice if the designated ED official receives, at least 5 days before that date, a request for a hearing or written material showing why the limitation or termination should not take place; and

(iv) Asks the lender to correct voluntarily the alleged violation(s).

(2) If the lender does not request a hearing but submits written material the ED official considers that material and notifies the lender that either—

(i) The proposed action is dismissed;

(ii) Limitations are effective as of a specified date; or

(iii) The termination is effective as of a specified date.

(3) If the lender requests a hearing by the time specified in paragraph (b)(1)(iii) of this section the designated ED official sets the date and place. The date is at least 15 days after the designated ED official receives the request. No proposed limitation or termination takes place until after a hearing is held.

(4) A presiding officer conducts the hearing, and a written record of the hearing is made.

(5) At the hearing the presiding officer shall consider any written material presented before the hearing and all other evidence presented during the hearing.

(6) If the presiding officer concludes that limitation or termination is warranted the presiding officer issues an initial decision that limits or terminates the lender's eligibility.

(7) If a termination action is brought against a lender, and the presiding officer believes a limitation to be more appropriate, the presiding officer may issue a decision imposing one or more limitations on a lender rather than terminating its eligibility.

(c) *Expedited hearings.* With the approval of the presiding officer and the consent of the designated ED official and the lender any time schedule specified in this section may be shortened.

(20 U.S.C. 1078–2, 1080, 1082, 1088f–1)

§ 683.107 Initial and final decisions.

(a) The presiding officer issues an initial decision in any limitation, suspension, or termination proceeding based on findings of fact and conclusions of law. The presiding officer shall base findings of fact only on evidence considered at the hearing and matters given official notice. The presiding officer's initial decision is mailed promptly to the lender.

(b) In a suspension proceeding, the Secretary reviews the presiding officer's initial decision and issues a final decision. The Secretary adopts the initial decision unless it is clearly unsupported by the evidence.

(c)(1) In a limitation or termination proceeding, the presiding officer's initial decision automatically becomes the Secretary's final decision 20 days after it is issued unless, within that 20-day period, the lender or designated ED official appeals the decision to the Secretary.

(2) Within a period of time specified by the Secretary the appealing party may submit additional written material including exceptions to the initial decision, proposed findings and conclusions, and supporting briefs and statements. The Secretary sets a time by which the opposing party shall respond. Any party submitting material to the Secretary shall provide a copy to each party that participated in the hearing.

(3) The presiding officer's initial decision limiting or terminating the lender's eligibility does not take effect pending the appeal, unless the Secretary determines that a stay of the effective date would seriously and adversely affect the Federal PLUS program, students or parents.

(4) After an appeal the Secretary issues a final decision affirming, modifying, or reversing the initial decision, including a statement of reasons for the Secretary's decision.

(20 U.S.C. 1078–2, 1080, 1082, 1088f–1)

§ 683.108 Verification of mailing dates.

The Department of Education's mailing dates are verified by the original receipts from the United States Postal Service.

(20 U.S.C. 1078–2, 1080, 1082, 1088f–1)

§ 683.109 Effect of suspension or termination proceeding.

After the effective date of a lender's suspension or termination, the Secretary does not insure new loans made by that lender. Also, the Secretary may prohibit the lender from making further disbursements on a loan for which an insurance commitment already has been issued.

(20 U.S.C. 1078–2, 1080, 1082, 1088f–1)

§ 683.110 Limitation.

A limitation may include—

(a) A limit on the number or total amount of Federal PLUS loans that a lender may make, purchase, or hold;

(b) A limit on the number or total amount of Federal PLUS loans a lender may make to parents on behalf of students at a particular school; and

(c) Other reasonable requirements or conditions.

(20 U.S.C. 1078–2, 1080, 1082, 1088f–1)

§ 683.111 Reimbursements, refunds, and offsets.

(a) The Secretary, designated ED official, or presiding officer may require a lender to take reasonable corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) The corrective action may include payment to the Secretary or to designated recipients of any funds that the lender improperly received, withheld, disbursed, or caused to be disbursed. Corrective action may, for example, relate to—

(1) Interest benefits, special allowance, or other claims paid by the Secretary; or

(2) Required refunds to students whose parents receive PLUS loans on their behalf, in the case of a school lender.

(c) If a final decision requires a lender to reimburse or make any payment to the Secretary, the Secretary may offset these claims against any benefits or claims due the lender.

(20 U.S.C. 1078–2, 1080, 1082, 1088f–1)

§ 683.112 Reinstatement after termination.

(a) A lender whose eligibility has been terminated may file a request for reinstatement of its eligibility. This request may not, however, be filed

within 18 months of the effective date of the termination.

(b) The reinstatement request must be in writing and must show that the lender has corrected the violation(s) on which its termination was based and meets all qualifications for eligibility.

(c) A school lender whose eligibility as a participating school has been terminated under 34 CFR Part 668 (Student Assistance General Provisions) may not be reinstated as a Federal PLUS program lender unitl it is reinstated as a participating school. However, the school may request reinstatement as both a school and a lender at the same time.

(d) The Secretary, within 60 days of receiving the reinstatement request either—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to limitations.

(e)(1) If the Secretary denies the request or establishes other limitations the lender, upon request, will be granted an opportunity, including a meeting, to show why its eligibility should be fully reinstated.

(2) A lender that is reinstated with limitations may participate in the Federal PLUS program under the limitations pending this appeal.

(20 U.S.C. 1078–2, 1080, 1082, 1088f–1)

§ 683.113 Removal of limitation.

(a) A lender may request removal of the Secretary's limitation imposed under these regulations no sooner than 12 months after the effective date of the limitation.

(b) The request must be in writing and show that the lender has corrected the violation(s) on which the limitation was based.

(c) The Secretary within 60 days of receiving the request, either—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to other limitations.

(d) If the Secretary denies the request or establishes other limitations the lender, upon request, will be granted an opportunity, including a meeting, to show why its eligibility should be fully reinstated.

(e) The lender may participate in the Federal PLUS program under the limitations pending this appeal.

(20 U.S.C. 1078–2, 1080, 1082, 1088f–1)

Appendix A—Standards for Acceptable Refund Policies by Participating Schools

For purposes of § 683.8(b) the Secretary considers guidelines VI, VII, and VIII of the following document to be acceptable elements of a fair and equitable school refund policy. The document, which is reproduced in its entirety for the convenience of the reader, was developed by the National Association of College and University Business Officers. The document does not affect a school's obligation to comply with other Department of Education regulations.

Policy Guidelines for Refund of Student Charges

(I) *The governing board of the institution should review and approve the schedule of all institutional charges and refund policies applicable to students.* The pricing of services and refund policies have important consequences to students, parents, the institution, and society; as such, pricing and refund policies should receive board attention and approval.

(II) *Institutions should seek consumer views in the process of establishing and amending charge and refund structures.* Decisions regarding institutional funds are ultimately the sole responsibility of the institution's legally designated fund custodians. However, consumer concerns do affect decision making, and involving consumers in decision making related to charges and refunds is a desirable approach for assessing student needs and creating public awareness of institutional requirements.

(III) *Institutions should publish a current schedule of all student charges, a statement of the purpose for such charges, and related refund policies, and have them readily available free of charge to current and prospective students.* Students and parents have a right to know what charges they will be expected to pay and what will or will not be refunded. They also have a right to know what services accompany payment of the charges. Informational materials published free for students and prospective students are ideal for this purpose.

(IV) *Institutions should clearly designate all optional charges as "optional" in all published schedules and related materials. Clearly, charges that are mandatory and charges that are optional must be plainly differentiated in all printed materials.* Also, the institution should state clearly in its schedule if a charge is optional for some students but required for others. Statements accompanying the schedule may include institutional endorsements of the optional program or service.

(V) *Institutions should clearly identify charges and deposits that are nonrefundable as "nonrefundable" on all published schedules.* Institutions determine on an individual basis which of their charges are refundable or nonrefundable. In general, admission fees, application fees, laboratory fees, facility and student activity fees, and other similar charges are not refundable. These fees are generally charged to cover the cost of activities such as processing applications and other student information, reserving academic positions, and establishing the limits of institutional programs and services, reserving housing space, and otherwise setting the fixed costs of the institution for the coming academic periods.

Institutions determine on an individual basis which of their deposits are refundable or nonrefundable. Some deposits will be nonrefundable or will be credited to a student's account (e.g., tuition deposits). Others are refundable according to the terms of the deposit agreement (e.g., deposits for breakage).

(VI) *Institutions should refund housing rental charges, less a deposit, so long as written notification of cancellation is made prior to a well-publicized date that provides reasonable opportunity to make the space available to other students.* Written notification on or before the beginning of the term of the contract is necessary to ensure utilization of housing units. During the term of the contract, room charges are generally not refundable. However, based on the program offered, space availability, debt service requirements, State and local laws, and other individual circumstances, institutions may provide for some more flexible refund guideline for housing.

(VII) *Institutions should refund board charges in full, less a deposition, if written notification of cancellation is made prior to a well-publicized date that falls on or before the beginning of the term of the contract. Subsequent board charges should be refunded on a pro rata basis less a withdrawal fee.* It is reasonable to make a refund for those goods and services not consumed. The withdrawal charge should reflect that portion of an institution's costs that are fixed for the term of the contract.

(VIII) *The institutional tuition refund policy for an academic period should include the following minimum guidelines:*

A. *The institution should refund 100 percent of the tuition charge, less a deposit fee, if written notification of cancellation is made prior to a well-publicized date that falls on or before the first day of classes.*

B. *The institution should refund at least 25 percent of the tuition charge if written notification of withdrawal is made during the first 25 percent of the academic period.* It is reasonable to

refund tuition charges on a sliding scale if a student withdraws from his or her program prior to the end of the first 25 percent of the academic period unless state law imposes a more restrictive refund policy.

(IX) *The institution should assess no penalty charges where the institution, as opposed to the student, is in error. The institution should make refunds in cases where the institution has assessed charges in error.* Penalty charges, such as those involving late registration fees, change of schedule fees, late payment fees, should not be assessed if it is determined that the student is not responsible for the action causing the charge to be levied.

(X) *Institutions should advise students that any notifications of withdrawal or cancellation and requests for refund must be in writing and addressed to the designated institutional officer.* A student's written notification of withdrawal or cancellation and request for a refund provides an accurate record of transactions and also ensures that such request will be processed on a timely basis. Accepteance of oral requests is an undesirable practice.

(XI) *Institutions should pay or credit refunds due on a timely basis.* The definition of "timely basis' should include the time required to process a formal student request for refund, to process a check if required, and toi allow for mail delievery, when nececessary. If an institution has a policy that a refund of an inconsequential amount will not be made, this policy should be published in part of all materials related to refund policies.

(XII) *Institutions should publicize, as a part of their dissemination of information on charges and refunds, that an appeals process exists for students or parents who feel that individual circumstances warrant exceptions from published policy. The informational materials should include the name, title, and address of the official responsible.* Although charges and refund policies should reflect extensive consideration of student and institutional needs, it will not be possible to encomposs in these structures the variety of personal circumstances that may exist or develop. Institutions are required to provide a system of due process to their students, and charges and refund policies are legitimately a part of that process. Students and parents should be informed regularly of procedures for requesting information concerning exceptions to published policies.

[FR. Doc. 81-1680 Filed 1-16-81; 8:45 am]
BILLING CODE 4000-01

---

34 CFR Parts 791, 792, 793, 794

Teacher Corps Program Grants

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing grants under the Teacher Corps Program. These proposed regulations implement the provisions of Section 502 of the Education Amendments of 1980. They also clarify the differences among the three types of projects funded under the program and organize the program into four parts to promote ease of understanding.

DATES: Comments must be received on or before March 5, 1981.

ADDRESSES: Comments on these proposed regulations should be submitted to Dr. Preston Royster, Teacher Corps Program, U.S. Department of Education, Room 720, Riviere Building, 1832 M Street, N.W., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Dr. Preston Royster. Telephone (202) 653-8320.

SUPPLEMENTARY INFORMATION: The regulations for the Teacher Corps Program, currently Part 793 of Title 34 of the Code of Federal Regulations, are reorganized by these proposed regulations into four parts.

34 CFR Part 791 contains provisions applicable to all types of projects under the program. The three other parts contain provisions specific to each type of project as follows:

34 CFR Part 792—Teacher Corps—Training Projects.

34 CFR Part 793—Teacher Corps—Youth Advocacy Projects.

34 CFR Part 794—Teacher Corps—Mathematics and Science Developmental Projects.

Part 794 implements Section 502 of the Education Amendments of 1980 authorizing the Secretary to award grants, under the Teacher Corps Program, to improve instruction in mathematics and science.

As proposed in the regulations, these projects are designed to—

(a) Develop or improve, and test curricular and instructional materials for teacher training in mathematics and science; and

(b) Provide training for teachers to increase their effectiveness in developing instructional materials and in teaching mathematics and science in schools that have a high concentration of children for low-income families.

The Secretary's interpretation of the authorizing statute focuses attention on teacher training because teacher training projects would be consistent with other types of projects under the Teacher Corps Program. The Secretary invites comments on this interpretation.

In addition to introducing these new types of projects, the proposed regulations make certain changes in the current regulations governing Teacher Corps Training Projects and Youth Advocacy Projects. These changes include the following:

(a) The proposed regulations delete the requirement that a project be conducted under the supervision of a policy board.

(b) The criteria the Secretary uses in selecting grantees have been rewritten for clarity.

(c) The proposed regulations contain a new selection criterion dealing with the involvement of the community council in developing, implementing, and evaluating a project.

(d) The proposed regulations permit greater flexibility in the use of existing community councils.

(e) Funding for the fourth and fifth years of projects would be limited to projects that, the Secretary determines, have proven exceptionally successful during their first three years and, because of their high promise, warrant further support to demonstrate and disseminate the educational improvements they have achieved.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before March 5, 1981 will be considered in the development of the final regulations. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 720, Riviere Building, 1832 M Street, N.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Information Requirements

The Department particularly requests comments on whether the proposed regulations in this document would require transmission of information that is already being gathered by or is

available from any other agency or authority of the United States.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (Pub. L. 96–354, enacted Sept. 19, 1980) requires each Federal agency to prepare an initial regulatory flexibility analysis for each set of regulations that—

(1) Is published as a notice of proposed rulemaking after January 1, 1981; and

(2) Has a significant economic impact on a substantial number of small entities (small businesses, small organizations, or small governmental jurisdictions).

Because the Department has not yet established its own definitions of "small organization" and "small governmental jurisdiction" as contemplated by the Act, it is not possible to prepare a full initial regulatory flexibility analysis at this time. Further, since the regulations in this document are required by statute to be published in final form no later than May 31, 1981, it is impracticable to delay publication while the necessary definitions are being developed.

In these circumstances, the Regulatory Flexibility Act permits a waiver or delay of the initial regulatory flexibility analysis. If it is determined that these regulations are subject to that Act, the Secretary will prepare the necessary analyses at a later date.

As an interim measure, this document, to the maximum extent possible, includes information of the kind contemplated by the Regulatory Flexibility Act, including the reasons for the regulations, and any significant issues and alternatives for consideration by the public. To assist the Department in determining whether the Regulatory Flexibility Act applies to these regulations, and in complying with the Act's requirements, public comment is especially invited on the following matters:

(1) The number and kind of small entities (small businesses, small organizations, or small governmental jurisdictions) affected by the regulations.

(2) The reporting, recordkeeping, and compliance burdens imposed by the regulations on small entities.

(3) The types of professional skills necessary for preparation of any reports or records required by the regulations.

(4) Any Federal rules that may duplicate, overlap, or conflict with the regulations.

(5) Any significant alternatives that would accomplish the purposes of the applicable statute but would minimize any significant economic impact of the regulations on small entities. The Secretary is particularly interested in suggestions on alternatives such as the following:

- The establishment of differing reporting or compliance requirements or timetables that take into account the resources available to small entities.
- The clarification, consolidation, or simplification of compliance and reporting requirements for small entities.
- The use of performance rather than design standards.
- An exemption for small entities from coverage by part or all of the regulations.

Citation of Legal Authority

A citation of statutory or other legal authority has been placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance Program No. 84.045, Teacher Corps Program)

Dated: January 13, 1981.

Shirley M. Hufstedler,

Secretary of Education.

The Secretary proposes to add a new Part 791 to Title 34 of the Code of Federal Regulations to read as follows:

PART 791—TEACHER CORPS PROGRAM

Subpart A—General

Sec.

791.1 What is the Teacher Corps Program?
791.2 [Reserved]
791.3 What regulations apply to the Teacher Corps Program?
791.4 What definitions apply to the Teacher Corps Program?

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant?

791.20 Joint applications.
791.21 Institutions of higher education.
791.22 Local educational agencies.
791.23 Released time for educational personnel.
791.24 State approval of applications.

Subpart D—How Does the Secretary Make a Grant?

791.30 How does the Secretary evaluate an application?
791.31 What selection criteria does the Secretary use?
791.32 Separate grants.

Subpart E—[Reserved]

Subpart F—What are the Administrative Responsibilities of a Grantee?

791.50 Employment of project administrative staff.
791.51 Project director and project staff.
791.52 Members of the Teachers Corps.
791.53 Supervision of Teacher Corps members.
791.54 Coordination with State educational agency.

Authority: Title V–A of the Higher Education Act of 1965 (Pub. L. 89–329), as amended by the Education Amendments of 1980 (Pub. L. 96–374) (20 U.S.C. 1101 *et seq.*).

Subpart A—General

§ 791.1 What is the Teacher Corps Program?

(a) The Teacher Corps Program provides Federal financial assistance to—

(1) Strengthen the educational opportunities available to children in areas having concentrations of low-income families;

(2) Encourage colleges and universities to broaden their programs of teacher preparation; and

(3) Encourage institutions of higher education and local educational agencies (LEAs) to improve programs of training and retraining for teachers, teacher aides, and other educational personnel.

(b) Through the Teacher Corps Program the Secretary assists three types of projects:

(1) Teacher Corps Training Projects.

(2) Youth Advocacy Projects.

(3) Mathematics and Science Developmental Projects.

(20 U.S.C. 1101 *et seq.*)

§ 791.2 [Reserved]

§ 791.3 What regulations apply to the Teacher Corps Program?

The following regulations apply to the Teacher Corps Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (General).

(b) The regulations in this Part 791.

(c)(1) For Teacher Corps Training Projects, the regulations in 34 CFR Part 792;

(2) For Youth Advocacy Projects, the regulations in 34 CFR Part 793; and

(3) For Mathematics and Science Developmental Projects, the regulations in 34 CFR Part 794.

(20 U.S.C. 3474)

§ 791.4 What definitions apply to the Teacher Corps program?

(a) *Definitions in EDGAR.* The following terms used in 34 CFR Parts 791 through 794 are defined in 34 CFR Part 77:

Applicant
Application
Award
Budget period
Department
EDGAR
Elementary school
Fiscal year

Grant period
Local educational agency (LEA)
Nonprofit
Nonpublic
Preschool
Private
Project
Project period
Public
Secondary school
Secretary
State
State educational agency (SEA)

(b) *Other definitions that apply to the Teacher Corps Program.* The following additional definitions apply to the regulations in this part and in 34 CFR Parts 792, 793, and 794:

"Feeder system."

This term means two, three, or four complete schools—

(1) That together include—

(i) All grade levels provided by the LEA; and

(ii) At least grades one through twelve;

(2) A majority of whose pupils enrolled in the elementary grades progress to the high school, or to the intermediate school if one is included; and

(3) A majority of whose children from the intermediate school, if one is included, progress to the high school.

"Institution of higher education" means an institution of higher education as defined in Section 1201 of the Higher Education Act of 1965, as amended.

"Low-income family" means a family with a child whom the LEA may count under Section 111 of Title I of the Elementary and Secondary Education Act of 1965, as amended.

"Other educational personnel" means administrators, supervisors, and other specialized educational personnel.

"Teacher" means a person who has a teaching certificate valid in the State in which the Teacher Corps project is located, and who has had full-time, paid teaching experience.

"Teacher aide."

(1) This term means a person employed as a paraprofessional in a school or correctional facility who assists a teacher in performing educational duties.

(2) The term does not include teacher-interns or noneducational personnel.

(3) State and local rules determine whether certification is required for a teacher aide.

"Teacher-intern."

(1) This term means a person who—

(i) Is recruited to serve in a Teacher Corps project;

(ii) Has a bachelor's degree or its equivalent, with or without a teaching certificate; but

(iii) Has not had full-time, paid teaching experience.

(2) However, a person who has successfully completed two or more years of a program for which credit was given toward a bachelor's degree may serve as a teacher-intern if there are not enough teacher-itern candidates who have a bachelor's degree.

"Teacher Corps members."

(1) This term means persons who participate in a project conducted under 34 CFR Part 792 or 793 and who are—

(i) Teachers and other educational personnel employed by a project school;

(ii) Volunteers who serve as part-time tutors or full-time instructional assistants in project schools;

(iii) Teacher-interns; or

(iv) Team leaders.

(2) The term does not include the project director and project administrative staff.

(20 U.S.C. 3474)

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant?

§ 791.20 Joint applications.

Each application for a project under the Teacher Corps Program must be a joint application submitted by the eligible parties listed in 34 CFR 792.2, 34 CFR 793.2, or 794.2, as applicable.

(20 U.S.C. 1103)

§ 791.21 Institutions of higher education.

(a) An application from one or more institutions of higher education must include a description of each institution of higher education that will participate in the project, including—

(1) Its degree offerings in education; and

(2) Its preservice and in-service graduate training program in education.

(b) The application must also include a description of—

(1) Past and current efforts by the institution of higher education to improve its educational personnel training programs; and

(2) The way those efforts relate to the proposed project.

(20 U.S.C. 1101, 1103, and 3474)

§ 791.22 Local educational agencies.

An application from one or more LEAs must include the following:

(a) A brief description of each project school, including the size of the educational staff and the grade structure and other relationships among the schools.

(b) A description of the past and current efforts to improve each project school and the way those efforts relate to the proposed project.

(c) A description of the LEA's current teacher development program.

(d) An assurance that educational personnel employed by each project school will be involved in planning and carrying out the project in that school.

(20 U.S.C. 1101, 1103, and 3474)

§ 791.23 Released time for educational personnel.

If an LEA intends to use grant funds to pay the cost of releasing educational personnel from their regular duties in a project school to enable them to participate in training in a Teacher Corps project, the LEA must demonstrate in its application that the success of the project will be jeopardized by the lack of compensation for released time.

(20 U.S.C. 1104)

§ 791.24 State approval of applications.

(a) The Secretary does not approve an application unless the State educational agency (SEA) of the State in which the project is located has approved the application. (See, EDGAR 34 CFR 75.154, State approval procedures.)

(b) The SEA shall approve an application that—

(1) Conforms with all applicable State laws, rules, and regulations; and

(2) Is consistent with overall plans for teacher education in that State.

(20 U.S.C. 1103, 3474)

Subpart D—How Does the Secretary Make a Grant?

§ 791.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 791.31. Additional criteria for Teacher Corps Training Projects, Youth Advocacy Projects, and Mathematics and Science Developmental Projects are found in 34 CFR Parts 792, 793, and 794 respectively.

(b) The Secretary awards up to 30 possible points for the criteria in § 791.31.

(c) The maximum possible score for each complete criterion is indicated in parentheses.

(20 U.S.C. 1101 *et seq.* and 3474)

§ 791.31 What selection criteria does the Secretary use?

(a) *Plan of Operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (7 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590, Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 1101 *et seq.* and 3474)

§ 791.32 Separate grants.

(a) If an application is selected for funding, the Secretary awards a grant to the institution of higher education and a grant to the LEA. If an SEA or State correctional facility participates in a project, the Secretary may award a separate grant to the SEA or correctional facility.

(b) An institution of higher education must use its grant funds under this program to enable its school, college, or department of education to participate in the project.

(c) If the application includes more than one institution of higher education, more than one LEA, or more than one correctional facility, the Secretary may award a grant to one or more of those institutions or agencies.

(d) (1) A Teacher Corps grantee—

(i) May not participate in more than one Teacher Corps project simultaneously; and

(ii) Is not eligible to receive a grant to carry out a new Teacher Corps project for two years after the end of the first project. However, a grantee under 34 CFR Part 792 (Teacher Corps Training Projects) or 34 CFR Part 793 (Youth Advocacy Projects) may receive a grant to carry out a project under 34 CFR Part 794 (Mathematics and Science Developmental Projects) that begins when the preceding project ends.

(2) If an LEA is divided into districts, these limitations apply to a district LEA that participates in a project.

(20 U.S.C. 1103 and 3474)

Subpart E—[Reserved]

Subpart F—What Are the Administrative Responsibilities of a Grantee?

§ 791.50 Employment of project administrative staff.

A grantee shall—

(a) To the extent possible hire the project's administrative staff from the grantee's regular employees; and

(b) In hiring its administrative staff, give consideration to persons who are broadly representative of the ethnic and cultural characteristics of the community served by the project.

(20 U.S.C. 1103 and 3474)

§ 791.51 Project director and project staff.

(a) Each project must have a project director.

(b) A grantee may appoint a temporary project director at the beginning of the initial project year.

(c) The grantee shall appoint a permanent project director before the end of the initial project year.

(20 U.S.C. 1103 and 3474)

§ 791.52 Members of the Teacher Corps.

Members of the Teacher Corps—

(a) Are not Federal employees, except for the purposes of the Federal Tort Claims provisions of Title 28 of the United States Code; and

(b) Are not eligible to receive a loan under the National Direct Student Loan Program (authorized by Title IV–E of the Higher Education Act of 1965, as amended) or a grant under the Supplemental Educational Opportunity Grant Program (authorized by Title IV A–2 of the Higher Education Act of 1965, as amended).

(20 U.S.C. 1105)

§ 791.53 Supervision of Teacher Corps members.

(a) Teacher Corps members must be under the direct supervision of the LEA to which they are assigned.

(b) Subject to the requirements concerning teacher-interns in Teacher Corps projects, the LEA shall retain the authority to—

(1) Assign Teacher Corps members within its system;

(2) Transfer Teacher Corps members within its system;

(3) Determine the terms and conditions of assignment of Teacher Corps members; and

(4) Determine the subject matter to be taught.

(20 U.S.C. 1106)

§ 791.54 Coordination with State education agency.

The grantee shall keep the SEA informed of the progress of the project, including project matters that would contribute to the improvement of State teacher certification requirements.

(20 U.S.C. 1101 *et seq.* and 3474)

The Secretary proposes to add a new Part 792 to Title 34 of the Code of Federal Regulations to read as follows:

PART 792—TEACHER CORPS—TRAINING PROJECTS

Subpart A—General

Sec.

792.1 What are Teaching Corps Training Projects?
792.2 Eligible parties.
792.3 What regulations apply to Teacher Corps Training Projects?
792.4 What definitions apply to Teacher Corps Training Projects?

Subpart B—What Kinds of Projects Does the Secretary Assist under This Program?

792.10 Nature of Teacher Corps Training Projects.
792.11 Activities of an institution of higher education.
792.12 Activities of an LEA.

Subpart C—How Does One Apply for a Grant?

792.20 Joint participation required.
792.21 Project schools.

Subpart D—How Does the Secretary Make a Grant?

792.30 How does the Secretary evaluate an application?
792.31 What selection criteria does the Secretary use?
792.32 Project duration.

Subpart E—What Conditions Must Be Met by a Grantee?

792.40 Community council.
792.41 Participation.
792.42 First year of project.

Training

792.43 Training by institutions of higher education.
792.44 Training: General.
792.45 Training program for teacher-interns.
792.46 Teacher-interns.

Allowable Costs and Required Expenditures

792.47 General allowable costs: institution of higher education.
792.48 General allowable costs: LEA.
792.49 Stipends.
792.50 Compensation.
792.51 Travel expenses.
792.52 Medical insurance.

Authority: Title V–A of the Higher Education Act of 1965 (Pub. L. 89–329), as amended by the Education Amendments of 1980 (Pub. L. 96–374) (20 U.S.C. 1101 *et seq.*).

Subpart A—General

§ 792.1 What are Teacher Corps Training Projects?

(a) Teacher Corps Training Projects provide specialized programs of training—and, if necessary, retraining—to enable teachers, teacher-aides, teacher-interns, and other educational personnel to work more effectively in schools that have a high concentration of children from low-income families.

(b) Teacher Corps Training Projects do not provide specialized training such as that required for school counseling, teaching handicapped children, or teaching vocational education.

(20 U.S.C. 1103)

§ 792.2 Eligible parties.

The following are eligible to apply for a grant to carry out a Teacher Corps Training Project:

(a) A local educational agency (LEA).

(b) An institution of higher education.

(c) A State educational agency (SEA).

(20 U.S.C. 1103 and 3474)

§ 792.3 What regulations apply to Teacher Corps Training Projects:

The following regulations apply to Teacher Corps Training Projects:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (General).

(b) The regulations in 34 CFR Part 791.

(c) The regulations in this Part 792.

(20 U.S.C. 3474)

§ 792.4 What definitions apply to Teacher Corps Training Projects?

The definitions in 34 CFR 791.4 apply to projects under this part.

(20 U.S.C. 3474)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 792.10 Nature of Teacher Corps Training Projects.

The Secretary awards grants under this part for projects designed to—

(a) Develop educational methods and procedures for increasing learning opportunities for children in areas that have a high concentration of low-income families;

(b) Develop and demonstrate innovative and improved approaches to train teachers, teacher-aides, teacher-interns, and other school personnel to teach these children; and

(c) Install and disseminate improved practices of teacher education.

(20 U.S.C. 1101 *et seq.* and 3474)

§ 792.11 Activities of an institution of higher education.

The Secretary provides assistance under this part to an institution of higher education to carry out activities that include, but are not restricted to, the following:

(a) Recruiting, selecting, and enrolling Teacher Corps members.

(b) Training Teacher Corps members.

(20 U.S.C. 1103)

§ 792.12 Activities of an LEA.

The Secretary provides assistance under this part to an LEA to carry out activities that include, but are not restricted to the following:

(a) Recruiting, selecting, and enrolling Teacher Corps members.

(b) Training Teacher Corps members.

(20 U.S.C. 1103)

Subpart C—How Does One Apply for a Grant?

§ 792.20 Joint participation required.

(a) In its application an applicant for a grant for a Teacher Corps Training Project shall provide for the joint participation in the proposed project by—

(1) One or more LEAs;

(2) One of more institutions of higher education; and

(3) A community council established under § 792.40.

(b) In its application the applicant may also provide for the participation in the project by an SEA to provide training to Teacher Corps members.

(c) The institutions and agencies that will participate in the proposed project shall collaborate in planning the project.

(d) If a community council, as described in § 792.40, exists prior to the submission of the application, the applicant shall also involve the council in planning the project.

(e) The appliant shall involve the educational personnel of a proposed project school in planning the proposed project in that school.

(20 U.S.C. 1103; EDGAR, 34 CFR 75.127–75.129)

§ 792.21 Project schools.

(a)(1) In its application an applicant for a grant for a Teacher Corps Training Project shall provide for the inclusion in the proposed project, if feasible, of schools that constitute a feeder system.

(2) If the applicant LEA does not have a feeder system, the following are acceptable alternatives:

(i) A single school if that school includes grades one through twelve.

(ii) More than four schools if additional schools are needed to include all grade levels in the feeder system.

(iii) More than four schools if one or more schools in the feeder system employ 12 or fewer teachers.

(iv) Two to four schools in a feeder system that does not include a high school (grades eight or nine through twelve) if the high school is in a separate LEA.

(b) If the alternatives in paragraph (a) of this section do not fit the organizational pattern of the applicant LEA, it may propose another arrangement provided the entire educational staffs of schools serving a definable low-income community are included.

(c) Each project school that includes elementary grades must be eligible for a project under Title I of the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 1103)

Subpart D—How Does the Secretary Make A Grant?

§ 792.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant for a Teacher Corps Training Project on the basis of—

(1) The criteria in § 792.31; and

(2) The criteria in 34 CFR 791.31 as follows:

(i) Plan of operation. (10 points) (See 34 CFR 791.31(a)).

(ii) Quality of key personnel. (7 points) (See 34 CFR 791.31(b)).

(iii) Budget and cost effectiveness. (5 points) (See 34 CFR 791.31(c)).

(iv) Evaluation plan. (5 points) (See 34 CFR 791.31(d)).

(v) Adequacy of resources. (3 points) (See 34 CFR 791.31(e)).

(b) The Secretary awards—

(1) Up to 70 possible points for the criteria in § 792.31; and

(2) Up to 30 possible points for the criteria in 34 CFR § 791.31.

(c) the maximum possible score for each complete criterion in § 792.31 is indicated in parentheses.

(20 U.S.C. 1103 and 3474)

§ 792.31 What selection criteria does the Secretary use?

(a) *Improved educational opportunities.* (20 points)

The Secretary reviews each application for information that shows that the project is likely to improve—

(1) The learning of children of low-income families; and

(2) The capabilities of the educational personnel in the project schools, including teacher-interns, to—

(i) Provide instruction that is sensitive to the needs of diverse cultures;

(ii) Deal effectively with children who have a wide variety of educational needs; and

(iii) Identify children with learning and behavioral problems, establish their special needs, and prescribe appropriate learning activities.

(b) *Educational personnel development system.* (25 points)

The Secretary reviews each application for information that shows that the project is likely to improve the applicant's personnel development system for persons who serve or who are preparing to serve in schools attended by children of low-income families. The Secretary looks for information that shows—

(1) A likely improvement in the methods used by the applicants to train educational personnel; and

(2) The extent to which preservice and in-service training are integrated.

(c) *Continuation of improvements.* (15 points)

The Secretary reviews each application for information that shows that, to the extent possible, the educational improvements made as a result of the project will continue after Federal funding ends.

(d) *Collaboration.* (10 points)

The Secretary reviews each application for information—in the form of a detailed governance plan—that shows the extent to which the applicants, the community council, affected teachers, local school administrators, and—in the case of a Youth Advocacy Project under 34 CFR Part 793—the correctional facility will collaborate in planning, carrying out, and evaluating the project.

(20 U.S.C. 1101 et. seq. and 3474)

§ 792.32 Project duration.

(a) *Basic Project.* (1) Eligible parties may submit an application for a project period of up to five years.

(2) The Secretary awards grants for the second and third years of a project subject to the provisions of EDGAR, 34 CFR 75.253 (Continuation of multi-year project after the first budget period).

(b) *Extended Project.* (1) The Secretary may award to a grantee a fourth or fifth year of funding to enable the grantee to demonstrate and disseminate its educational improvements to other schools, educational institutions communities, and interested persons.

(2) The Secretary provides funding for the fourth and fifth year of the project only if the Secretary determines that—

(i) The requirements of EDGAR, 34 CFR 75.253 have been met;

(ii) The grantee has been exceptionally successful in achieving the objectives of its basic project;

(iii) The educational processes and products that have been developed are of exceptionally high quality and worthy of demonstration and dissemination; and

(iv) The demonstration and dissemination activities the grantee proposes to carry out are likely to lead to the widespread adoption of those high-quality educational processes and practices by other schools.

(20 U.S.C. 1103)

Subpart E—What Condition Must Be Met by a Grantee?

§ 792.40 Community council.

(a) Each project must include an elected community council.

(b) The community council must be representative of—

(1) Parents of the children attending the project schools; and

(2) Other residents of the areas served by the project schools.

(c) An existing elected council that is broadly representative of the community in which the project is located may serve as the community council under this part.

(d)(1) The grantee shall hold a community-wide election to elect a community council for the project within three months after the date of the initial grant award if the community council referred to in paragraph (c) does not exist.

(2) For purposes of paragraph (d)(1) of this section, the term community-wide means within the attendance boundaries of the project schools.

(20 U.S.C. 1103)

§ 792.41 Participation.

(a) The institutions, agencies, and community council that participate in a project shall collaborate in carrying out and evaluating the project.

(b) The grantee shall involve the educational personnel of a project school in carrying out the project in that school.

(20 U.S.C. 1103)

§ 792.42 First year of project.

(a) During the first year of its project—or less, if these functions can be completed in a shorter time—the grantee shall—

(1) If necessary, further develop and organize the project;

(2) Hold an election for members of the community council;

(3) Hire the team leader;

(4) Recruit the teacher-interns; and

(5) Plan and develop any revisions of the project's objectives.

(20 U.S.C. 1103 and 3474)

Training

§ 792.43 Training by institutions of higher education.

(a) Each institution of higher education that receives a grant under this part shall provide training to Teacher Corps members, including preservice training for teacher-interns and in-service training for other educational personnel employed by the project schools.

(b) An institution of higher education that does not offer academic course work beyond the bachelor's degree level may provide training for volunteers and teacher aides.

(20 U.S.C. 1103)

§ 792.44 Training: general.

(a) Training of Teacher Corps members must be primarily field-based and carried out in the community served by the project.

(b)(1) Training for teachers and teacher-interns who have a bachelor's degree must be at the graduate level.

(2) However, training for teacher-interns who do not have a bachelor's degree may be at the undergraduate level.

(c) A grantee may provide training to prepare volunteers for service in the project.

(20 U.S.C. 1103)

§ 792.45 Training program for teacher-interns.

(a) The training program for a teacher-intern must be developed by the project director in consultation with the team leader and the institution of higher education that provides the training.

(b) The training must include—

(1) Practical classroom experience—related to the institution of higher education's degree and certification program—in each of the project schools;

(2) Academic study; and

(3) Practical experience and training in the community served by the project.

(c) The practical classroom experience of a teacher-intern may not average more than one half of each school day during the period of his or her internship.

(d) Training for a teacher-intern may be provided in an pre-school, early-childhood setting.

(e)(1) Training must be designed so that a teacher-intern begins his or her internship three months before the beginning of the second school year of the project and has the opportunity to complete the internship and receive a degree and teaching certification by the end of the third school year of the project.

(2) If a project does not have an initial planning year, the training of interns must begin three months before the beginning of the first school year of the project.

(20 U.S.C. 1103)

§ 792.46 Teacher-interns.

(a) Each project must include at least four teacher-interns.

(b) Each project may include up to one teacher-intern for each five teachers in the project schools if the LEA will employ all teacher-interns who complete their internships.

(c)(1) A grantee shall organize teacher-interns into teams that include at least four teacher-interns and one experienced teacher who serves as a team leader.

(2)(i) Each team shall spend a portion of the internship together in each project school.

(ii) However, if a project school has a teaching staff of fewer than 20 teachers, a team of two interns may be used.

(d) In recruiting teacher-interns, the grantee shall give consideration to persons who are broadly representative of the ethnic and cultural characteristics of the community served by the project.

(e) The Secretary publishes annually in the **Federal Register** a notice that explains how to apply for teacher-internships.

(f) The grantee may not use a teacher-intern—

(1) To replace or carry out the functions of a teacher who is or would otherwise have been employed in a project school; or

(2) As a substitute teacher.

(20 U.S.C. 1103)

Allowable Costs and Required Expenditures

§ 792.47 General allowable costs: institution of higher education.

In addition to the provisions of §§ 792.49, 792.50(c), 792.51, and 792.52, an institution of higher education may use its grant under this part to pay the following:

(a) The administrative costs of the community council.

(b) The cost of project administration, including planning, documentation, evaluation, and dissemination.

(c) The compensation of teacher-interns.

(20 U.S.C. 1103 and 1104)

§ 792.48 General allowable costs: LEA.

In addition to the provisions of §§ 792.49 through 792.52, an LEA may use its grant under this part to pay the following:

(a) The compensation of Teacher Corps members.

(b) The compensation for released time for educational personnel while in training, within the limitations of 34 CFR 791.23.

(c) The administrative costs of the community council.

(d) The cost of project administration, including planning, documentation, evaluation, and dissemination.

(20 U.S.C. 1103 and 1104)

§ 792.49 Stipends.

(a) *Training stipends for teachers and other educational personnel.* (1) An institution of higher education or LEA that receives a grant under this part may pay a training stipend to each of the teachers and other educational personnel of a project school who participates in training under this part during a period of the year, if any, not covered by a local employment contract.

(2) The training stipend—

(i) May not exceed $100 per week for any person; and

(ii) Must be reduced proportionally if the training is part-time.

(3) The grantees may use funds under their grants to pay up to 100 percent of the cost of stipends paid under paragraph (a) of this section.

(b) *Training stipends for teacher-interns.* (1)(i) The institution of higher education shall pay a training stipend of $175 per week to each teacher-intern during each period he or she receives training at that institution.

(ii) The institution of higher education may not pay this stipend during periods the teacher-intern serves in project schools.

(2) The training stipend must include an additional $25 per week for each dependent who receives more than one half of his or her support from the teacher-intern.

(3) The institution of higher education may use funds under its grant to pay up to 100 percent of the cost of stipends paid under paragraph (b) of this section.

(20 U.S.C. 1104)

§ 792.50 Compensation.

(a) *Teacher-interns.* (1) An LEA shall compensate a teacher-intern during each period he or she serves in project schools at a rate of $175 per week, subject to paragraph (a)(3) of this section.

(2) This compensation must include an additional $25 per week for each dependent who receives more than one half of his or her support from the teacher-intern, subject to paragraph (a)(3) of this section.

(3) The total compensation paid to a teacher-intern under paragraphs (a)(1) and (2) of this section may not exceed the compensation paid to a beginning teacher employed by the LEA for comparable period of time.

(4) The LEA may use funds under its grant to pay up to 90 percent of the compensation paid under paragraph (a) of this section.

(b) *Team leaders.* (1) The LEA employ each teacher-intern team leader.

(2) The LEA shall compensate a team leader at a rate comparable to that being paid to other personnel in the LEA who perform similar work.

(3) The LEA may use funds under its grants to pay up to 90 percent of the compensation paid under paragraph (b)(2) of this section.

(c) *Volunteers.* (1) Volunteers who serve as part-time tutors or full time instructional aides in project schools may be paid or unpaid, according to local policy.

(2) If a grantee pays volunteers, it must compensate them at a rate equal to that being paid other volunteers for similar work.

(3) A granteee that pays any compensation under paragraph (c)(of this section may use funds under its grants to pay up to 90 percent of that compensation.

(20 U.S.C. 1103 and 1104)

§ 792.51 Travel expenses.

(a) Subject to pargraph (b) of this section a grantee shall pay—

(1) The necessary travel expenses of Teacher Corps members and their dependents;

(2) The necessary expenses for transportation of the household goods and personal effects of Teachers Corps members and their dependents; and

(3) Other necessary expenses of Teacher Corps members and their dependents that are directly related to their service in the project, including readjustment allowances proportionate to that service.

(b) A teacher-intern whose last permanent address before coming to a project is outside the community served by the project, shall be paid—

(1) By the institution of higher education for his or her necessary expenses for travel to the project—by the least expensive common carrier or by private automobile, subject to any institutional rules on reimbursement for mileage; and

(2) By the LEA for—

(i) The necessary expenses for travel to the project by dependents of teacher-interns—by the least expensive common carrier or by private automobile, subject to any agency limits on reimbursement for mileage; and

(ii) The necessary expenses for shipment to the project of up to 11,000 pounds of household goods and personal effects owned by the teacher-intern or his or her dependents.

(20 U.S.C. 1104)

§ 792.52 Medical insurance.

(a) A grantee shall provide teacher-interns and team leaders with medical insurance coverage—including hospitalization—during their participation in a project.

(b) Each dependent who receives more than one half of his or her support from a teacher-intern or team leaders must be included in the insurance coverage.

(c) The grantee may use funds under its grant to pay up to 100 percent of the cost of the insurance.

(20 U.S.C. 1104)

The Secretary proposes to revise Part 793 of Title 34 of the Code of Federal Regulations to read as follows:

PART 793—TEACHER CORPS—YOUTH ADVOCACY PROEJECTS

Subpart A—General

Sec.

793.1 What are Youth Advocacy Projects?
793.2 Eligible parties.
793.3 What regulations apply to Youth Advocacy Projects?
793.4 What definitions apply to Youth Advocacy Projects?

Subpart B—What Kind of Projects Does the Secretary Assist Under This Program?

793.10 Nature of Youth Advocacy Projects.
793.11 Activities of an institution of higher education.
793.12 Activities of an LEA.
793.13 Activities of a correctional facility.

Subpart C—How Does One Apply for a Grant?

793.20 Joint participation required.
793.21 Project schools.

Subpart D—How Does the Secretary Make a Grant?

793.30 How does the Secretary evaluate an application?
793.31 Project duration.

Subpart E—What Conditions Must Be Met by a Grantee?

793.40 Community council.
793.41 Participation.
793.42 First year of project.
793.43 Training.
793.44 Training program for teacher-interns.
793.45 Teacher-interns.
793.46 General allowable costs: institution of higher education.
793.47 General allowable costs: LEA.
793.48 General allowable costs: correctional facility.
Sec.
793.49 Stipends, compensation, travel expenses, and medical expenses.

Authority: Title V–A of the Higher Education Act of 1965 (Pub. L. 89–329), as amended by the Education Amendments of 1980 (Pub. L. 96–374) (20 U.S.C. 1101 *et seq.*).

Subpart A—General

§ 793.1 What are Youth Advocacy Projects?

Youth Advocacy Projects train educational personnel to provide remedial, basic and secondary educational training—including literacy and communication skills training—to juvenile delinquents and youth offenders.

.S.C. 1103)

§ 793.2 Eligible parties.

The following are eligible to apply for a grant to carry out a Youth Advocacy Project:

(a) A local educational agency;

(b) An institution of higher education; and

(c) An agency or institution—that functions as a correctional facility—approved by the Secretary. (See § 793.20(a)(4)).

(20 U.S.C. 1103)

§ 793.3 What regulations apply to Youth Advocacy Projects?

The following regulations apply to Youth Advocacy Projects:

(a) The Education Division General Administrative Regulation (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (General);

(b) The regulations in Part 791; and

(c) The regulations in this Part 793.

(20 U.S.C. 3474)

§ 793.4 What definitions apply to Youth Advocacy Projects?

The definitions in 34 CFR 791.4 apply to projects under this part.

(20 U.S.C. 3474)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 793.10 Nature of Youth Advocacy Projects.

The Secretary awards grants under this part for projects designed to train educational personnel to meet the special educational needs of juvenile delinquents or youth offenders.

(20 U.S.C. 1103)

§ 793.11 Activities of an institution of higher education.

The Secretary provides assistance under this part to an institution of higher education to carry out activities that

include, but are not restricted to, those listed in 34 CFR 792.11.

(20 U.S.C. 1103)

§ 793.12 Activities of an LEA.

The Secretary provide assistance under this part to an LEA to carry out activities that include, but are not limited to, those listed in 34 CFR 792.12.

(20 U.S.C. 1103)

§ 793.13 Activities of a correctional facility.

The Secretary provides assistance under this part to a correctional facility to carry out activities that include, but are not restricted to, the following:

(a) Recruiting, selecting, and enrolling Teacher Corps members.

(b) Training Teacher Corps members.

(20 U.S.C. 1103)

Subpart C—How Does One Apply for a Grant?

§ 793.20 Joint participation required.

(a) In its application an applicant for a grant for a Youth Advocacy Project shall provide for the joint participation in the proposed project by—

(1) One or more LEAs;

(2) One or more institutions of higher education;

(3) A community council established under § 793.40; and

(4) One or more of the following correctional facilities:

(i) A detention center.

(ii) An incarcerative institution.

(iii) A public or nonprofit private alternative school for delinquent youth.

(iv) A special center, within a public school, that serves the special needs of juvenile delinquents, youth offenders, or both.

(b) The institutions, agencies, and correctional facilities that will participate in the proposed project shall collaborate in planning the project.

(c) If a community council, as described in § 793.40, exists prior to the submission of the application, the applicant shall also involve the council in planning the project.

(20 U.S.C. 1103; EDGAR, 34 CFR 75.127–75.129)

§ 793.21 Project schools.

In its application an applicant for a grant for a Youth Advocacy Project shall provide for the inclusion in the proposed project of—

(1) One or more junior high schools or senior high schools, or both, of the LEA; and

(2) One or more schools of the correctional facility.

(20 U.S.C. 1103)

Subpart D—How Does the Secretary Make a Grant?

§ 793.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant for a Youth Advocacy Project on the basis of—

(1) The criteria in 34 CFR 791.31 as follows:

(i) Plan of operation. (10 points) (See 34 CFR 791.31(a))

(ii) Quality of key personnel. (7 points) (See 34 CFR 791.31(b))

(iii) Budget and cost effectiveness. (5 points) (See 34 CFR 791.31(c))

(iv) Evaluation plan. (5 points) (See 34 CFR 791.31(d))

(v) Adequacy of resources. (3 points) (See 791.31(e)); and

(2) The criteria in 34 CFR 792.31 as follows:

(i) Improved educational opportunities. (25 points)

(See 34 CFR 792.31(a))

(ii) Educational personnel development system. (20 points) (See 34 CFR 792.31(b))

(iii) Continuation of improvements. (15 points) (See 34 CFR 792.31(c))

(ii) Collaboration. (10 points) (See 34 CFR 792.31(d)).

(b) The Secretary thus awards up to 100 possible points as follows:

(1) Up to 30 possible points for the criteria in 34 CFR 791.31(d)

(2) Up to 70 possible points for the criteria in 34 CFR 792.31.

(20 U.S.C. 1103 and 3474)

§ 793.31 Project duration.

The provisions of 34 CFR 792.32 apply to the duration of Youth Advocacy Projects.

(20 U.S.C. 1103 and 3474)

Subpart E—What Condition Must Be Met by a Grantee?

§ 793.40 Community council.

(a) Each Youth Advocacy Project must include an elected community council.

(b) The community council must be representative of—

(1) If possible, the parents of the juvenile delinquents or youth offenders participating in the project; and

(2) The residents of the areas served by the project schools.

(c) The provisions of 34 CFR 792.40(c) and (d) apply to Youth Advocacy Projects.

(20 U.S.C. 1103)

§ 793.41 Participation.

The institutions, agencies, community council, and correctional facilities that participate in a Youth Advocacy Project shall collaborate in carrying out and evaluating the project.

(20 U.S.C. 1103)

§ 793.42 First year of project.

The provisions of 34 CFR 792.42 apply to Youth Advocacy Projects.

(20 U.S.C. 1103 and 3474)

§ 793.43 Training.

The provisions of 34 CFR 792.43 and 792.44 apply to Youth Advocacy Projects.

(20 U.S.C. 1103)

§ 793.44 Training program for teacher-interns.

(a) The provisions of 34 CFR 792.45 apply to Youth Advocacy Projects.

(b) In addition, a Youth Advocacy Project must include teacher-intern training in a correctional facility in which youths are—

(1) Incarcerated;

(2) Having problems adjusting to traditional educational programs; or

(3) Preparing to return to the school-community environment.

(20 U.S.C. 1103 and 3474)

§ 793.45 Teacher-interns.

The provisions of 34 CFR 792.46 apply to Youth Advocacy Projects.

(20 U.S.C. 1103 and 1104)

§ 793.46 General allowable costs: institution of higher education.

The provisions of 34 CFR 792.47 apply to Youth Advocacy Projects.

(20 U.S.C. 1103 and 1104)

§ 793.47 General allowable costs: LEA.

The provisions of 34 CFR 792.48 apply to Youth Advocacy Projects.

(20 U.S.C. 1103)

§ 793.48 General allowable costs: correctional facility.

A correctional facility may use its grant under this part to pay the following:

(a) The compension of Teacher Corps members.

(b) Compensation for released time for educational personnel while in training, within the limitations in 34 CFR 791.23.

(c) The administrative costs of the community council.

(d) The cost of project administration, including planning, documentation, evaluation, and dissemination.

(20 U.S.C. 1103 and 1104)

§ 793.49 Stipends, compensation, travel expenses, and medical expenses.

The provisions of 34 CFR 792.49 through 792.52 apply to Youth Advocacy Projects.

(20 U.S.C. 1103 and 1104)

The Secretary proposes to add a new Part 794 to Title 34 of the Code of Federal Regulations to read as follows:

PART 794—TEACHER CORPS—MATHEMATICS AND SCIENCE DEVELOPMENTAL PROJECTS

Subpart A—General

Sec.
794.1 What are Mathematics and Science Developmental Projects?
794.2 Eligible parties.
794.3 What regulations apply to Mathematics and Science Developmental Projects?
794.4 What definitions apply to Mathematics and Science Developmental Projects?

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant?

794.20 Joint participation required.
794.21 Project schools.
794.22 Provision for testing materials.

Subpart D—How Does the Secretary Make a Grant?

794.30 How does the Secretary evaluate an application?
794.31 What selection criteria does the Secretary use?
794.32 Project duration.

Subpart E—What Conditions Must Be Met by a Grantee?

794.40 Collaboration of grantees.
794.41 Project sequence.
794.42 Allowable costs.

Authority: Title V-A of the Higher Education Act of 1965 (Pub. L. 89–329), as amended by the Education Amendments of 1980 (Pub. L. 96–374) (20 U.S.C. 1101 *et seq.*).

Subpart A—General

§ 794.1 What are Mathematics and Science Developmental Projects?

Mathematics and Science Developmental Projects—

(a) Develop, improve, or expand curriculum offerings or instructional materials for the training of teachers in mathematics and science in schools with a high concentration of children from low-income families; and

(b) Provide training opportunities for teachers to increase their effectiveness in developing instructional materials and in teaching mathematics and science in schools with a high concentration of children from low-income families.

(20 U.S.C. 1103)

§ 794.2 Eligible parties.

The following are eligible to apply for a grant to carry out a Mathematics and Science Developmental Project:

(a) A local educational agency. (LEA).

(b) An institution of higher education.

(20 U.S.C. 1103 and 3474)

§ 794.3 What regulations apply to Mathematics and Science Developmental Projects?

The following regulations apply to Mathematics and Science Developmental Projects:

(a) The Educational Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (General).

(b) The regulations in 34 CFR Part 791.

(c) The regulations in this Part 794.

(20 U.S.C. 3474)

§ 794.4 What definitions apply to Mathematics and Science Developmental Projects?

The following definitions apply to Mathematics and Science Developmental Projects:

(a) The definitions in 34 CFR 791.4.

(b) The following term:

"Science" means biological sciences, natural sciences, earth sciences, and physical sciences.

(20 U.S.C. 3474 and 1103)

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant?

§ 794.20 Joint participation required.

(a) In its application an applicant for a grant for a Mathematics and Science Developmental Project shall provide for joint participation in the proposed project by—

(1) One or more LEAs; and

(2) One or more institutions of higher education.

(b) The institutions and agencies that will participate in a proposed project shall collaborate in planning the project.

(20 U.S.C. 1103; EDGAR 34 CFR 75.127–75.129)

§ 794.21 Project schools.

The provisions of 34 CFR § 792.21 (regarding a feeder school system) apply to Mathematics and Science Developmental Projects.

(20 U.S.C. 1103)

§ 794.22 Provision for testing materials.

In its application an applicant shall describe its proposed plan for testing, in project schools, the appropriateness of the curricular or instructional materials, or both, that will have been developed or revised under its proposed project.

(20 U.S.C. 1103 and 3474)

Subpart D—How Does the Secretary Make a Grant?

§ 794.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant for a Mathematics and Science Developmental Project on the basis of—

(1) The criteria in § 794.31; and

(2) The criteria in 34 CFR 791.31 as follows:

(i) Plan of operation. (10 points) (See 34 CFR 791.31(a))

(ii) Quality of key personnel. (7 points) (See 34 CFR 791.31(b))

(iii) Budget and cost effectiveness. (5 points) (See 34 CFR 791.31(c))

(iv) Evaluation plan. (5 points) (See 34 CFR 791.31(d))

(v) Adequacy of resources. (3 points) (See 34 CFR 791.31(e))

(b) The Secretary awards up to 100 possible points as follows:

(1) Up to 70 possible points for the criteria in § 794.31.

(2) Up to 30 possible points for the criteria in 34 CFR 791.31.

(c) The maximum possible score for each complete criterion in § 794.31 is indicated in parentheses.

(20 U.S.C. 1103 and 3474)

§ 794.31 What selection criteria does the Secretary use?

(a) *Curricular and instructional materials.* (25 points)

The Secretary reviews each application for information that shows the extent to which the project will—

(1) Develop or improve curricular or instructional materials, or both, for teacher training in mathematics and science;

(2) Test the effectiveness of those curricular or instructional materials;

(3) Incorporate promising curricular and instructional materials into the regular teacher training program of the participating project schools, the participating colleges or departments of education, and other schools in the participating LEA that have high concentrations of children from low-income families; and

(4) Package promising curricular and instructional materials in appropriate form for dissemination to other schools, colleges or departments of education, and LEAs.

(b) *Improved teacher training.* (25 points)

The Secretary reviews each application for information that shows that the project will provide a training program to increase the effectiveness of teachers and other educational personnel in developing instructional materials and in teaching mathematics

and science to children with a wide variety of educational needs.

(c) *Coordination.* (10 points)

The Secretary reviews each application for information that shows the extent to which the applicant plans to coordinate the project with other local teacher training activities.

(d) *Collaboration.* (10 points)

The Secretary reviews each application for information—in the form of a detailed plan—that shows the extent to which the applicants, the parents of children attending project schools, the teachers in project schools, and local school administrators will participate in planning, carrying out, and evaluating the project.

(20 U.S.C. 1103 and 3474)

§ 794.32 Project duration.

(a) The Secretary may award a grant for a Mathematics and Science Developmental Project for a project period of up to three years.

(b) The Secretary awards a separate grant for each fiscal year of the project, subject to the provisions of EDGAR, 34 CFR 75.253 (Continuation of multi-year project after the first budget period.)

(20 U.S.C. 1103)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 794.40 Collaboration of grantees.

An LEA and an institution of higher education that have received a grant for a Mathematics and Science Developmental Project shall collaborate in—

(a) Recruiting and selecting the project director;

(b) Recruiting and selecting all other staff;

(c) Planning, developing, implementing and evaluating the project; and

(d) Developing curricular and instructional materials.

(20 U.S.C. 1103 and 3474)

§ 794.41 Project sequence.

(a) During the first year of a project, the grantee shall—

(1) Select a project director who is responsible for the overall administration of the project, and

(2) Develop or revise the curricular or instructional material or both.

(b) During the second and third year of the project, the grantees shall carry out for teachers a training program through which the grantees will test and improve curricular and instructional materials that have been developed or revised under the project.

(20 U.S.C. 1103 and 3474)

§ 794.42 Allowable costs.

A grantee may use its grant under this part to pay the following:

(a) Training stipends for teachers and other educational personnel, as provided in 34 CFR 792.49(a).

(b) The compensation for released time for educational personnel while in training, within the limitations of 34 CFR 791.23.

(c) Other reasonable costs necessary for carrying out the project.,

(20 U.S.C. 1103 and 1104; EDGAR, 34 CFR Part 75)

[FR Doc. 81-1679 Filed 1-16-81; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

Advance Notice of Proposed Rulemaking for Implementing the Reexamination and Fee; Provisions of Pub. L. 96-517 (H.R. 6933)

AGENCY: Patent and Trademark Office/ Commerce.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The purpose of this advance notice of proposed rulemaking is to advise the public of the Office's current plans for implementing the reexamination and fee provisions of Pub. L. 96-517, enacted on December 12, 1980. The reexamination provisions of this new law, including reexamination fees, will take effect on July 1, 1981. New patent and trademark fees, other than reexamination fees, must be established no later than October 1, 1982.

Insofar as the reexamination provisions are concerned, it is expected that proposed rules to implement them will be published in the **Federal Register** by the middle of January, 1981, with publication to follow in the Official Gazette as soon thereafter as possible. Assuming the proposed rules are published by the middle of January, a public hearing on the proposed rules could be held as early as the first half of April, 1981, with the rules being completed and promulgated thereafter.

It will be some time before the Office is ready to publish proposed rules implementing the fee provisions, but the same procedure will be followed as for the reexamination rules. A public hearing will be held following publication of the proposed rules. Completion and promulgation of the rules will follow both an adequate comment period and the public hearing.

ADDRESS: Persons wishing to submit written comments before the proposed rules are published should address them to Michael K. Kirk, Director, Office of Legislation and International Affairs, whose address is: Box 4, Commissioner of Patents and Trademarks, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: New fees under the provisions of Public Law 96-517 will not become effective until appropriate rules are promulgated. Until that time, which the Office presently anticipates will be no earlier than July 1, 1981, the present fee provisions will remain in effect. Maintenance fees will be required for any patent actually applied for on or after December 12, 1980, whether or not the patent is entitled to the benefit of an earlier filing date under section 120 of title 35, U.S.C. or a right of priority under section 119 of title 35, U.S.C. The amounts of maintenance fees have not yet been set.

The text of Pub. L. 96-517 will be published shortly in the Official Gazette.

This advance notice of proposed rulemaking is issued under the authority of 35 U.S.C. 6 and 41.

Dated: December 19, 1980.

Sidney A. Diamond,

Commissioner of Patents and Trademarks.

Dated: January 8, 1981.

Approved:

Jordan J. Baruch,

Assistant Secretary for Productivity, Technology and Innovation.

[FR Doc. 81-1575 Filed 1-16-81; 8:45 am]

BILLING CODE 3510-17-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[EN-FRL 1729-2]

Motor Vehicle Pollution Control; Waiver of Oxides of Nitrogen Emission Standards; Notice of Opportunity for Public Hearing and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Opportunity for public Hearing and Comments to Consider Applications for Waivers.

SUMMARY: Automobiles Peugeot (Peugeot) has submitted an application to EPA for waiver of the 1982 NOx emission standard for certain diesel light-duty vehicles pursuant to section 202(b)(6)(B) of the Clean Air Act (Act).

This notice announces an opportunity for public hearing and requests comment on Peugeot's application for waiver of

the 1982 oxides of nitrogen (NOx) emission standard.

DATES AND ADDRESSES: Interested parties may submit a *bona fide* written request for a public hearing by January 22, 1981. If EPA receives such a hearing request the Agency will hold a public hearing on February 2, 1981, beginning at 9:00 a.m., at EPA Conference Room 3908, Waterside Mall, 401 M Street, S.W., Washington, D.C. Otherwise, EPA will publish a notice in the **Federal Register** by January 28, 1981, announcing the cancellation of this public hearing. Regardless of whether a hearing is requested, EPA will consider written comments on Peugeot's waiver request received by February 5, 1981. Requests for public hearing or comments on Peugeot's waiver request should be sent to the Director, Manufacturers Operations Division (EN–340), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Information submitted by Peugeot, as well as any comments received from interested parties, will be available for public inspection between 8 a.m. and 4 p.m., Monday through Friday, at: U.S. Environmental Protection Agency, Central Docket Section (A–130), Gallery I, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460 (Docket Number EN–81–1).

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Schwartz, Manufacturers Operations Division (EN–340), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 472–9421.

SUPPLEMENTARY INFORMATION:

I. Background:

Section 202(b)(6)(B) of the Clean Air Act, as amended, 42 U.S.C. 7521(b)(6)(B)(1977), allows any light-duty diesel manufacturer to petition the Administrator of EPA for waiver of the 1981–1984 model year NOX standard of 1.0 gpm. The Administrator, after notice and opportunity for public hearing, may waive the standard for any class or category of light-duty vehicles manufactured during the four model year period, beginning in model year 1981, up to a maximum level of 1.5 gpm, if the manufacturer can show that the waiver is necessary to permit diesel engine technology to be used on the subject vehicles. The waiver may be granted if the Administrator determines:

(i) That the waiver will not endanger public health;

(ii) That the waiver will result in significant fuel savings at least equal to the fuel economy standard applicable in each year under the Energy Policy and Conservation Act, and

(iii) That the technology has a potential for long-term air quality benefit and has the potential to meet or exceed the average fuel economy standard applicable under the Energy Policy and Conservation Act at the expiration of the waiver.

Guidelines for diesel NOx waiver applications were published in the **Federal Register** at 43 FR 30341, July 14, 1978, in order to apprise manufacturers of the information deemed necessary to demonstrate that a waiver should be granted.

II. Waiver Application

On December 16, 1980, Peugeot submitted an application for waiver of the 1982 statutory NOx emission standard for its XD2C diesel engine family to an interim standard of 1.2 gpm.

In order to grant a waiver, the Administrator must determine that the applicant has provided information sufficient to satisfy each of the waiver criteria set out above. The Administrator is not required to make his determination solely on the record of the hearing, and may consider any additional information as well. All information considered by the Administrator for this waiver decision will be included in public docket EN–81–1.

III. Procedures for Public Participation

EPA is offering an opportunity for public hearing by tentatively scheduling one for February 2, 1981, at the time and place specified in the "Dates and Addresses" section of this notice if EPA receives a *bona fide* request for such a hearing. If EPA does not receive such a request, it will publish a notice cancelling the February 2 hearing. Regardless of whether or not EPA holds a public hearing, it still will consider any written comments submitted for the record by the deadlines specified in the "Dates and Addresses" section.

The public hearing tentatively scheduled will provide an opportunity for interested persons to state their views or arguments, or to provide pertinent information concerning the waiver requests at issue. Any party desiring to make an oral statement at the hearing should file a notice of such intention and 10 copies of the proposed testimony and other relevant material with the Director of EPA's Manufacturers Operations Division at the address listed above not later than January 22, 1981. If feasible, these parties also should submit at least 25 copies of their statements or material for the hearing record for general circulation to the Presiding Officer at the time of the hearing. In addition, any person may submit written questions at any time during the hearing, which the hearing panel may propound to witnesses to the extent practicable. Relevant statements and information not specifically required by the hearing panel may be filed in the public docket by February 5, 1981, to ensure their consideration as part of the waiver decision.

The Presiding Officer will have the responsibility for maintaining order, excluding irrelevant or repetitious material, scheduling presentations, directing participants to submit corroborative material in writing and, to the extent possible, notifying participants of the time at which they may appear.

Presentations by the participants should address the considerations set forth in detail by the guidelines for submission of waiver requests published in the **Federal Register**, 43 FR 30341, July 14, 1978. Participants should be prepared to respond to questions from the Hearing Panel on the following issues:

1. Whether a waiver is necessary to permit the use of diesel engine technology in the class or category of vehicles or engines for which an applicant requests a waiver;
2. Whether the waiver would endanger the public health;
3. Whether the waiver would result in significant fuel savings at least equal to the fuel economy standard applicable under the Energy Policy and Conservation Act ("EPCA");
4. Whether the technology utilized in the class or category for which a waiver is sought: (a) has a potential for long-term air quality benefit, and (b) has the potential to meet or exceed the average fuel economy standard applicable under EPCA at the expiration of the waiver, and;
5. The level of NO_x emissions, not to exceed 1.5 gpm, which an applicant's diesel vehicle class or category could meet in each of the model years for which an applicant requests a waiver.

A verbatim record of the proceedings will be available for public inspection in public docket EN–81–1. Any interested party may request a copy of the transcript from the hearing reporter during the hearing at the party's own expense. Interested parties also may obtain copies of other documents in the public docket as provided in 40 CFR Part 2.

Dated: January 14, 1981.

Jeffrey G. Miller,

Acting Assistant Administrator for Enforcement.

[FR Doc. 81–1879 Filed 1–16–81; 8:45 am]

BILLING CODE 6560–33–M

40 CFR Part 180

[OPP-300043; PH-FRL 1730-2]

Lecithin; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This action proposes that lecithin be exempted from the requirement of a tolerance when used as an inert (or occasionally active) ingredient in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. This amendment was requested by Decco Tiltbelt Agricultural Technology.

DATE: Written comments must be received on or before February 18, 1981.

ADDRESS: Written comments to: John A. Shaughnessy, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-229, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: John A. Shaughnessy (202-426-9425).

SUPPLEMENTARY INFORMATION: At the request of Decco Tiltbelt Division, the Administrator proposes to amend 40 CFR § 180.1001(c) to include lecithin. Inert ingredients are all ingredients which are not active ingredients as defined in 40 CFR § 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have pesticidal efficacy of their own): solvents such as water; baits such as sugar, starches and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellan in aerosol dispensers; and emulsifiers. The term inert is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient	Name and address of requestor	Basis for approval
Lecithin	Decco Tiltbelt Agricultural Technology Division of Pennwalt Corp., Box 120, 1713 S. California Ave., Monrovia, CA 91016.	Lecithin is found in all living cells, principally in the form of the phosphatides (Phosphatidylcholine, phosphatidylethanolamine and inositolphosphatide). It is readily catabolized and anabolized (see H. R. Mahler and E. H. Cordes, *Biological Chemistry* 2nd ed. Harper and Row, New York, 1971, pp. 588, 733) and is a precursor of the neurotransmitter, acetylcholine.

Lecithin is generally recognized as safe (21 CFR § 182.1400) and has been extensively reviewed by the Federation of American Societies for Experimental Biology (FASEB) for the Food and Drug Administration. Their conclusion was:

"There is no evidence in the available information on lecithin and lecithin bleached with hydrogen peroxide that demonstrates or suggests reasonable grounds to suspect a hazard to the public when they are used at levels that are now current or that might reasonably be expected in the future."

According to FASEB, the average U.S. daily consumption of lecithin is 92 milligrams (mg) (or about 1.5 mg/kilograms (kg). Clearance of lecithin under 180.1001(c) is not expected to significantly increase the exposure of the public to lecithin; furthermore, there is no reason to believe that increased exposure to lecithin would, in fact, be undesirable.

Based on the above information, the chemistry of this substance, and review of its use, it has been found that, when used in accordance with good agricultural practice, this ingredient is useful and does not pose a hazard to the environment. It is concluded therefore, that the proposed amendment to 40 CFR § 180.1001 will protect the public health, and it is proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for the registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act, which contains this inert ingredient may request, on or before February 18, 1981, that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear notation indicating both the subject and the petition/document control number "[OPP-300043]." All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Process Coordination Branch (TS-767], Room E-229, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460 from 8:00 a.m. to 4:00 p.m. Monday through Friday, except legal holidays.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." This proposed rule has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Sec. 408(e) 68 Stat. 514, (21 U.S.C. 346a(e)))

Dated: January 12, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that Subpart D of 40 CFR Part 180 be amended by alphabetically inserting "lecithin" in the list under § 180.1001(c) to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * * *

(c) * * *

Inert ingredient	Limits	Uses
* * *	* * *	* *
Lecithin.....	Meeting Food Chemicals Codex specification..	Emulsifier.
* * *	* * *	* *

[FR Doc. 81-1913 Filed 1-16-81; 8:45 am]

BILLING CODE 6560-32-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration, Public Health Service

42 CFR Parts 50 and 441

Requirements Applicable to Sterilizations (Hysterectomies)

AGENCIES: Health Care Financing Administration (HCFA). Public Health Service (PHS).

ACTION: Proposed rule.

SUMMARY: Current Department regulations for the Medicaid and Public Health Service programs provide that no Federal funds are available for hysterectomies unless the woman or her representative has signed an acknowledgment that she was informed that the operation would make her sterile. These amended rules would eliminate the "acknowledgment requirement" in certain situations where the patient is already sterile or an emergency situation exists. We will also clarifying certain ambiguities. The purpose of the proposed regulations is to remove an unnecessary administrative burden created by the current requirements.

DATE: To assure consideration, comments should be mailed by March 20, 1981.

ADDRESSES: Address comments in writing to: For the Health Care Financing Administration: Administrator, Department of Health and Human Services, Health Care Financing Administration, P.O. Box 17076, Baltimore, Md. 21235.

If you prefer, you may deliver comments to: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C.; or to Room 789 East High Rise, 6401 Security Blvd.; Baltimore, Maryland.

In commenting, please refer to file code BPP–82–FC.

For the Public Health Service: Director, Office of Population Affairs, Room 722–H, Hubert H. Humphrey Building, 220 Independence Avenue SW., Washington, D.C. 20201, (202) 245–7581.

Agencies and organizations are requested to submit their comments in duplicate. Comments will be available for public inspection, beginning approximately 2 weeks after publication, at the following offices on Monday through Friday of each week during regular business hours:

Health Care Financing Administration, Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201, (202) 245–0950

Public Health Service, Room 722–H, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201, (202) 245–7581

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and will respond to them in the preamble to that rule.

FOR FURTHER INFORMATION, CONTACT:

For the Health Care Financing Administration: Raymond T. Johnson, (301) 594–9370

For the Public Health Service: Marilyn L. Martin, (202) 245–7581

SUPPLEMENTARY INFORMATION:

Background

On November 8, 1978, the Department of Health, Education, and Welfare issued final rules governing expenditures for sterilizations under certain federally assisted programs administered by the Health Care Financing Administration (HCFA), Public Health Service (PHS), and the Administration for Public Services (APS) of the Office of Human Development Services (OHDS) (see 43 FR 52146). These rules are codified at 42 CFR Part 441, Subpart F for HCFA; 42 CFR Part 50, Subpart B for PHS; and 45 CFR §§ 220.21, 222.59, and 228.63 for APS, OHDS. The rules include the following requirements for the availability of Federal funds for hysterectomies: (1) the hysterectomy cannot be performed solely for the purpose of sterilizing the patient, or, if there was more than one purpose to the procedure, it would not have been performed but for the purpose of making the patient permanently incapable of reproducing; (2) the person securing authorization to perform the hysterectomy must inform the patient, and her representative, if any, orally and in writing, that the operation will make her sterile; and (3) the patient, or her representative, if any, must sign a statement acknowledging receipt of that information. Items 2 and 3 constitute the "acknowledgment requirement".

The purposes of these requirements are to: (1) safeguard patients' rights by ensuring that women will make informed voluntary choices; (2) emphasize that hysterectomies are not an appropriate or acceptable means of sterilization; (3) remove the financial incentive to perform hysterectomies for contraceptive purposes since this is the most dangerous and expensive sterilization method; (4) provide effective safeguards against abuse; and (5) permit effective enforcement of the procedural safeguards.

Since these rules became effective, we have received various inquiries from Congress, providers of services, State agencies, and the general public that have brought to the Department's attention certain situations in which the "acknowledgment requirement" is unnecessary and overly broad in scope.

In the inquiries, these commenters questioned the need to inform a patient who is already sterile due to age, prior sterilization, or congenital disorder that a hysterectomy will make her sterile. They further questioned the need to obtain a written acknowledgement to that effect. Physicians also questioned the reasonableness of this requirement when a patient must undergo a hysterectomy on an emergency basis. In emergency situations, it may be impossible to inform the woman of the consequences of the hysterectomy prior to the procedure, because the need for it is unanticipated. For example, one physician reported discovering an undiagnosed fibroid uterine tumor while performing a caesarean section. It had to be incised in order to deliver the baby, and the resultant bleeding could be controlled only by an emergency hysterectomy.

The Department believes that these points are valid and that the regulations should be amended to take these situations into consideration. The amendments we are proposing to make to eliminate the "acknowledgment requirement" in certain situations are consistent with the policy behind that requirement, which is that a woman should be aware that a hysterectomy will make her sterile, so that she may make a informed decision regarding the procedure in light of that information. If she is already sterile, this information would have no bearing on her decision on whether to have the hysterectomy. In those situations where life-threatening circumstances indicate that an emergency hysterectomy is required, and there is insufficient time to inform the patient that the operation will make her sterile, we believe it woud be appropriate to presume that the woman would concur in her physician's decision and choose to have the hysterectomy.

The proposed amendments below affect only the HCFA and PHS regulations, since those regulations spell out the detailed requirements described above. We will not amend the OHDS regulations because they are cross-referenced to the Medicaid regulations. Consequently, the proposed changes in Medicaid requirements would automatically apply to the OHDS regulations.

Regulation Provisions

a. Amendment of Acknowledgment Requirement

The Department is proposing to amend the regulations to provide for an exception to the "acknowledgment requirement" for hysterectomies when one or more of the following circumstances exist:

(1) The individual is 58 years of age or older;

(2) The individual is sterile due to a congenital disorder;

(3) The individual was previously sterilized; or

(4) The individual requires a hysterectomy on an emergency basis because of life-threatening circumstances.

We chose the age of 58 as an upper age limit, beyond which all women would be considered sterile for purposes of these proposed regulations, because data from the U.S. Health Examination Survey of Adults, 1960–1962, show that, by the age of 58, 100 percent of the women in the survey were postmenopausal. The survey included 3,581 women, and consisted of a nationwide probability sample of persons 18–79 years of age selected from the U.S. civilian, noninstitutional population. We believe it would constitute an adequate basis for determination of the specific age beyond which the protection otherwise afforded by the proposed regulation is not needed. We will, however, consider any information individuals may wish to submit indicating that a different age would be more appropriate.

The Department selected the proposed exceptions 2 through 4 for several reasons. We believe the "acknowledgment requirement" in an unnecessary procedural requirement to be met for a woman already sterile because of a congenital disorder, or because of a prior sterilization. In addition, it could be embarrassing to a woman in either of these situations to receive and acknowledge receipt of this information in writing. Lastly, the "acknowledgment requirement" is also an unfeasible requirement in emergency situations since the physician, in most instances, would not have the opportunity to inform the woman and obtain the required acknowledgment. We are, however, requesting comment on the appropriateness of these exceptions to the requirements, and whether (and if so, what) other exceptions should be provided for.

Although we believe that these proposed exceptions to the "acknowledgment requirement" are consistent with the purposes of the present rules, we are concerned that the exceptions not be abused. Therefore, in order to assure that the proposed exceptions are applied only in appropriate circumstances, the amended regulations would require the State agency, prior to paying the claim, to obtain the certification of the physician who performs the procedure that one of these specific circumstances we are proposing existed in each case when the "acknowledgment requirement" was not net. This approach is similar to the certification requirement applicable to the sterilization consent form requirements of the regulations (see 42 CFR 441.258(c) and 42 CFR 50.205(c)(2)). We propose to use this approach for the same reasons that prompted that certification requirement (i.e., assuring that the requirement is met, while at the same time, imposing minimal burdens on providers and patients.)

We believe the data generated from these proposed certifications will provide sufficient information about the procedures to facilitate monitoring without creating an undue burden for providers and patients. However, if there are other safeguards that might more effectively prevent program abuse of these exceptions, we welcome suggestions and recommendations on this point.

b. Retroactivity of Regulation

1. *Reasons for Retroactivity.* We propose to make the final regulations retroactive to the date the final rules on sterilization were effective, March 8, 1979. There are two reasons for this provision.

First, because the Department believes the "acknowledgment requirement" is unnecessary and too broad in certain circumstances, we want to avoid a disallowance of Federal funds for failure to follow this requirement when those circumstances already existed.

Second, we want to allow providers to be reimbursed if they performed the operation in good faith without having the opportunity to satisfy this requirement because an emergency medical situation existed.

2. Handling of a claims. When a provider submits a claim for hysterectomy services, and the "acknowledgment requirement" hs not been satisfied, FFP would be available only if the physician's certification meets the requirements of the new regulations; that is, the physician would have to certify that the circumstances meet the criteria in regulations for dispensing with the acknowledgment requirement.

If a provider's claim was previously denied solely because the "acknowledgment requirement" was not met, the provider would be allowed to submit a new claim under these proposed regulations. This new claim, however, would have to include the physician's certification before payment can be made.

Regulations at 42 CFR 447.45 specify that the Medicaid agency must require providers to submit all claims within a specified time period not to exceed 12 months after the date of service. For purposes of this proposed sterilization regulation only, a retroactive claim for performance of a hysterectomy falling within its exceptions would be considered timely under § 447.45 if it is submitted (or resubmitted) within the State's specified time period beginning with the publication date of the final rule.

In addition, FFP would be available for hysterectomy services furnished between March 8, 1979 and 30 days after publication of the final rule, if (1) one of the circumstances specified in § 441.255(c) applies, and (2) the agency was not entitled to FFP because it did not have the required documentation on hand before it paid the claim. In these cases, the agency could submit a request for FFP if it obtains a physician's certification as to the applicable circumstance. We believe that 30 days after publication is a reasonable period for States to notify providers of the new certification requirements and put appropriate procedures into effect; however, we welcome suggestions and recommendations on this point also. For services furnished after that date, the State would be required to meet the prior documentation requirements specified in § 441.256.

Federal financial assistance would also be available under the Public Health Service Act for the same period if the new physician's certification is obtained.

Report Burden Requirements

The reporting requirements in 42 CFR 441.256 and 42 CFR 50.209 are subject to the Federal Reports Act. They have been approved by the Office of Management and Budget (OMB). The OMB approval number is 66R0129.

42 CFR Parts 50 and 41 are amended as set forth below.

1. Section 50.207 is amended by revising paragraph (b) and adding paragraph (c) as follows:

§ 50.207 Sterilization by hysterectomy.

* * * * *

(b) Except as provided in paragraph (c) of this section, programs or projects to which this subpart applies may perform or arrange for the performance of a hysterectomy not covered by paragraph (a) of this section only if:

(1) The person who secures the authorization to perform the hysterectomy has informed the individual and her representative, if any, orally and in writing, that the hysterectomy will render her

permanently incapable of reproducing; and

(2) The individual or her representative, if any, has signed a written acknowledgment of receipt of that information.

(c)(1) A program or project is not required to follow the procedures of paragraph (b) if any of the following circumstances exists:

(i) The individual is 58 years of age or older;

(ii) The individual is sterile due to a congenital disorder;

(iii) The individual was previously sterilized;

(iv) The individual requires a hysterectomy on an emergency basis because of life-threatening circumstances.

(2) If the procedures of paragraph (b) are not followed because one or more of the circumstances of paragraph (c)(1) exist, the physician performing the hysterectomy must certify in writing,

(i) That the woman was already sterile, stating the cause of that sterility (paragraph (c) (i), (ii), or (iii) of this section) and, if sterility is due to a congenital disorder, stating the nature of that disorder; or

(ii) That the hysterectomy was performed under emergency circumstances, describing the nature of the emergency.

(2) Section 50.209 is amended by revising paragraph (b) as follows—

§ 50.209 Use of Federal financial assistance.

* * * * *

(B) A program or project shall not use Federal financial assistance for any sterilization or hysterectomy without first receiving documentation showing that the requirements of this subpart have been met. Documentation includes consent forms, and as applicable, either acknowledgments of receipt of hysterectomy information or certifications for hysterectomies.

Authority: Sec. 215, Public Health Service Act, as amended (42 U.S.C. 216).

3. Section 441.255 is amended by revising paragraphs (b) and adding paragraphs (c) and (d), as follows:

§ 411.255 Sterilization by hysterectomy.

* * * * *

(b) Except as provided in paragraph (c) of this section, FFP is available in expenditures for a hysterectomy not covered by paragraph (a) of this section only if—

(1) The person who secured authorization to perform the hysterectomy has informed the individual and her representative, if any, orally and in writing, that the hysterectomy will render the individual permanently incapable of reproducing; and

(2) The individual or her representative, if any, has signed either a written acknowledgement of receipt of that information.

(c) The limitations of paragraph (b) of this section do not apply when any of the following circumstances exist:

(1) The individual is 58 years of age or older;

(2) The individual is sterile due to a congenital disorder;

(3) The individual was previously sterilized; or

(4) The individual required a hysterectomy on an emergency basis because of life-threatening circumstances;

(d) When the procedures in paragraph (b) are not followed because one or more of the circumstances of paragraph (c) exist, the physician performing the hysterectomy must certify in writing:

(1) That the woman was already sterile, stating the cause of the sterility (paragraph (c)(1), (2), or (3) of this section); and, if sterility is due to a congenital disorder, specifying the nature of tha disorder; or

(2) That the hysterectomy was performed under emergency circumstances, describing the nature of the emergency.

4. Section 441.256 is revised to read as follows:

§ 441.256 Additional condition for Federal financial participation (FFP).

(a) FFP is not available in expenditures for any sterilization or hysterectomy unless the Medicaid agency, before making payment, obtained documentation showing that the requirements of this subpart were met. This documentation must include a consent form or an acknowledgement of receipt of hysterectomy information or a certification for the hysterectomy, as applicable.

(b) With regard to the requirements of § 441.255(d) for hysterectomies performed from March 8, 1979 through [30 days after date of publication], FFP is available if the Medicaid agency obtained the documentation showing that the requirements of that paragraph were met before submitting a claim for FFP for that procedure.

(Sec. 1102 of the Social Security Act (42 U.S.C. 1302)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance)

Dated: October 1, 1980.

Howard Newman,

Administrator, Health Care Financing Administration.

Dated: October 29, 1980.

Julius B. Richmond,

Assistant Secretary for Health.

Approved: January 13, 1981.

Patricia Roberts Harris,

Secretary.

[FR Doc. 81-1932 Filed 1-16-81; 8:45 am]

BILLING CODE 4110-35-M

---

42 CFR Part 405

Medicare Program; Shared-Services Organizations and Cost to Related Organizations

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

ACTION: Withdrawal of notices of proposed rulemaking.

SUMMARY: This notice withdraws two notices of proposed rulemaking relating to Medicare reimbursement of providers of health care services. Current regulations limit the amount a provider may be reimbursed when it obtains services, facilities, or supplies from an organization to which it is related by common ownership or control. We published two proposed amendments to those regulations. The first would have exempted, from the related organizations regulations, costs incurred by providers for items furnished by certain shared-services organizations. The second proposal would have revised the definition of a related organization and made certain other changes in application of the rules.

After considering the responses of the public to the proposed regulations and our own policy analyses, we have concluded that we should retain the flexibility provided by existing regulations and that there is no current need to amend these regulations. We are, therefore, withdrawing the proposals from further action.

EFFECTIVE DATE: January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Paul Trimble, Bureau of Program Policy, Health Care Financing Administration, Room 1-G-1, East Low Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235, 301-594-8640.

SUPPLEMENTARY INFORMATION:

Background

General Medicare reimbursement policy on reasonable cost provides that reimbursement to a provider for services, facilities, or supplies furnished to it by another organization is normally

based on charges made by the supplying organization. However, a special rule applies when a provider obtains these items from a supplier to which it is related by common ownership or control. In this situation, Medicare reimbursement to a provider for items obtained from the supplying organization is limited to the related organization's costs rather than its charges, provided those costs do not exceed the open market price of the items (42 CFR 405.427). This policy is intended to prevent Medicare from paying the provider a profit from dealing with itself through the related organization.

The current regulations define relatedness in terms of a significant degree of common ownership, equity or controlling power (i.e., the ability to influence or direct). They also provide for an exception to the rule when specified circumstances exist, such as situations in which the supplying organization also conducts a substantial amount of business activity, of the type transacted with the provider, with nonrelated organizations.

We published two notices of proposed rulemaking in the **Federal Register** that were intended to: (1) recognize the recent development of "shared-services" organizations by providing for them in an additional specific exception to the rule; and (2) alleviate problems we had perceived in interpretation of the "related organization" concept. However, for reasons explained below, we have decided not to proceed with development of final rules.

Shared-Services Organizations (SSOs)

On August 17, 1978, we published in the **Federal Register** (43 FR 36488) proposed regulations on SSOs. In the proposal, we defined an SSO as a nonprofit organization that furnishes health care services, facilities, supplies, or support services, to two or more providers. For example, an SSO might be formed to furnish linens to several hospitals at a lower cost than could be obtained from a regular supplier. SSOs are generally established by a group of providers, that subsequently retain an ownership or management interest in the organization.

As explained above, the usual method for reimbursing providers related to supplying organizations is the lower of cost or the price of comparable items in the open market. For SSOs, however, we proposed to add an exception to the related organization regulations to reimburse providers the lower of the SSO charge to the provider or the open market price rather than the lower of cost or open market price. The purpose of the SSO proposal was to encourage the use of SSOs by providers in those cases where it would reduce the cost of furnishing health care.

Comments received on the proposed SSO regulations raised concerns about creating competition unfair to small suppliers, the administrative difficulty of implementation, and the participation of certain types of organizations in SSOs (for example, proprietary providers, chain organizations, and management services firms).

In addition to the concerns raised during the public comment period, we analyzed other information on SSO development and operations. A survey by the American Hospital Association in late 1978 showed that there has been a very rapid increase in the number and use of SSOs and that over 80 percent of the 6,223 responding hospitals in the country shared one or more services. One of the main reasons for developing the SSO regulation was to encourage the use of SSOs. It is apparent, however, that growth in shared-services arrangements is taking place without the need for regulatory encouragement.

Moreover, our research into the organizational and operational aspects of SSOs has led us to believe that our proposed regulations would have been difficult to administer effectively and fairly. For example, our intent in proposing the regulation was to ensure that the margin of revenue over cost retained by the SSO be channeled into patient-care-related activities (i.e., expansion of the SSO's service to providers). However, we now believe this policy would be difficult to enforce. The funds retained by the SSO under the proposal could be diverted into nonpatient-care-related activities with little opportunity for detection by Medicare intermediaries that have no statutory right of access to the books and records of SSOs.

Also, under the current related organization rule, SSOs as we defined them, typically would not be related to their member providers. This is because, when viewed on an individual provider basis, each provider typically does not have a significant ownership or control interest in the SSO. Therefore, there is no need to except most SSOs because the rule does not apply to them.

Based on the reasons explained above, particularly the fact that the industry appears to be moving in the desired direction quite well without Federal regulation, we have decided to withdraw the proposed regulations on SSOs.

Cost to Related Organizations

Our proposed amendments to the general rules on related organizations were published on January 26, 1979 (44 FR 5479). Their purpose was to clarify the intent of the regulation by defining terms and adding explanatory language emphasizing that a related supplying organization's allowable costs are determined in accordance with general Medicare reimbursement principles. Questions had arisen, for example, on specific applications of the "common ownership or control "provision.

In the proposal, therefore, we attempted to eliminate some of the subjectivity in the current regulations by defining providers and suppliers as related if there were "any" common control or common ownership. Commenters responded to this proposal by pointing out the rigidity of such a definition and recommending either that we attempt to quantify relatedness in terms of a percentage of ownership or control, or that we leave the current regulations unchanged.

We have now been persuaded, both by the comments and a review of our experience since we began the development of the proposed rule, that we should retain the flexibility of existing regulations. While there are supportable reasons to select any one of several figures in setting a specific percentage of common ownership or control, we believe that the figure chosen could prove to be arbitrary and inappropriate when applied in a particular situation. Finally, during the period since the proposed regulations were published, we have found that Medicare intermediaries, that interpret and apply the regulation with respect to specific provider expenditures, appear to be able to resolve most of the issues equitably. We believe, therefore, in light of these considerations, that further regulation in this area of provider reimbursement is unnecessary at this time.

(Sec. 1102, 1861(v), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v), and 1395hh))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance; No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: December 1, 1980.

Howard Newman,

Administrator, Health Care Financing Administration.

Approved: January 12, 1981.

Patricia Roberts Harris,

Secretary.

[FR Doc. 81-1776 Filed 1-16-81; 8:45 am]

BILLING CODE 4110-35-M

Health Care Financing Administration

42 CFR Part 435

Medicaid Program; Entitlement of Individuals Receiving Cash Assistance Under the Foster Care Maintenance Payments Program or the Adoption Assistance Program

Correction

In FR Doc. 80–40557, published at page 86850, in the issue of Wednesday, December 31, 1980, the section heading on page 86852, first column, first line, now reading

"§ 435.4009 * * * "

should read

"§ 435.1009 Definitions relating to institutional status."

BILLING CODE 1505–01–M

FEDERAL MARITIME COMMISSION

46 CFR Part 524

[General Order 23; Docket No. 81–3]

Exemption of Agreements for Cargo Inspection Services or Self-Policing, or Both, Between Conferences or Rate Agreements From Section 15 Filing and Approval Requirements

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Agreements for joint cargo inspection services or self-policing, or both, between the members of two or more conferences or other rate-fixing agreements would be exempt from the filing and approval requirements of section 15 of the Shipping Act, 1916. Experience shows the anticompetitive impact of such agreements to be minimal. This exemption will lessen regulatory requirements.

DATE: Comments (original and 15 copies) by March 20, 1981.

ADDRESS: Comments and Inquiries to: Secretary, Federal Maritime Commission, 1100 L Street, N.W., Room 11101, Washington, D.C. 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Mr. Frances C. Hurney, Secretary, Federal Maritime Commission, (202) 523–5725.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission is considering the promulgation of a rule to exempt agreements for joint cargo inspection services or self-policing, or both, between the members of two or more conferences or other rate-fixing agreements from the filing and approval requirements of section 15 of the Shipping Act, 1916 (46 U.S.C. 814).

Agreements for joing cargo inspection services or self-policing, or both, between the members of two or more conferences or other rate-fixing agreements, are cooperative working arrangements within the meaning of section 15. Such agreements usually contain uniform self-policing provisions and authorize the employment of a common neutral body or cargo inspection services with authority to collect delinquent freight and other tariff charges. Since these agreements do not directly concern the pricing or operational activities of the parties involved, their anticompetitive impact appears to be minimal.

Section 35 of the Shipping Act, 1916, permits the Commission to exempt certain activities from regulation, provided that the exemption will not substantially impair effective regulation, be unjustly discriminatory, or be detrimental to commerce. The Commission believes that full section 15 regulation of such agreements of the type described above serves no substantive purpose, and that their exemption from filing and prior approval requirements should not substantially or significantly affect the overall design of regulation contemplated by the Shipping Act, 1916.

Therefore, pursuant to sections 15, 35, and 43 of the Shipping Act, 1916 (46 U.S.C. 814, 833a and 841a), and 5 U.S.C. 553, the Commission proposes to amend 46 CFR Part 524 by adding a new paragraph (c) to § 524.2 *Definitions*. The new material would read as follows:

§ 524.2 Definitions.

* * * * *

(c) An agreement for joint cargo inspection services or self-policing, or both, between the members of two or more conferences or other rate-fixing agreements authorizes the signatories to discuss and agree upon a common self-policing system which includes establishment of uniform investigation and enforcement provisions and the employment of a common neutral body or cargo inspection service(s).

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 81–1540 Filed 1–16–81; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 80–634]

Changes in the Corporate Structure and Operations of the Communications Satellite Corporation; Order Extending Time for Filing Comments and Reply Comments.

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; Extension of comment and reply comment period.

SUMMARY: This Order extends the time for filing comments in response to No. 80–634 on corporate structure and operations of the Communications Satellite Corporation from January 12, 1981, to January 16, 1981. It extends the time for filing reply comments from February 9, 1981, to February 20, 1981. The extension was granted pursuant to a request filed by Western Union International, Inc.

DATES: Comments shall be filed on or before January 16, 1981, and reply comments on or before February 20, 1981.

ADDRESS: Comments and replies should be submitted to: The Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554

FOR FURTHER INFORMATION CONTACT: James L. Ball/Glenn deChabert, International Facilities Planning Division, Common Carrier Bureau, Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554 (202) 632–3214.

Order

(45 FR 71628)

Adopted: January 7, 1981.

Released: January 9, 1981.

In the Matter of: Changes in the Corporate Structure and Operations of the Communications Satellite Corporation; Request for Extension of Time.

1. Western Union International, Inc. (WUI) has filed a request for a four-day extension of time, until January 16, 1981, to file comments in response to the Commission's Notice of Proposed Rulemaking in Docket No. 80–634. *Communications Satellite Corporation*, 81 FCC 2d 287 (1980). The Commission's Notice requests comments on tentative proposals made in the Comsat study for changes in the corporate structure and operations of Comsat.

2. WUI states that the extension it requests is justified in view of the court schedule confronting it during the final

week before the current deadline for comments in this proceeding. WUI indicates that its counsel will be involved in oral argument in the appeals of four Commission decisions scheduled for January 8, 1981, in the U.S. Court of Appeals for the District of Columbia.[1] It states that its counsel therefore has been unable to devote sufficient attention to preparation of comments in this proceeding and argues that a four-day extension would afford a reasonable opportunity to complete this task.

3. We will grant WUI's request. Under the circumstances that it presents, a short extension is reasonable and will not unduly delay this proceeding in relation to other Commission policy initiatives in the international communications area.

4. Accordingly, IT IS ORDERED, pursuant to authority delegated in § 0.291 of the Commission's Rules and Regulations, 47 CFR 0.291 (1979), that the request of Western Union International, Inc., for an extension to file comments in CC Docket No. 80-634 IS GRANTED.

5. IT IS FURTHER ORDERED, that interested parties shall file comments in this proceeding on or before January 16, 1981. Replies shall be filed on or before February 20, 1981.

Federal Communications Commission.

Willard L. Demory,

Assistant Bureau Chief, International Common Carrier Bureau.

[FR Doc. 81-1941 Filed 1-16-81; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 2

[Gen. Docket No. 80-740; FCC 80-696]

Amendment of Part 2 of the Rules Regarding Use of the High Frequency Radio Spectrum

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: The Commission proposes to revise its policy on the use of the radio spectrum below 25 MHz by fixed and land mobile services as a result of the Final Acts of the World Administrative Radio Conference, Geneva, 1979.

DATES: Comments must be submitted on or before January 30, 1981, and Reply Comments on or before March 2, 1981

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Donald Draper Campbell, Office of Science and Technology, Washington, D.C. 20554, (202) 653-8176—Room 7307.

In the matter of amendment of Part 2 of the Rules regarding use of the High Frequency radio spectrum.

Adopted: November 25, 1980.

Released: December 31, 1980.

By the Commission:

1. The United States has observed a domestic policy which generally prohibits the use of the High Frequency (HF) Fixed Service for internal domestic communications. This policy results from the following conditions.

(a) The U.S. has implemented high-quality domestic microwave, land-line and satellite facilities.

(b) The HF band is characterized by lower availability than higher frequency bands due primarily to propagation anomalies and vagaries that occurr in the HF band.

(c) The HF spectrum is highly congested internationally and domestic operations would affect, and be affected by, this situation.

Further, authority to operate in the HF spectrum has been generally prohibited to the Land Mobile Service.

2. The Final Acts of the World Administrative Radio Conference, Geneva, 1979 (WARC), reflect a number of allocation changes in the radio spectrum between 3 and 27.5 MHz which generally reduce the amount of spectrum space allocated to the Fixed Service and increase the spectrum space allocated to the Broadcasting Service, the Maritime Mobile Service, the Amateur Service and the Radio Astronomy Service. The effective implementation dates for these international allocation changes will vary over a wide range due to a complex reaccommodation process contained in Resolution CV of the Final Acts (given at Appendix A) and because further specific actions must be taken at future International Telecommunication Union (ITU) conferences.[1] The timeframe for this transition will extend from early 1982 through approximately 1994. Although U.S. domestic allocation changes are not yet determined, consideration of the propagation characteristics at HF would restrict us to closely follow the international allocations.[2] The WARC recognized the congestion existing in the High Frequency portion of spectrum and called for a review of entries in the Master International Frequency Register (MIFR) with a view toward deleting unused entries and prioritizing the remainder (Resolution CT given in Appendix A). It also recognized the possibilities for relief through application of new technologies as expressed in Recommendation YI (given at Appendix A).

3. It is our belief that the basis United States domestic policy should continue. Newer technologies will provide high-quality communications service within the United States, but the international congestion at HF will remain as other countries must continue and increase their domestic usage as stated in the Recommendation YI. Because of that usage and congestion, it does not appear feasible to guarantee protection from international interference on frequency assignments in the HF spectrum, even though such assignments are for primary services. We would not, however, wish to totally foreclose the use of HF spectrum by the Fixed and Land Mobile Services. That spectrum could be useful, in certain instances, to provide backups to higher technology communications facilities, to provide for intermittent uses occasioned by disasters and emergencies, and to provide important communications links when other facilities are unavailable [such as circuits necessary to provide for public health and safety in isolated communities and circuits necessary in exploration for energy resources).

4. As a result of the circumstances outlined above, the Commission feels that it is necessary to amend its Rules regarding the use of the spectrum below 25 MHz by stations in the Fixed and Land Mobile Services. Currently, Rule Sections 2.102 and 2.105 (a) and (b) set forth the authority for stations in the Fixed Service and Mobile Service to operate on frequencies below 25 MHz. The Commission, therefore proposes to amend Section 2.102 by adding a new subparagraph (h), given at Appendix B, which states provisions for use of the HF spectrum by the Fixed and Land Mobile services and to delete paragraphs (a) and (b) from Section 2.105 so that it contains only information regarding the format of the Table of Frequency Allocations. Further, the Commission proposes to add a new

---

[1] The four decisions on appeal are: (1) *Gateways*, 76 FCC 2d 115 (1979); (2) *Unbundling*, 76 FCC 2d 61 (1979); (3) *International Formula*, 75 FCC 2d 345 (1979); and (4) *Domestic Public Message Service*, 71 FCC 2d 471 (1979).

[1] World Administrative Radio Conference (WARC) for Mobile Telecommunications (March 1982); WARC for Planning of the High Frequency Bands Allocated to the Broadcasting Services (1st Session, January 1983 and 2nd Session, October 1984); and WARC for the Mobile Services (October 1986).

[2] Proposals concerning domestic allocation changes which take into account the results of WARC are contained in a Notice of Inquiry (FCC 80-695) in Docket 80-739.

§ 2.108, given at Appendix C, to help accomplish reaccommodation actions which may become necessary as a result of changes made by the 1979 WARC.

5. Authority for issuance of this Notice is contained in Section 4(i) and 303(r) of the Communications Act 1934, as amended, 47 U.S.C. 154(i) and 303(r). Pursuant to procedures set out in Section 1.415 of the Rules and Regulations, 47 CFR 1.415, interested persons may file comments on or before January 30, 1981 and reply comments on or before March 2, 1981. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

6. In accordance with the provisions of Section 1.419 of the Rules and Regulations, 47 CFR 1.419, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

7. For purpose of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, Section 1.1231 of the Commission's rules, 47 CFR 1.1231.

8. For further information concerning this Notice, contact Donald D. Campbell, FCC, Office of Science and Technology, Spectrum Planning Branch, Washington, D.C. 20554, telephone (202) 653–8176. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, *ex parte* contracts made to members of the Federal Communications Commission in this proceeding must be disclosed in the public docket file. A summary of the Commission's procedure governing *ex parte* contacts in rulemaking proceedings is available from the Commission's Consumer Assistance Office, FCC Washington, D.C. 20554, (201) 532–2700.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Note.—In an effort to minimize publishing costs, Appendix A has been omitted. However, interested parties may inspect that appendix on file in the Dockets Branch, Room 239, 1919 M St., N.W., Washington, D.C. 20554.

Appendix B

47 CFR § 2.102 is amended by adding a new (h) to read as follows:

§ 2.102 Assignment of frequencies.

* * * * *

(h) Special provisions regarding the use of spectrum allocated to the Fixed and Land Mobile Service below 25 MHz by non-Government stations.

(1) Only in the following circumstances will authority be extended to stations in the Fixed Service to operation on frequencies below 25 MHz.

(i) With respect to Aeronautical Fixed Stations, only when a showing can be made that more suitable facilities are not available.

(ii) With respect to Fixed Stations, only to:

- provide standby and/or backup facilities to satellite and cable circuits used for international public correspondence;
- provide communications circuits in emergency and/or disaster situations, where safety of life and property are concerned;
- provide standby and/or backup communications circuits to regular domestic communications circuits which have been disrupted by disasters and/or emergencies; and
- provide communications circuits wholely within the State of Alaska and the United States Possessions in the Pacific;
- provide communications circuits to support operations which are highly important to the national interest and where other means of telecommunication are unavailable.

(2) Only in the following circumstances will authority be extended to stations in the Land Mobile Service to operate below 25 MHz.

(i) To provide communications circuits in emergency and/or disaster situations where safety of life and property are concerned,

(ii) To provide standby and/or backup communication circuits to regular domestic communication circuits which have been disrupted by disaster and/or emergency, and

(iii) To provide communication circuits wholely within the State of Alaska and the United States Possessions in the Pacific.

(iv) To provide communications circuits to support operations which are highly important to the national interest and where other means of telecommunication are unavailable.

(3) The circuits provided for situations described in (1) and (2) will not usually be notified to the International Frequency Registration Board and, thus, will not be entered into the Master International Frequency Register; this results in the following constraints upon such circuits.

(i) The FCC will not accept responsibility for protection of the circuits from harmful interference caused by foreign operations.

(ii) In the event that a complaint of harmful interference resulting from operation of these circuits is received from a foreign source, the offending circuit(s) must cease operation on the particular frequency concerned.

(iii) In order to accommodate the situations described in (i) and (ii) the circuits must utilize frequency

synthesized equipments which are capable of tuning among frequencies assigned to the particular operation.

Appendix C

47 CFR is amended by adding a new § 2.108 to read as follows:

§ 2.108 Special provisions regarding the implementation of the final acts of the World Administration Radio Conference (WARC), Geneva, 1979.

(a) High Frequency Bands. (1) The Table of Frequency Allocations, § 2.106, contains a number of bands in the High Frequency portion of the radio frequency spectrum which have been reallocated by the 1979 World Administration Radio Conference. The effective implementation dates for the allocations vary over a wide range due to a complex reaccommodation process for affected operations and an associated revision of entries in the Master International Frequency Register and because specific actions must be taken at International Telecommunications Union conferences before exact implementation dates can be determined. The transition period will extend from early 1982 to 1989 for frequency bands above 10 MHz and to 1994 for bands below 10 MHz.

(2) The following is a list of bands which are involved in the international re-allocation process:

Bands kHz and Radio Services To Be Excluded After Implementation

9775–9900, fixed
11650–11700, fixed
11975–12050, fixed
12230–12330, fixed
13600–13800, fixed
15450–15600, fixed
16360–16460, fixed
17360–17410, fixed
17550–17700, fixed
18068–18168, fixed
18780–18900, fixed
19680–19800, fixed
21750–21850, fixed
22720–22855, fixed
24890–24990, fixed & land mobile
25110–25210, fixed & land mobile
25550–25600, fixed & mobile
25600–25670, broadcasting
26100–26175, fixed & land mobile

(3) In order to facilitate the timely domestic implementation of revised High Frequency allocations, non-Government entities should consider the following principles as a guide:

(i) New frequency assignments in the 3–27.5 MHz portion of the spectrum which require international protection and which are required for a long period of time (i.e., after the transition period) should be made in appropriate bands given in the Table of Frequency Allocations, § 2.106. This approach should preclude the necessity for removal into another band.

(ii) New frequency assignments which are required for a short period of time (i.e., not beyond the transition period) and which do not require international interference protection or do not pose an international interference potential should be made in bands which will be released to other radio services. Applicants requesting assignments in the bands which are to be used by other services must fully accept the fact that such assignments may be terminated by the Commission at such time without prior notice as either national or international implementation plans and schedules are adopted.

[FR Doc. 81-1877 Filed 1-16-81; 8:45 am]
BILLING CODE 6712-01-M

---

47 CFR Parts 2, 22, and 90

[General Docket No. 80-183; RM-2365; RM-2750; RM-3047; RM-3068]

Amendment of Parts 2, 22, and 90 of the Commission's Rules To Allocate Spectrum in the 928–941 MHz Band and To Establish Other Rules Policies, and Procedures for One-Way Paging Stations in the Domestic Public Land Mobile Radio Service and the Private Land Mobile Radio Services; Order Extending Time for Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment and reply comment period.

SUMMARY: The FCC has extended the deadline for comments and reply comments in this proceeding, due to concern that inadequate time had been left from the release of the Supplemental Notice of Proposed Rule Making on November 4, 1980.

The FCC had originally released a Notice of Proposed Rule Making on May 8, 1980, allocating three MHz of spectrum for private and common carrier paging systems. The Supplemental Notice proposed a more flexible allocation plan, featuring potential use of private paging frequencies by common carriers and vice-versa. Parties to the proceeding were invited to comment on both regulatory approaches with the comments deadline established as December 15, 1980, and the reply comments deadline established as January 30, 1981. However, parties to the proceeding expressed concern that more time was needed to fully analyze both proposals; hence, the extension of time.

DATES: The deadline for comments has been extended to January 16, 1981, and the deadline for reply comments has been extended to March 6, 1981.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Rodney T. Small (Office of Science and Technology), (202) 653–8169; Michael D. Sullivan (Common Carrier Bureau), (202) 632–6450; or Eugene Bowler (Private Radio Bureau), (202) 632–6497.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of Parts 2, 22 and 90 of the Commission's rules to Allocate Spectrum in the 928–941 MHz Band and to Establish Other Rules Policies, and Procedures for One-Way Paging Stations in the Domestic Public Land Mobile Radio Service and the Private Land Mobile Radio Services, General Docket No. 80–183, RM–2365, RM–2750, RM–3047, RM–3068.

Adopted: December 12, 1980.

Released: December 15, 1980.

1. The Commission has before it a motion for extension of time in this proceeding filed by DPRS, Inc. t/a Zip/Call. Other parties have also informally expressed an interest in an extension of time.

2. In view of the fact that the release date of the *Supplemental Notice of Proposed Rule Making* in this proceeding was delayed beyond our expectations, the Commission believes that an extension of time for both the original *Notice* and the *Supplemental Notice* would be in the public interest.

3. Therefore, it is ordered, that the date for filing is extended to and including January 16, 1981, and the date for filing reply comments is extended to and including March 6, 1981.

4. This action is taken pursuant to authority found in Sections 4(i), 5(d), and 303 of the Communications Act of 1934, as amended, and § 0.241 of the Commission's rules.

Elliot Maxwell,

Deputy Chief Scientist.

[FR Doc. 81-1779 Filed 1-16-81; 8:45 am]
BILLING CODE 6712-01-M

---

47 CFR Part 73

[BC Docket No. 80-701; RM-3616; RM-3681]

FM Broadcast Stations in Andrews and Pawley's Island, South Carolina; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment and reply comment period.

SUMMARY: This action extends the time for filing comments and reply comments in a proceeding on FM broadcast stations in Andrews and Pawley's Island, South Carolina in response to the request from Linda S. Knop who has petitioned for the assignment of an FM channel to Pawley's Island, South Carolina.

DATES: Comments must be filed on or before January 29, 1981, and reply comments on or before February 19, 1981.

ADDRESS: Submit comments to Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

Order Extending Time for Filing Comments and Reply Comments

Adopted: December 29, 1980.

Released: January 6, 1981.

In the Matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Andrews and Pawley's Island, South Carolina).

By the Chief, Policy and Rules Division:

1. On October 30, 1980, the Commission adopted a *Notice of Proposed Rule Making*, 45 FR. 73719, published November 6, 1980, concerning the above entitled proceeding. The date for filing comments and reply comments are currently December 29, 1980, and January 19, 1981, respectively.

2. On December 23, 1980, counsel for Linda S. Knop filed a request to extend for 30 days the comment deadline so that the necessary information to respond to the issues in this proceeding can be assembled.

3. We believe it would be appropriate to extend the deadline for comments in this proceeding so that Ms. Knop can provide information which would be helpful to us in resolving this proceeding. It will also be necessary to extend the reply comment deadline.

4. Accordingly, IT IS ORDERED, that the dates for filing comments and reply comments in BC Docket No. 80–701 ARE EXTENDED to and including January 29, 1981, and February 19, 1981, respectively.

5. This action is taken pursuant to authority found in Sections 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81–1940 Filed 1–16–81; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Chapter V

Five-year Priorities for Motor Vehicle Safety Rulemaking and Research

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Publication of the National Highway Traffic Safety Administration's "Five Year Priorities for Motor Vehicle Safety Rulemaking and Research."

SUMMARY: This document, discussing NHTSA's priorities for motor vehicle safety rulemaking and research, is an update of the similar five year plan published on April 26, 1979 (44 FR 24591). The plan discusses the Agency's rulemaking goals and addresses accomplishments since the last plan. It then describes NHTSA's anticipated rulemaking initiatives on which we expect formal action in the near future. The plan concludes with a discussion of motor vehicle safety related research which the Agency has underway or anticipates intiating within the next five years.

Past NHTSA plans discussed both safety and fuel economy rulemaking. However, fuel economy rulemaking is not addressed in this plan since it is complete for the 1980 to 1985 period, which the plan encompasses. Decisions as to potential fuel economy rulemaking in the post-1985 time frame are pending.

The plan will be updated periodically in response to the dynamic environment in which rulemaking and its research must occur. It is an expression of NHTSA's current intentions, should aid the automobile industry in anticipating NHTSA's priorities for use in developing their own long range corporate plans, and assist the public in understanding what to expect, as part of NHTSA's long-standing involvement of the public in research and rulemaking efforts. The information provided in this plan offers citizens the basis for actively participating in the rulemaking process.

ADDRESS: Interested persons may obtain copies of the plan free of charge by contacting Ms. Eleanor Kitts, Office of Management Services (NAD–42), National Highway Traffic Safety Administration, Room 4423, 400 Seventh Street, SW., Washington, D.C. 20590 (202–426–0874).

FURTHER INFORMATION: For further information about this plan, contact Deborah L. Parker, Special Projects Planning Staff (NPP–30), National Highway Traffic Safety Administration, Room 5212, 400 Seventh Street, SW., Washington, D.C. 20590 (202–426–1570).

(Sec. 9, Pub. L. 89–670, 80 Stat. 931 (49 U.S.C. 1657); sec. 301, Pub. L. 94–163, 89 Stat. 901 (15 U.S.C. 2002); secs. 103,112, 119, 203, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1407, 1423); delegation of authority at 49 CFR 1.50)

Issued on January 5, 1981.

Joan Claybrook,

Administrator.

Update—Five-Year Priorities for Motor Vehicle Safety Rulemaking and Research

This document reflects the National Highway Traffic Safety Administration's current priorities for potentially proposing motor vehicle safety rulemaking and conducting motor vehicle safety research. (More detail can be found in the U.S. Department of Transportation's Regulations Agenda, published semi-annually in the **Federal Register**.) Priorities have been established for the next five years. This document updates the plan published on April 26, 1979 (44 FR 24591). The Agency's objectives in publicly stating and seeking comment on its priorities are two-fold.

- First, to provide policy guidance for use within NHTSA for the possible development and issuance of motor vehicle safety standards.
- Second, to provide the public with information on proposed future activities and priorities, and to permit the regulated industries to anticipate potential requirements in their long-range planning.

Our priorities are presented in three sections. Section I describes NHTSA's rulemaking goals and accomplishments since the April 26, 1979, publication.

Section II describes NHTSA's anticipated rulemaking initiatives along with estimated dates for issuance of proposals, or, where the proposal has already been issued, an estimated final rule date. Although we offer this information to provide the industry and the public with a sense of our timing, it must be recognized that the rulemaking process is a search for a solution to a problem. After consideration of alternatives and the impact of each, the process may or may not lead to a formal rulemaking action.

Section III describes areas where safety problems have been identified and where rulemaking is anticipated later (1982–1985) in the five year period covered by this plan. It further describes the motor vehicle safety related research which NHTSA has underway or anticipates initiating within the next five years. This research supports problem identification; development and assessment of alternative remedies; definition of costs, benefits, and leadtimes for major alternatives; and development of specific countermeasures.

This statement of priorities is intended to be a dynamic document. Just as this document revises the April 26, 1979, version, it is expected that future amendments will occur in response to technological innovations, new accident injury findings, pesistent safety hazards, petitions from the public and industry, changes in Agency resource availability, formal Agency evaluations, or other pertinent information. This document is an expression of the Agency's current intent, that can serve as a guide to the Government's performance. It does not in any way indicate the time frame within which a manufacturer could upgrade the relevant safety performance of its vehicles, as this can always be accomplished more rapidly on a voluntary basis than can be effectuated through government rulemaking activities.

The priorities which follow reflect a careful assessment of the capabilities of the Agency. They include the use of all the funding and staffing resources NHTSA now has available for motor vehicle safety rulemaking and research, appropriately distributed among those areas where the greatest payoff lies. Additional resources would be required to pursue additional areas of safety rulemaking. Although the plan is ambitious in relation to Agency resources, it is anticipated that with efficient and effective management, it can be successfully implemented.

Section I: Rulemaking Priorities

A. *Major Accomplishments Since the April 1979 Draft Plan.*

In performing its mission to improve motor vehicle safety over the last year, NHTSA achieved a number of accomplishments in the areas it had identified as priorities for safety rulemaking; i.e., occupant protection, light trucks and vans, pedestrian safety, braking systems and motorcycles. These include the following major regulatory actions:

1. NHTSA has issued final rules for Federal Motor Vehicle Safety Standards (FMVSS) 201, 203, and 204 for light trucks and multipurpose passenger vehicles (MPV's) under 10,000 pounds Gross Vehicle Weight Rating (GVWR), effective in Model Year 1982.[1] The standards require specific performance in these vehicles for Occupant Protection in Interior Impact, Impact Protection for the Driver from the Steering Control System, and Steering Column Rearward Displacement. Similar standards have applied to passenger vehicles for a number of years, and the application of these to light trucks is necessary because of the recent large increase in their use, particularly for carrying passengers. Last year (1979), this vehicle class had over 7,100 occupant fatalities—an increase of more than 50 percent since 1975. Many of those deaths could have been prevented through the application of standards similar to those now required for passenger vehicles. The three standards cited above are expected to save about 200 lives per year when fully implemented.[2]

2. We have also issued a final rule revising FMVSS 213, Child Restraint Systems, to require the dynamic testing of child restraint systems sold as optional vehicle equipment. The standard took effect beginning January 1981, and applies to child auto seats, harnesses, and other components which vehicle owners purchase to protect their children. The standard covers those restraint systems which fit children from birth to about age 5 years, and establishes minimum performance requirements for reducing the chance of injury and death from both interior vehicle impact and the restraint system itself. If used conscientiously, the restraints meeting this standard could significantly reduce the approximately 1,000 fatalities and 100,000 injuries each year to children ages 0 to 5, resulting from motor vehicle accidents. To encourage and permit the use of child restriant systems in vehicles which might have automatic restraint systems without lap belts or anchorage points for child restraint tethers, we have published an NPRM addressing these issues.

The Agency has also issued two final rules for Part 572, Anthropomorphic Test Dummies: one to include performance standards for the child surrogate dummies used in the dynamic testing of infant restraints and child harnesses, the other to specify the use of triaxial accelerometers for the elimination of calibration problems during compliance testing.

3. The Agency has issued a final rule amending FMVSS 218, Motorcycle Helmets. This amendemnt increases the percentage of helmet sizes covered by FMVSS 218 from 40 percent to over 90 percent by testing large and extra large helmets with the medium (size "C") headform. Prevously, only medium size helmets were covered. Future rulemaking is anticipated to extend the standard to cover headform sizes "A" and "D", to assure all production helmets meet the standard.

4. NHTSA issued both a Notice of Proposed Rulemaking (NPRM) and a Final Rule for FMVSS 105–75, Hydraulic Brake Systems, establishing a brake system performance standard for trucks, buses and MPV's of up to 10,000 pounds GVWR. (Several requirements are also extended to trucks, buses and MPV's with a GVWR greater than 10,000 pounds.) There had not been a standard for the stopping distance performance of these vehicles. This standard requires performance similar to the existing standard for passenger vehicles to assure compatible braking performance throughout the Nation's vehicle fleet. As the number of light trucks and MPV's in the fleet grew because of both utility and popularity, compatible brake performance to prevent rear end collisions became essential. The standard also requires all heavy duty vehicles over 10,000 pounds GVWR using hydraulic brakes to provide a specific braking performance in the event of partial brake system failure. The performance requirements are effective for vehicles manufactured after September 1, 1983.

5. Both the NPRM and the Final Rule have been issued establishing comfort and convenience performance standards for safety belts, applicable to FMVSS 208, 209, and 210 (Occupant Restraints, Seat Belt Assemblies and Seat Belt Assembly Anchorages). The most frequent reasons given by the public for not wearing seat belts and shoulder belts are that they are uncomfortable to wear and inconvenient to use. This occurs because of improper fit to the occupant, pressure exerted by the restraint on the occupant when in place, inadequate clearance for entry and exit without encumberance, and inconvenient mounting locations causing poor access during donning.

This standard, just issued, requires specific mandatory performnance specifications for seat belt and restraint comfort and convenience parameters to ensure that people are not discouraged from using these safety devices. Because

[1] FMVSS No. 204 is limited to vehicles other than passenger cars with an unloaded vehicle weight of 4,000 pounds or less.

[2] Additional agency action to raise the unloaded vehicle weight in FMVSS No. 204 from 4,000 pounds or less to 5,500 pounds or less, may be initiated.

of cost and leadtime considerations and to encourage innovative occupant restraint designs, the Agency will issue additional specifications as performance guidelines. The guidelines will encourage manufacturers to follow several of the procedures proposed but not promulgated as a final rule by the Agency, or to find alternative means to accomplish the same ends. The mandatory requirements are in effect beginning September 1, 1982, for all vehicles under 10,000 pounds GVWR.

6. NHTSA issued a final rule amending FMVSS 121, Air Brake Systems, to require air brake equipped trucks, truck-tractors, and trailers to be manufactured with brakes that act on all wheels. Several truck manufacturers had been considering removing front axle brakes to reduce truck weight and costs, an action which NHTSA test data show could lengthen stopping distances substantially. The amendment, effective July 24, 1980, requires that the industry continue its general practice of having brake systems acting on all wheels.

7. NHTSA issued a final rule amending the Consumer Information Regulation, Part 575, by deleting the requirement that manufacturers supply information on acceleration and passing ability to vehicle first purchasers and prospective purchasers. In deleting the requirement, NHTSA felt that the national interest in energy conservation had substantially reduced the demand for rapid acceleration capability and that the high speed driving permitted by the test procedures appeared to contradict the safety and energy saving policies behind the national 55-mph speed limit. The final rule also moves up the timing of manufacturers' submissions to NHTSA of other vehicle performance data which are provided to the consumer. This benefits the consumer in his or her purchase decisions by making the information available earlier in the model year. Rulemaking to delete those information requirements was initiated in response to a petition from General Motors Corporation.

8. NHTSA recently issued a final rule for improving the theft protection capabilities of motor vehicles by amending FMVSS 114, Theft Protection. The revised safety standard extends the existing passenger car requirements for theft protection to light trucks and MPV's of up to 10,000 pounds GVWR. It also revises the standard to prevent the inadvertent locking of the steering mechanism of a moving vehicle by removal of the ignition key or shutting off the engine. The effective date for passenger cars is September 1, 1982, and for light trucks and MPV's the date is September 1, 1983.

9. A Final Rule for FMVSS 128, Direct Fields of View, was just issued establishing performace requirements for maximum permissible size of obstructions (e.g., roof pillars) in the field of view of the driver, a minimum field of view for the driver through the windshield, and the light transmittance of the windshield. The standard will be effective for Model Year 1985 passenger vehicles.

10. An NPRM has been published proposing that the tire identification number molded on tires be more accessible to the owner. Improved access of the tire identification number would greatly enhance the owner's ability to determine if the tires had been recalled. Currently, the number is placed on the blackwall side of white wall tires and on only one side of the blackwall tires, making the number inaccessible on about 90 percent of the tires. To read the number, the owner would now have to crawl under the car, remove each tire, or have a service station perform either of those tasks. The proposed requirement would eliminate the difficulty of reading the number by requiring that the number be placed on both sidewalls of a blackwall tire and on the whitewall side of a whitewall tire. The improved access would help increase the number of motorists who respond to recall campaigns and thereby reduce the number of motorists who unknowingly continue to drive on potentially unsafe tires.

11. An NPRM was recently published proposing a new safety standard entitled, "Rear Underride Protection" for specifying performance requirements for rear underride protective devices on most trucks and trailers that are over 10,000 pounds GVWR. The standard would reduce the death and injury which occur as a result of vehicle collision and the attendant sliding of the car under the rear ends of trucks and trailers.

12. An NPRM has just been published proposing an amendment to FMVSS 108 to require the installation of a single center, high mounted stoplamp on passenger cars in addition to the stoplamps presently required. The purpose is to reduce rear end collisions by providing a more effective indication to following drivers that the brake had been applied. The amendment is proposed to be effective for Model Year 1984 passenger cars.

13. NHTSA has published an Advanced Notice of Proposed Rulemaking (ANPRM) for updating the requirements of FMVSS 214, Side Impact Protection. Because about one-third of the occupant deaths and life threatening injuries for all vehicles occur from side impact accidents, the opportunity for preventing fatalities and injuries is significant. The upgrade focuses on four major areas: performance criteria for higher levels of occupant protection, extending coverage from just passenger cars to all passenger vehicles under 10,000 pounds GVWR, the upgrading of testing requirements by using a moving barrier to more closely simulate real world conditions, and incorporating some of the safety requirements from FMVSS 206, Door Locks and Door Retention Components. The ANPRM addresses preliminary test requirements for moving barrier impactor tests and suggest potential performance criteria for evaluating the anthropomorphic test dummy response. The test dummy would be the key element in measuring the level of occupant protection.

14. NHTSA issued an ANPRM to consider an amendment to FMVSS 108, Lamps, Reflective Devices, and Associated Equipment, which would improve the noticeability of large commercial vehicles. The purpose of the amendment would be to prevent acidents in which these vehicles are struck by other vehicles in the rear or side, by improving the probability of motorists seeing these larger vehicles. This improved noticeability could be accomplished by better lighting and signalling systems or increased use of reflectorized and fluorescent materials.

Other Accomplishments Since the Previous Plan

1. Public Meetings to Discuss Motor Vehicle Safety

During the past year and a half, NHTSA held over 19 public meetings to discuss various motor vehicle safety related problems and their potential solutions. Early involvement of the public in research and rulemaking efforts is a longstanding NHTSA policy. It offers the public a view of our efforts to improve motor vehicle safety, and the opportunity to actively participate in this process. In turn, it provides NHTSA with a wider range of information, ideas and views than would otherwise occur. Public meetings serve to develop open lines of communication among all people involved in motor vehicle safety and lay the groundwork for a cooperative effort among motor vehicle manufacturers, users, and safety regulators. These meetings have covered a variety of topics including heavy truck safety, vehicle safety technical issues, bumper and consumer information programs, child safety, and motor vehicle safety research study results.

Some of the major meetings are discussed briefly below:

• Heavy Duty Truck Safety Meetings (September 10, 1979 and February 19, 1980) were held to discuss ways of improving safety in designing, manufacturing, operating, and maintaining heavy duty trucks.

• Symposium on Side Impact Protection (January 23, 1980) was held to provide a forum for the exchange of information on side impact protection and to inform the public and industry of the status of the NHTSA rulemaking activities in upgrading side impact protection.

• National Conference on Child Passenger Protection and public meeting on Child Safety and Motor Vehicles (December 10 through 12, 1979) were held to provide a public forum to discuss and broaden NHTSA's knowledge of the hazards that vehicles pose to children, and to determine the possible means for reducing those hazards.

• Seventh International Technical Conference on Experimental Safety Vehicles (June 5 through 8, 1979) was held to exchange information on the development of experimental safety vehicles and progress in the supporting research work.

• Eighth International Technical Conference on Experimental Safety Vehicles (October 21–24, 1980) was held to continue the process of information exchange between countries and manufacturers developing experimental safety vehicles which incorporate advanced systems to satisfy national goals in safety, fuel economy, and vehicle emissions.

• Small Car Safety News Exhibit (August 19, 1980) was held to highlight the serious small car safety problem and the Agency's concern that the growing number of small fuel efficient cars on the Nation's highways will result in sharp increases in fatalities and serious injuries unless significant improvements are made in car safety.

• National Accident Sampling System Advisory Committee Meeting (February 25, 26, 1980) was the initial meeting of 25 nationally recognized highway safety experts gathered to advise NHTSA on the implementation and operation of NHTSA's National Accident Sampling Sytstem. This system was established to provide representative field accident data in support of NHTSA's mission to reduce highway injuries and fatalities through vehicle and highway safety improvements. This initial meeting addressed issues relating to data privacy and release, vehicle identification, accident exposure, and estimation of characteristics of unreported accidents. A second public meeting was held November 17 and 18 to review the program status and make recommendations on data collected, field procedures and analysis.

• International Automotive Rating Symposium (December 9–11, 1980) was held between representatives of the automotive and insurance industries, and various governments, to discuss the past, present, and future of automotive ratings systems for crashworthiness, damageability, and maintainability.

• Quarterly NHTSA/Industry Technical Meetings at which NHTSA answers technical questions posed by the automotive industry and other interested parties on the Agency's safety-related activities and research.

2. Petitions

NHTSA devotes considerable resources responding to petitions from the automotive industry, its suppliers, and other interested parties. These petitions may address the commencing of proceedings on rulemaking, the determination and consequentiality of motor vehicle safety defects, and relief for noncompliance because of inconsequentiality.

Petitions for new or amended standards may address vehicle equipment or may request that performance specifications and test procedures be revised or updated. Petitions receive a technical review by the Agency to assist in determining the likelihood that the requested action will result in a formal Agency response, such as a rule. The review may consist of an analysis of the materials submitted, together with existing Agency information, or additional information collected by the Agency directly or through public meetings.

At the conclusion of the technical review, based on the merits of the case, the Agency determines the likelihood that the action requested will be issued. If there is a reasonable likelihood, NHSTA grants the petition. If not, the petition is denied.

If the petition is granted, a rulemaking proceeding is begun. It does not, however, signify that a rule will necessarily result from the petition. If the petition is in respect to the consequentiality of noncompliance or defect, a proceeding will begin to assess the issues.

a. Responses to Petitions for Rulemaking from the Public and Industry.

This past year, NHTSA has responded to a number of petitions for the commencement of rulemaking. An example of this type of petition was a request from Volvo to permit the retaining of the front seat during side impact tests of vehicles. The manufacturer's position was that the seat could serve as an integral part of the side impact protection system. This petition was granted, and subsequently resulted in an amendment to FMVSS 214, Side Door Strength, which allowed the use of the seats during testing under an alternative test procedure.

When petitions for rulemaking are received, NHTSA may investigate them individually, or if a number are related, may elect to combine them into one rulemaking action. Our investigation on the merits of the petition may result in a denial or grant, and if granted, may further result in the issuance of an ANPRM, an NPRM or a final rule. Additionally, some petitions may be granted in part, and denied in part. As a result of these variables, the following compilation is only a rough guide for showing the level of effort and disposition of the petitions for rulemaking that NHTSA has worked on since the publication of the last plan.

• Granted—12.

• Published rulemaking actions (Rules, NPRM's, ANPRM's)—27.

• Denied—12.

b. Responses to Petitions for Inconsequential Defects or Noncompliance.

Vehicle and equipment manufacturers whose products fail to comply or contain safety related defects of a minor nature, have a statutory right to petition for a determination that the fault is "inconsequential as it relates to motor vehicle safety." A grant relieves the manufacturer of any obligation to notify purchasers and remedy the condition. An example might be a production lot of seat belts which was inadvertently not marked in accordance with Standard No. 209. If the Agency determined the problem was inconsequentially related to motor vehicle safety, it would grant the petition for exemption. The compilation below shows the disposition of petitions for inconsequence addressed since the last plan:

• Granted—8.

• Denied—12.

B. Motor Vehicle Safety

This section discusses the vehicle environment and trends which will affect the health and safety of motor vehicle occupants. It is followed by a section which describes NHTSA's response to these safety problems.

Motor vehicle traffic crashes claimed over 51,000 lives in 1979, or almost 140 lives every day of the year. This represents about one-half of the deaths due to all types of accidents in the United States, and constitutes a major

public health problem of epidemic proportions. The motor vehicle death rate is comparable to the typhoid and diptheria death rates of the early 1900's. Motor vehicle accidents are the sixth leading cause of death in the Nation, exceeded significantly only by cancer, heart disease, and stroke, and the leading cause of death for Americans age 44 and under. One of every 40 infants born today will die in an auto-related crash.

But fatalities are only a part of the problem. Injuries and their debilitating effects are another part of the toll on society. Approximately 2 million people suffer disabling injuries each year and millions more are injured less severely. Two of every three infants born today can expect to suffer a vehicle related injury in their lifetime. Vehicle crashes are the single most common cause of paraplegia and a major cause of epilepsy.

The societal loss due to these accidents is estimated to be more than $50 billion per year, a sum that does not begin to show the magnitude of the cost since it is impossible to place a true dollar value on life or to quantify the cost of pain and suffering. Highway crashes rob this Nation of significant productive working years of their victims. Because the average age of a motor vehicle fatality victim is only 34, compared to about double that for the leading causes of death—cancer, heart disease, and stroke—the "work years" lost by such victims is tremendous—more than 1.5 million person years annually. And this figure does not include lost work time for the millions who are injured.

With the increase in small car sales, motor vehicle crashes may become an even more serious problem unless appropriate actions are taken to ensure adequate levels of occupant protection. The full implementation of automatic restraint systems is expected to reduce significantly this hazard confronting the motoring public. The automatic restraint standard, FMVSS 208, Occupant Restraint Systems, is the first safety standard to require the measurement of occupant injury levels as a performance requirement for improved safety. Because of the standard, it is estimated that between 10,500 and 13,600 lives would be saved annually by the early 1990's. NHTSA is following closely the progress of the manufacturers and suppliers in responding to the automatic restraint system rule and will be evaluating the effectiveness of their production systems. The Agency has proposed a plan to evaluate automatic restraint systems and FMVSS 208 during the period 1980–1986. The plan, "Evaluation Plan for Motor Vehicle Safety Standard 208, Occupant Crash Protection," was announced in the October 22, 1979 **Federal Register** (44 FR 60771), and covers passenger automobiles built with automatic crash protection both prior to and after the standard's effective dates.

Unfortunately the need for improved safety continues to grow. The highway and vehicle environment is changing, and new problems are emerging. The number of people killed annually has increased in each of the past 5 years. Motor vehicle deaths rose to approximately 51,000 in 1979, and may exceed 52,500 in 1980. For 1979, this is an increase of more than 6 percent from the 1977 figure of 47,800. The increase occurred despite a decrease in overall travel that resulted from gasoline shortages and substantial price increases.

One of the reasons for this upward trend in fatalities is the increase in the number of lightweight passenger cars and heavy trucks on the roads creating a greater risk for occupants of the smaller automobiles. There are also more occupants at risk as a result of the greater number of light trucks and vans which are increasingly used for passengers, and a signficant increase in heavy trucks in the last 5 years. These are not subject to many of the safety requirements applicable to passenger cars. Motorcycle safety continues to be a serious problem, particularly for motorcyclists who do not wear protective helmets. In the last four years, 28 States have repealed or weakened their helmet use laws. Over the same time period, annual motorcyle fatalities have gone up by more than 50 percent.

Fortunately, progress in motor vehicle safety techology to prevent and mitigate the annual loss of lives, limbs and livelihood is advancing. And due to improved accident data and NHTSA's growing ability to analyze the accident environment, we now better understand highway losses and what can be done to reduce them. Equally important has been the agency's work in integrating many vehicle systems and subsystems into specific vehicles which meet the goals of safety and fuel economy. The agency's production of the Experimental Safety Vehicle (ESV) has shown that small, fuel-efficient cars that are also safe are well within the state-of-the-art. The subsequent Research Safety Vehicle (RSV) Program continued this work in demonstrating what is possible in safety, integrated with fuel economy, low emissions, and comfort features people want in a family car. The RSV has shown extraordinary safety performance in front and side crashes up to 50 mph.

C. Rulemaking Approach

The challenge now facing the Agency is to address those areas and vehicles where the promulgation of Federal Motor Vehicle Safety Standards would significantly enhance the safety of the public. In some areas, where there exists a serious safety hazard as well as a clear solution or reasonable chance of developing a solution to that problem, the rulemaking process can be initiated quickly. On the other hand, where certain types of deaths and injuries are occurring but solutions are not readily apparent, research is required. Even where solutions may be available, research may be necessary to characterize the cause of the harm with sufficient precision that an objective performance standard to reduce the injuries can be established. In other cases, innovative suppliers have developed remedies which make it possible for the Agency to move more quickly.

Of course, as part of each rulemaking initiative and consistent with the Administration's emphasis on regulatory reform, the Agency will continue its efforts to analyze alternative technical and non-technical solutions to each safety problem, including their costs, benefits, economic and employment impacts, to assure maximum benefits and minimum burdens to the industry and to consumers.

The Agency's safety program is not restricted to vehicle safety regulation, but includes driver safety improvements as well. The most cost effective combination of traffic and vehicle safety program elements is always being sought by the Agency. Each program element must meet the same stringent tests of cost-effectiveness. For example, the Agency's traffic safety programs aimed at improved driver performance are evaluated along with programs for vehicle improvements. Standards for vehicles are adopted when they promise to be more effective in preventing death and injury than can be expected from attempts to modify human behavior. But the important point to bear in mind is that a multifaceted approach must be undertaken if there is to be an effective reduction in highway deaths.

Consumer information is another major approach NHTSA is exploring. The Agency's New Car Assessment Program, initiated in 1979, is being carried out under Title II of the Motor Vehicle Information and Cost Savings Act. This Act requires NHTSA to

develop and publish comparative ratings for cars by make and model in three categories: crashworthiness, damageability, and ease of diagnosis and repair. In addition to establishing a foundation for a crashworthiness rating system, the purpose of the New Car Assessment Program is to increase consumer awareness of automotive safety. With better information consumers could choose safer vehicles, and competition to satisfy consumer demand could result in improved levels of automotive safety. We view this approach as a supplement to, and not a substitute for, vehicle regulation.

The Agency's safety regulations have been a major factor in the decline of the fatality rate over the last decade. Based on a General Accounting Office procedure, NHTSA estimates that its safety standards have saved approximately 73,000 lives through 1980. In addition, automotive safety regulations has a strong positive economic impact on society as well as individuals and families. Regulatory related costs are moderate compared with the spending on comfort and convenience automobile options, and when compared with the societal cost of failing to require reasonable safety measures. In addition, since the Agency issues performance standards rather than design standards, there is a variety of ways a manufacturer can comply with the regulations. Since the manufacturer determines how it will comply, the manufacturer exercises significant control over the actual costs of regulation.

The Agency's estimate of the average price to consumers of the safety features contained in a model year 1979 automobile is only about $250–$300. The basis for this estimate is described in the NHTSA report, "The Contributions of Automobile Regulation," December 1979. Over the last seven model years, only two percent of the price increases of new automobiles can be attributed to changes to meet Federal safety standards. The source of data for this figure is the information on the costs of implementing NHTSA regulations which the manufacturers themselves have provided to the Bureau of Labor Statistics. Furthermore, our planning and regulatory analyses are helping to ensure that our regulatory program will be responsive to highway loss needs, and the realities of industry and consumer economics.

D. NHTSA's Planned Vehicle Safety Emphasis

NHTSA expects to have a significant effect on safety through its potential rulemaking initiatives which are spelled out in this Five Year Plan. Several major safety problems have been identified for which reasonable technological countermeasures appear to be available. The following are the major potential rulemaking initiatives for near term action which are expected to begin saving lives and preventing injuries in the mid 1980's.

Side Impact Protection.—Nearly 10,000 people are killed and several hundred thousand disabled in side impact crashes each year. Improved vehicle side impact performance could significantly reduce the safety hazard in this crash situation. This standard will be the second safety standard, after the Occupant Restraint standard, to require performance as measured by occupant injury levels.

Pedestrian Protection.—Each year about 130,000 people are struck by motor vehicles and about 8,000 are killed. Soft (foam filled) front bumpers are now in production in the automobile industry, and offer potential for reducing pedestrian fatalities if properly optimized.

Automatic Frontal Crash Protection for Light Trucks and Vans.—Each year over 3,000 people are killed in light truck and van frontal crashes. The extension of FMVSS 208, Occupant Crash Protection, to cover these vehicles is contemplated by issuance of a Notice of Proposed Rulemaking in 1981.

Heavy Truck Brakes.—The 54 percent increase in deaths of heavy truck occupants since 1975 has been accompanied by a 53 percent increase in fatalities in other vehicles involved in crashes with heavy trucks. NHTSA believes that rulemaking to improve brakes on heavy trucks is clearly needed for improved accident avoidance performance. However, in view of the recent court decision to eliminate some aspects of FMVSS 121, Air Brake Systems until further work is done by the Agency, NHTSA is conducting further research on performance and reliability characteristics before carrying out major rulemaking to improve truck braking performance. The initial step is to establish a new stopping distance requirement with a Notice of Proposed Rulemaking planned for 1981.

Rulemaking beyond the mid 1980's will to a large extent be based on research currently underway in the Integrated Vehicle Systems Research Program. Vehicles developed under this program will demonstrate if the technology exists to allow for the mass production of vehicles that provide higher levels of crash protection, greater fuel economy, and lower emission levels, and are acceptable to the public in terms of price, style and comfort.

NHTSA is also contemplating amending its existing occupant protection standards into overall performance standards. These overall performance standards, called the "400 Series" of Motor Vehicle Safety Standards, are being designed as a total system concept that would provide minimum occupant protection in frontal, side, rear and rollover crashes through crash performance standards which measure occupant injury levels. Passenger cars, light trucks, and MPV's would be covered. The "400 Series" will come as close to being a totally integrated performance standard as is possible to achieve with the present state-of-the-art. The Automatic Restraint Standard, FMVSS 208, is a step in the direction of overall performance standards. FMVSS 208 does not regulate vehicle components but rather sets safety performance requirements directly for the vehicle occupant by means of injury criteria as measured on an anthropomorphic dummy. Maximum acceptable injury criteria are specified in FMVSS 208 for various types of accident modes. the planned upgrade of FMVSS 214, Side Door Strength, to increase side impact protection is another step in this same direction toward overall performance standards based on injury reduction requirements.

Section II: Rulemaking Initiatives

Rulemaking initiatives describe areas where a course of action taken by NHTSA to resolve a safety problem usually leads to the issuance of a rule, when there exists both sufficient evidence of the problem and a cost effective solution. A rulemaking initiative typically begins as the result of a petition to NHTSA for action on a particular safety problem or from the identification of a safety problem in NHTSA's anticipated rulemaking efforts.

The issuance and effective dates shown below are estimates based on the Agency's best judgment at the time this Plan was prepared. The indication of a date for a final rule does not necessarily mean that a rule will be issued. The Agency may alternatively decide on that date not to issue any rule.

A. Crash Avoidance Rulemaking Initiatives

Vehicle crashes can be avoided in a number of ways, including better highway engineering, driver improvement, and improvements in the vehicle itself. Crash avoidance rulemaking addresses the safety performance characteristics of the vehicle and its components, such as

braking, handling and stability, tires and wheels, lamps and reflectors, and other features that enable the vehicle to be driven in a safe and efficient manner.

FMVSS 108: Lamps, Reflective Devices, and Associated Equipment (High Mounted Brake Lamps)

NPRM 1981 (Issued)

Rule 1981

Effective model 1984

A recent study has shown that rear-end accidents were reduced by more than 50 percent on taxicabs equipped with a separate high-mounted brake light. This finding has been verified by another study of American Telephone and Telegraph Company, Inc., fleets also using high mounted brake light. FMVSS 108 would be amended to require a separate high-mounted brake light on all passenger vehicles to ensure that following drivers would be provided a more effective indication that the brakes had been applied. Three alternative requirements were proposed to accommodate the placement of the lamp by manufacturers. The final rule would adopt one of those or a modification of one.

FMVSS 108: Lamps, Reflective Devices, and Associated Equipment (Headlamp Retaining Ring)

NPRM 1981

The standard would be amended to delete the dimensional specifications of headlamp retaining rings. (This initiative results from a petition from Toyota.)

FMVSS 108: Lamps, Reflective Devices, and Associated Equipment (Modify Reflex Reflector Tests for Rear Lamps)

NPRM 1981

The standard would be amended to permit manufacturers to use a different test parameter than originally specified, while still keeping the original photometric performance requirements. (This initiative results from a petition from the Motor Vehicle Manufacturers Association.)

FMVSS 108: Lamps, Reflective Devices, and Associated Equipment (Heavy Duty Vehicle Conspicuity)

ANPRM 1980 (Issued)

NPRM 1982

The standard would be amended to require improved lighting and conspicuity performance for heavy duty vehicles to reduce the probability of rear and side collisions.

FMVSS 109: Pneumatic Tires for Passenger Cars (Delete Tire Tables)

NPRM 1980 (Issued)

Rule 1981

Effective 1982

This initiative is designed to reduce the regulatory burden by deleting the tire tables of Appendix A from the standard. The tire industry presently compiles and publishes the same information as the tire tables, and the deletion of the table would reduce redundancy and permit faster introduction of new tires sizes and designs, such as those for improved fuel economy. (This initiative results from a petition from the Michelin Tire Corporation.)

FMVSS 110: Tire Selection and Rims, Passenger Cars (Tire Reserve Load)

NPRM 1981

This initiative would require a minimum tire reserve load for all vehicles covered by the standard.

FMVSS 111: Rearview Mirrors (Update)

NPRM 1978 (Issued)

Rule 1981

Effective Model 1984

This update would require that drivers of all vehicles under 10,000 pounds GVWR, including motorcycles, be able to see specified percentages of target areas directly behind and on either side of the rear of the vehicle, and require that outside mirrors meet breakaway or foldaway requirements to reduce pedestrian injuries.

FMVSS 111/128: Fields of View (Heavy Duty Vehicles)

NPRM 1978 (Issued)

NPRM (Revised) 1982

This effort would address blind spots, improvements in mirror systems including the use of heated mirrors, and provide specifications for visibility of ground surface targets for both front and rear fields of view, for vehicles over 10,000 GVWR.

FMVSS 120: Tire Selection and Rims, Non-Passenger (Rim Marking)

NPRM 1979 (Issued)

Rule 1981

These amendments would clarify existing requirements and resolve some technical problems in labeling, used tire selection, and rim size designation. It will also clarify references to standards from other organizations.

FMVSS 121: Air Brake Systems (New Stopping Distances, Technical Amendments)

NPRM 1981

High speed stopping distance requirements were dropped as a result of the court decision on the enforceability of various sections of FMVSS 121. This initiative would establish new stopping distance requirements in accordance with NHTSA research and the mandate of the court, and without the prohibition of wheel lockup during testing which is being considered in a separate longer term rulemaking. Several other minor technical issues would also be addressed.

FMVSS 128: Direct Fields of View (Light Trucks, MPV's and Buses)

NPRM 1978 (Issued)

Rule 1981

This rule would specify requirements for light trucks, MPV's, and buses by (1) limiting the extent to which vehicle structures obstruct the driver's line of sight, (2) improving night-time visibility by specifying light transmission performance, and (3) specifying viewing area through windshields.

FMVSS (New): Battery Explosion

NPRM 1981

This initiative would provide requirements to insure battery safety by reducing the likelihood of battery explosion from lead acid batteries in all vehicles.

FMVSS (New): Hydraulic Brake Systems (Brake System Inspectability)

NPRM 1981

This initiative would require that brake system components such as pads and shoes be capable of being inspected without removal of the vehicle's wheels or brake drums. This will promote easier and more frequent inspection and reduce the likelihood of brake failure and degradation.

FMVSS (New): Low Tire Pressure Warning

ANPRM 1981

This initiative would require the installation of a low tire pressure warning device on all passenger cars, trucks and buses which would warn when tire inflation pressure drops below recommended levels. The initiative would also specify minimum performance for these devices.

Tire Identification and Record Keeping, Part 574

NPRM 1980 (Issued)

Rule 1981

Part 574 would be amended to provide for tire identification on the tire outside sidewall. (This initiative results from a petition from the Center for Auto Safety)

Consumer Information Regulation, Part 575 (Uniform Tire Quality Grading Standards)

NPRM 1981

This initiative would include rolling resistance for tire as a criterion in the Uniform Tire Quality Grading Standards. Because there is a correlation between the rolling resistance of a tire and the energy it consumes in rolling, publication of tire rolling resistance information would assist tire purchasers in choosing tires to increase the fuel efficiency of their vehicle.

Consumer Information Regulation, Part 575 (Vehicle Stopping Distance)

NPRM 1981

This initiative would amend Part 575 by adding a wet stopping distance requirement.

B. Crashworthiness Rulemaking Initiatives

NHTSA's crashworthiness rulemaking program is directed at reducing injuries and fatalities through vehicle performance requirements which provide occupant protection in a motor vehicle crash. These vehicle performance requirements encompass occupant protection, vehicle structures, biomechanics and anthropomorphic devices, and pedestrian protection.

FMVSS 205: Glazing Materials (Update of technical references)

NPRM 1981

The existing standard would be upgraded to reference the 1977 edition of the American National Standards Institute (ANSI) Safety Code for Safety Glazing Materials for Motor Vehicles Operating on Land Highways, and the performance requirements for bullet resisting glazing will be modified. (This initiative results from petitions form Rohm and Haas, General Electric, and the Society for Automotive Engineers.)

FMVSS 205: Glazing Materials (Anti-laceration Safety Shield)

ANPRM 1981

NPRM 1981

FMVSS 205 would be amended to permit the use of a plastic laminate on the interior surface of the vehicle's windshields as an anti-laceration safety sheild. The current standard specifies abrasion and chemical resistance requirements which plastics cannot now meet. This issue needs to be resolved before an amendment is issued. (This initiative results from a petition from Saint-Gobain Vitrage.)

FMVSS 205: Glazing Materials (Abrasion resistance)

Rule 1981

Rule Effective on Day of Issuance

This amendment would delete abrasion resistance performance for vehicle glazing locations which do not require driving visibility. (This initiative results from petitions the California Highway Patrol, PPG Industries and the Speciality Equipment Manufacturers Association.)

FMVSS 206: Door Locks and Retention Components (Transverse Rear Doors)

NPRM 1981

This amendment would extend applicability of the present FMVSS 206 to cover transverse rear doors; e.g., those on hatchback passenger cars. Existing 206 test procedures will also be clarified.

FMVSS 208: Occupant Crash Protection (Light truck applications of automatic restraints)

NPRM 1981

The automatic restraint requirements would be extended to light trucks, vans and multi-purpose vehicles under 10,000 pounds GVWR.

FMVSS 209: Seat Belt Assemblies (Update ASTM References)

NPRM 1981

This initiative would update the standard by citing the current American Society of Testing Materials' (ASTM) specifications.

FMVSS 209: Seat Belt Assemblies (Modify resistance to light procedure)

NPRM 1980 (Issued)

Rule 1981

Effective 1981

This amendment would remove the bias against polyester material in the resistance to the light test procedure in the standard. (This initiative results from a petition from the Narrow Fabrics Institute.)

FMVSS 210: Seat Belt Assembly Anchorages (Tether anchorages for child restraints)

NPRM 1980 (Issued)

Rule 1981

FMVSS 210 would be amended to include provisions for tether anchorages for rearmost seating positions in all passenger vehicles under 10,000 pounds GVWR, and provisions for anchorages for the convenient installation of child restraint attachments in passenger seats equipped with automatic belts not suitable for attachment of child restraints.

FMVSS 214: Side Door Strength (Side impact protection upgrade)

ANPRM 1979 (Issued)

NPRM 1981

FVMSS 214 would be amended to upgrade performance and to introduce a moving barrier compliance test. Requirements would be based on dummy performance and would include occupant protection and possibly compartment integrity and ejection criteria. Applicability would be to passenger cars, light trucks, and multi-purpose passenger vehicles.

FMVSS 218: Motorcycle Helmets (Upgrade to all sizes)

NPRM 1981

The existing standard requires compliance testing for only those production helmets which can be placed on a size "C" headform, regardless of the size of the helmet. FMVSS 218 would be amended to permit the use of the additional size "A" and "D" headforms for compliance testing. The effect would be that all sizes of production helmets would be required to be tested for compliance.

FMVSS 222: School Bus Passenger Seating (Activity Buses)

NPRM 1981

FMVSS 222 would be amended to permit seating on school activity buses to be spaced farther apart for greater passenger comfort on long distance and special activity trips.

FMVSS (New): Pedestrian Impact Protection

NPRM 1981

This possible standard would require appropriate modification to passenger car bumpers to reduce the severity of pedestrian impact injuries.

FMVSS (New): Truck Rear End Underride Protection

NPRM 1980 (Issued)

Rule 1981

Effective: Proposed for September 1, 1983

The standard would require protective devices to reduce injuries to occupants of passenger cars and other small vehicles caused by impact into and penetration under the rear-ends of heavy trucks and trailers during truck rear-end accidents.

Part 572: Anthropomorphic Test Dummies (Adult Dummy for FMVSS 214: Side Door Strength, Impact Protection Upgrade)

NPRM 1981

The standard would provide performance criteria for the adult surrogate dummies which would be required in dynamic testing of vehicles if FMVSS 214, Side Door Strength, is upgraded.

New Car Assessment Program

NPRM 1981

This initiative would require automobile manufacturers to disclose 35 mph frontal crash test performance results for their cars.

Section III: Anticipated Rulemaking (1982–1985)

In addition to the research carried out in direct support of the regulations described in Section II, research efforts are also being undertaken in high priority areas where a specific rulemaking schedule has not yet been established. This investigative work is performed by collecting and analyzing data to verify pressing safety problems; conducting research, engineering development, tests, demonstrations and evaluations of vehicle safety improvements; and then defining the most promising performance oriented solutions, considering both progress in motor vehicle technology and the impacts of potential solutions on the public, the industry, and the nation.

As general support for potential and existing vehicle standards, NHTSA carries out the following activities: development and implementation of computer programs and simulations depicting crash scenarios, vehicle dynamics, and crash avoidance capabilities; standards maintenance and responses to petitions which require research to stay abreast of advancing automotive technology; applied research to advance the state-of-the-art in automotive technology; cost, weight and leadtime analyses to support development of cost effectiveness analyses; and special research projects to develop quick reaction responses to critical problem areas.

The research described in this section does not involve the design of vehicles or vehicle components; this is left to the manufacturers. The emphasis is on the design of tests to determine the level of protection needed and feasible, to measure the performance of the industry-designed safety improvements in alleviating known safety problems, and to provide quantitive estimates of safety payoff. This research is expected to lead to rulemaking in the areas shown below in the 1982–1985 period.

A. Passenger Cars, Light Trucks and Multipurpose Passenger Vehicles under 10,000 Pounds GVWR

1. *Crashworthiness. Pedestrian Impact Protection.* The pedestrian impact rulemaking initiative described in Section II would modify passenger car bumper areas. As a complement to that activity, NHTSA will direct research at the pedestrian safety effects of modifying hood edges and surfaces and windshield headers. The critical need here is to develop a human surrogate which can accurately measure human injuries under pedestrian impact test conditions.

Interior Impact Protection. Current restraint systems do not adequately fit children ages 4 through 12. Research will be performed to determine potential improvements to the safety effectiveness of various types and combinations of restraint systems. Greater protection is also needed for unrestrained children who impact the lower surfaces of the instrument panel and seat backs and NHTSA will research the available means of protection to determine their feasibility and cost-effectiveness. Additional research is being done on the performance of steering columns to determine methods of improving driver impact protection during accidents where the front of the vehicle is hit at an angle.

Occupant Protection Upgrade: "400 Series". The 400 Series will take a systems approach to occupant crash protection, permitting vehicle manufacturers wide latitude in designing the vehicle interior and structure as long as the occupant injury criteria are met. The 400 Series integrates a major portion of the existing crashworthiness standards into a set of comprehensive performance standards along with an upgrade in performance levels. The standard will address all crash modes (frontal, side, rear, rollover) for passenger cars, light trucks, and vans. NHTSA is developing both advanced human surrogates (dummies) and advanced compliance tools (barriers) to better simulate different crash modes. Demonstration vehicles will also be developed as part of the project to identify, test, and evaluate the technical and economic feasibility of various proposals.

2. *Crash Avoidance. Brakes.* The braking system is probably the most critical of all safety systems found in a car. Because of the high safety payoff of reliable and effective braking systems, NHTSA continually seeks to advance technological applications. Automatic warning and actuation systems (radar braking) appear to hold promise in preventing accidents. NHTSA's research will focus first on determining the cost-effectiveness of the system and, as a next step, on developing performance specifications and compliance test procedures. Another research focus is on long-life brakes, particularly to develop accurate and repeatable test procedures for brake lining wear performance.

Tires. NHTSA currently has no traction performance standard, although new tires are graded for traction along with treadwear and temperature resistance. Since traction and treadwear are to a large extent inversely related, consumer interest in high treadwear could possibly result in degradation of traction performance. NHTSA is monitoring traction performance to keep apprised of any possible degradation of traction levels and to determine if a standard is needed to prevent such degradation. Other tire research focuses on radial tire performance since FMVSS 109 (New Pneumatic Tires) as currently written does not address certain problems uniquely associated with radial tires, such as tread separation. The research will focus on defining performance specifications for radial tire safety.

Controls and Displays. NHTSA will assess the safety effects of standardized control and display locations on the instrument panel that will enable drivers to quickly locate and operate critical displays and controls used when the vehicle is being driven. Also, the use of multifunctional stalk controls mounted on the steering columm will beresearched, by using human factors engineering to determine how many controls and modes of operation can be safely used.

Lighting. Because adequate lighting of the roadway is so important to safe nighttime driving, improvements in vehicle headlamps may do much to reduce accidents at night. The low

beam, used for most night driving, has been studied to determine likely performance improvements which would help increase visibility without adding undue glare. The high beam photometrics have just recently undergone performance improvements through an upgrade in the standard. In studying improvements in headlamp photometrics, it is our intention to develop an internationally acceptable headlamp beam specification to promote international harmonization and its consequent economies through standardization. Headlamp research is also being performed as a result of petitions requesting more headlamp configurations for styling purposes, and for the use of plastic as a headlamp construction material for fuel economy weight reduction.

Handling and Stability. Analyses of accident data show that light duty vehicles pulling trailers are overrepresented in accidents. The most commonly stated causes for these accidents are wind gusts and passing vehicles. NHTSA is conducting research on the aerodynamics of light duty vehicle-trailer combinations to determine the nature of this problem and to then generate solutions.

Electromagnetic Interference. Past experience with vehicular electronic systems has shown that they may be subject to malfunctions as a result of electromagnetic interference. To assure that systems such as antilock brakes, air cushion restraint controls, and drivetrain controls remain reliable and safe, NHTSA is conducting research on their electromagnetic compatibility with the automotive environment.

B. Motorcycles/Mopeds

1. *Rider Protection.* Accident analyses have shown that the crash bars currently on the market have significantly variable protection performance, in some cases causing rider injuries. Data also show that fuel spillage in motorcycle accidents occurs much more often than for other vehicles and consequently the potential for fire is greater. Therefore, NHTSA will research the potential for improved rider leg protection through performance requirements for crash bars, and the potential of fuel system integrity countermeasures to prevent fires in accidents.

2. *Crash Avoidance. Brakes.* In-use motorcycle braking performance depends greatly on the skill and experience of the rider. However, skill and experience deficiencies can be compensated for in part by the use of antilock brake systems, because these systems prevent wheel lockup and avoid the consequent loss of stability and steering control. Prototypes of these systems will be tested to determine their characteristics, performance, and level of overall motorcycle performance improvement. NHTSA is also performing research to improve the current motorcycle brake systems standard compliance test procedure.

Lighting. The motorcycle headlamp has offered only limited visibility compared to automobile headlamps. Recent allowances for the use of higher power European type lamps have helped improve the situation for some riders. However, improved lighting is not available for many motorcycles because of the vast array of non-standardized headlamp sizes. Because reliable and adequate roadway illumination is so important for motorcycles, NHTSA is performing research on improvements for both the photometric and physical characteristics of motorcycle headlamps.

Other. Data analyses will be performed to determine whether users of large displacement motorcycles have higher rates of injury than users of smaller size motorcycles.

C. Electric, Hybrid and Restricted Performance Vehicles

These types of vehicles are presently being built by various manufacturers and tested for performance by the Department of Energy (DOE). These vehicles may be the beginning of a new generation of transportation. To assure that crashworthiness and crash avoidance safety features are being properly considered, NHTSA, in cooperation with DOE, will be performing safety research experiments on these vehicles.

1. *Crashworthiness.* Vehicle studies and crash tests will be performed to determine safety hazards unique to electric vehicles, such as electric shock, fire hazard, retention of batteries, and spillage of electrolyte, in an effort to prevent the introduction of any new hazards to the vehicular environment.

2. *Crash Avoidance.* Evaluation of existing motor vehicle safety standards will be performed to assure that they are appropriate when applied to electric and hybrid vehicles, and a review will be undertaken to determine the impact which Restricted Performance Vehicles will have on urban highway safety.

D. Heavy Duty Vehicles

1. *Crash Avoidance. Brakes.* The high speed stopping distance and no-wheel-lockup requirement provisions of FMVSS 121, Air Brake Systems were invalidated by a Federal court. The court questioned the reliability of the hardware used by manufacturers in complying with the regulation. The court said that the requirements could be reestablished, but the safety and reliability of the components used for the requirements would have to be verified. Consequently, NHTSA is performing a field testing program to gather data on component reliability and the stopping and stability performance of air brake systems. Longer term research goals on heavy duty vehicle brake systems are to provide better performance capabilities and improvements to lateral stability to reduce stopping distances, improve reliability and reduce loss of vehicle control. Another area of research addresses the level of added braking capability afforded by engine and driveline retarders, especially for vehicles operating in mountainous regions, where vehicle runaway accidents are so disastrous. The use of retarders may significantly improve the safety in these situations. In addition, NHTSA is gathering information to more fully understand problems in heavy duty vehicle handling, as related not only to braking but also to alternate vehicle configurations and loading practices.

Tires. Heavy duty vehicle tires do not now have traction performance requirements. To improve the stopping and handling capability of heavy duty vehicles, tire traction is being examined to determine the current levels of traction available, and how they affect overall vehicle performance. Efforts will then focus on developing a traction measuring methodology, and on the feasibility of setting a minimum traction standard.

Controls and Displays. Existing controls and displays in heavy vehicles will be evaluated for factors of commonality, convenience and safety. A human factors study will then be performed to recommend standardized control and display configurations.

Splash and Spray. Visibility reduction from the splash and spray of heavy duty vehicles operating on wet roads has been cited as the cause of many accidents. NHTSA is reviewing the performance characteristics of various splash and spray reduction devices, as well as researching their cost-effectiveness.

Defrosters and Wipers. While heavy duty vehicles are required to have windshield wipers and defrosters, there is no performance standard for them. Because adequate visibility is so important to safe driving, windows must remain clean and clear; this is especially important for heavy duty vehicle operators relying on mirrors visible only through side windows. NHTSA will

study the need for and feasibility of minimum performance standards for assuring that adequate visibility is maintained by the required defrosters and wipers.

Truck Ride Quality. Poor truck ride quality is cited by heavy duty vehicle operators as a significant cause of driver fatigue which can have dire safety consequences, and also bring about health problems. In view of the authority of the Occupational Health and Safety Administration to deal with health problems, NHTSA is concentrating mainly on the safety rather than the health aspects of poor ride quality in its research efforts. Research will determine the extent of the safety problem and potential solutions.

Multi-Piece Wheels. Multi-piece wheel rim assemblies, which are found on the majority of domestically produced heavy trucks and buses, are subject to failure through explosive disassembly, resulting in a serious safety hazard. The problem causing the failure is usually improper assembly of the unit. NHTSA is exploring means of mitigating the problem through options such as positive locking indicators assuring proper assembly, or the manufacture of single piece rims.

2. *Crashworthiness. Truck and Bus Crashworthiness/Aggressiveness.* Presently there are no standards governing the crashworthiness of heavy trucks, although heavy truck occupant fatalities represent a disproportionately large share of fatalities in the commercial driver occupation. NHTSA is studying the crashworthiness and aggressiveness characteristics of heavy duty vehicles to determine those crash scenarios that could be effectively addressed by applying occupant protection techniques, such as padding, improved restraint systems, improved door latching and retention, and windshield retention. The research is designed to determine those techniques which would yield a significant improvement with minimal cost impact.

Fuel System Integrity. Accident data show an increasing trend of fires in heavy duty vehicle accidents. Information from the Bureau of Motor Carrier Safety (BMCS) and other sources will be reviewed to determine the nature of this increased hazard and whether there is need for upgrading the existing fuel system integrity requirements now administered by BMCS.

Seat Belt Comfort and Convenience. As occurs in passenger cars and light trucks, users of heavy duty vehicle seat belts and restraints complain that the devices are uncomfortable and inconvenient to use. For example, seat belts in the truck environment tend to get very dirty; the operator, in turn, stops using the restraint because it soils his or her clothes. NHTSA plans to study the comfort and convenience aspects of heavy duty vehicle restraints in an effort to find ways to improve them and, in turn, bring about greater restraint usage.

[FR Doc. 81-1675 Filed 1-13-81; 4:09 pm]
BILLING CODE 4910-59-M

---

49 CFR Part 531

[Docket No. LVM 77-01; Notice 5]

Passenger Automobile Average Fuel Economy Standards; Proposed Decision To Grant Exemption

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Proposed decision to grant exemption from average fuel economy standards and to establish alternative standards.

SUMMARY: This notice is being issued in response to a petition by Avanti Motors Corporation (Avanti) requesting that it be exempted from the generally applicable average fuel economy standards of 19.0 miles per gallon (mpg) and 20.0 mpg for 1979 and 1980 model year passenger automobiles, respectively, and that lower alternative standards be established for it. This notice proposes that the requested exemptions be granted and that alternative standards of 14.5 mpg and 15.8 mpg be established for those model years.

DATE: Comment closing date: March 5, 1981.

ADDRESS: Comments on this notice must refer to Docket No. LVM 77-01 and should be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, SW, Washington, D.C. 20590. The Docket Section is open to the public daily Monday through Friday from 8:00 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Robert A. Mercure, Office of Automotive Fuel Economy Standards, National Highway Traffic Safety Administration, Washington, D.C. 20590 (202-755-9384).

SUPPLEMENTARY INFORMATION: Section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended (the Act), provides that a low volume manufacturer of passenger automobiles may be exempted from the generally applicable average fuel economy standards for passenger automobiles if those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if the National Highway Traffic Safety Administration (NHTSA) establishes an alternative standard for the manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one which manufactures fewer than 10,000 passenger automobiles worldwide in the model year for which the exemption is sought (the affected model year) and which manufactured fewer than 10,000 passenger automobiles worldwide in the second model year before the affected model year. In determining maximum feasible average fuel economy, the agency is required by section 502(e) to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

Requested alternative standards. In its petition, Avanti requested that its alternative standard for the 1979 model year be set at 16.1 mpg and that its 1980 standard be set at 17.1 mpg. Avanti provided later information showing that it would actually achieve a fuel economy of 14.5 mpg in the 1979 model year, but that its 1980 average fuel economy would rise to 15.8 mpg. The company asked that this information be considered by NHTSA in establishing its alternative standards. In evaluating these requests and in setting today's proposed alternative standards, NHTSA has employed the methodology described below.

Methodology used in setting alternative standards. The methodology used in this exemption differs in some respects from that typically used in the promulgation of generally applicable average fuel economy standards. Generally, the agency begins formulating those standards several years in advance of the model years in which they will apply. When establishing standards in advance of the affected model years, the agency must first select a baseline model year for which Environmental Protection Agency (EPA) fuel economy data exists. Then NHTSA projects the fuel economy improvements which could be obtained by making changes to the baseline vehicles. In accord with the statutory criteria discussed earlier, the fuel economy improvements are figured only if analysis shows such improvements to be both technologically feasible and economically practicable. Once completed, these projections are published in a notice of proposed rulemaking for public comment. For at least some of the proposed fuel economy

improvements, the automobile manufacturers submit test data that permit the agency to refine its projections. A final rule reflecting the refined projections is then published.

In this proceeding, the agency is not promulgating standards in advance of the model year to which they will apply. The vehicles subject to the standards already exist and, in most cases, their fuel economy levels have been measured using the EPA procedures. Thus, the agency has a more reliable method for determining the fuel economy levels that can be achieved by these vehicles when equipped with a particular mix of technologies and does not have to rely on projections of the fuel economy benefits contributed by each component system. However, the projection method must still be used with respect to the technologies which the manufacturer might have incorporated in its vehicles but did not.

The following discussion is, therefore, divided into two parts. First, there is a description of the specifications of the the Avanti vehicles for the 1979 and 1980 model years and their respective fuel economy measurements. Second, there is a tentative determination of whether Avanti could have further increased the fuel efficiency of its 1979 and 1980 model year automobiles by using the methods for improving fuel economy which this agency examined in establishing average fuel economy standards for 1981–84 passenger automobiles (43 FR 11995, June 30, 1977). These methods include weight reduction, engine improvements, accessory improvements (engine and vehicle), transmission and driveline improvements, and reductions in aerodynamic drag and rolling resistance.

In reaching its tentative determination of what would be technologically feasible for Avanti in the 1979 and 1980 model years, the agency has considered: Avanti's engineering capabilities, the technology available to it, and the leadtime available to Avanti for making changes to its 1979 and 1980 model year automobiles. In making a tentative determination of what would have been economically practicable for Avanti, the agency considered the company's size, the resources available to it for product development, and the market for its vehicles.

1979 and 1980 Avanti automobiles: technical characteristics and fuel economy ratings. According to information submitted by Avanti and confirmed by EPA, all Avantis are represented in a single vehicle configuration. This means that Avanti need test only one vehicle for fuel economy and that the fuel economy level measured for that vehicle will be Avanti's corporate average fue economy for that model year. Avanti automobiles use the body designed by Raymond Loewy for the Studebaker Avanti. The 350 cubic inch displacement (CID) V–8 engine and the drivetrain used in these automobiles are purchased from General Motors. Since Avanti considers its vehicle's image to be that of a "family sports car", it uses the same engine and drivetrain used in the Corvette. The axle ratio is 3.07:1. Since Avanti produces only one vehicle configuration, that configuration must be certified to comply with the more stringent California emissions standards as well as the 49-state emission standards. The emissions control system on all 1979 and 1980 Avanti automobiles consists of a four barrel carburator with a single oxidation catalyst.

The average fuel economy for 1979 Avanti automobiles was 14.5 mpg, as measured by the EPA. The 1980 average for Avanti rose to 15.8 mpg. This fuel economy gain resulted from engine calibration changes made by General Motors.

Weight of Avanti vehicles in the affected model years. The loaded vehicle weight of 1979 and 1980 Avanti automobiles is 4045 pounds, which places the vehicle in the 4000 pound test weight class. For the results of any weight reduction by Avanti to show up on EPA fuel economy tests, the vehicles would have to move into a lower test weight class. For the 1979 Avanti automobiles, this would have meant reducing the vehicle weight by 295 pounds, so the vehicle could be tested in the 3500 pound weight class.

For model year 1980, EPA changed the fuel economy test procedures by increasing the number of test weight classes. Thus, in addition to the pre-existing 3500 pound class and the 4000 pound class, there is a new 3750 pound weight class. For the 1980 Avantis to be tested in the 3750 pound class, they would have to shed 108 pounds.

Weight reduction. In determining whether Avanti could have made the weight reductions needed to have the vehicles produced in 1979 and 1980 tested in a lower inertia weight class, the agency has considered two options—downsizing and material substitution. The goal of downsizing is to reduce the exterior dimensions of the automobile without reducing significantly the interior passenger and luggage volume of the automobile. Avanti is severely limited in its ability to make design changes that would modify the vehicle's general shape and appearance, because the demand for its automobiles is, in large part, based on the fact that it is a reproduction of a now-classic sports car. Any changes in this appearance could significantly decrease the market for the automobiles. Accordingly, the agency has tentatively concluded achieving weight reduction by making design changes is not practicable for Avanti in either the 1979 or 1980 model years.

"Materials substitution", the other weight reduction option indicated above, refers to the substitution of lighter materials, such as aluminum, plastics, and high strength low alloy steels for currently used materials. Avanti currently uses a fiberglass body, which is a very light weight material. Further, the 4-seat Avanti has the same equivalent test weight as the 2-seat Chevrolet Corvette. Avanti purchases the Corvette engine and a transmission from General Motors, so the weight of these components is outside the control of Avanti. After a consideration of these factors, the agency has tentatively concluded that it would not have been technologically feasible and economically practicable for Avanti to have reduced the weight of its 1979 and 1980 automobiles.

Aerodynamic improvements. For all model years after 1978, the EPA has established fuel economy test procedures that take into account the aerodynamics of the test vehicle. Under these procedures, each test vehicle is assigned a dynamometer road load setting which reflects the vehicle's aerodynamic drag and its test weight. This value is usually assigned by use of an EPA formula which results in what is commonly referred to as the "book value". When calculated in this manner, the road lad increases to the extent that the vehicle's frontal area is greater than average and to the extent that the combined area of all equipment protruding from the front view of the vehicle exceeds established reference values. Test vehicles are also penalized with a higher road load setting if they do not use radial tires.

The EPA also permits a manufacturer, at its option, to use an alternative procedure to calculate the road load setting for the test vehicle. The alternative procedure, commonly referred to as "coastdown", measures the aerodynamic drag of the entire vehicle. This alternative procedure generally yields a lower road load setting than the book value for vehicles with lower than average frontal area for the particular test weight class.

The Avanti's design gives it a very low drag coefficient, and the company took advantage of this fact by using the coastdown procedure in both the 1979 and 1980 model years. In both model

years, all Avanti automobiles have radial tires as standard equipment, so no penalty was added to the road load settings. Hence, the only way in which Avanti could have improved its fuel economy would have been through design changes to the automobiles to improve their aerodynamic drag.

As explained above in the section titled *Weight reduction*, one consequence of Avanti building copies of the famous Studebaker sports car designed by Raymond Loewy is that the company's ability to make design changes which would modify the vehicles' general shape and appearance is quite limited. Since the frontal area of the car is already well below average for its test weight class, any changes to improve the aerodynamic drag would almost certainly have to modify its shape and appearance. Accordingly, NHTSA tentatively concludes that it would not have been economically practicable and technologically feasible for Avanti to have improved its average fuel economy in the 1979 and 1980 model years by means of aerodynamic improvements.

Engine improvements. NHTSA has also considered whether Avanti could have further improved its fuel economy in the 1979 and 1980 model years by using an alternative emissions control system or a smaller engine. Avanti purchases its engines from General Motors, and does not have the engineering or production capabilities to design and build its own engine. Therefore, its choice of engine is limited by the types that are available from other manufacturers. Avanti has used the same engine as the Corvette since the mid-60's, and currently uses the 350 CID V–8 engine used in the Corvette.

Avanti could use the smaller General Motor 305 CID V–8 engine, but there are two reasons it did not do so. First, Avanti believes that its automobiles must be high performance automobiles in order to maintain their current sales levels, and it is therefore reluctant to use a smaller engine than the Corvette. Since Avantis have the same curb weight as a Corvette, the use of a small engine would almost certainly give Avantis lower performance than the Corvette, and possibly reduce the demand for its vehicles.

Second, Avanti's automobiles are tested for compliance with the emissions standards by General Motors along with the Corvette. If Avanti uses a different engine than the Corvette engine, this testing would not be possible, and Avanti would have to conduct the tests itself. Since EPA certification is estimated by NHTSA to cost between $60,000 and $85,000, Avanti is loath to take the step (Avanti's net profit in 1979 was between $90 and $100,000). In consideration of these factors, NHTSA has tentatively determined that it would not have been economically practicable for Avanti to have used a smaller engine on its 1979 and 1980 automobiles.

With respect to the emissions control system, as noted earlier, Avanti used the same system on its 1979 and 1980 automobiles. This system was a single oxidation catalyst. As was also noted earlier, Avanti produces only one vehicle configuration, which must pass both the Federal and the California emission standards. Avanti formerly followed the practice of larger manufacturers of producing a separate configuration of automobiles for each set of emission standards. The problem with this was that the company had its marketing flexibility tightly constrained—Avanti could not sell its 49-state certified vehicles in California when California has a larger-than-expected demand for the vehicles, nor could it shift its California cars for sale outside that state if California's demand was less than expected. To avoid these situations, Avanti began producing only one type of vehicle (one which had been certified for compliance with both California and the 49-state emission standards) in the 1979 model year.

In the 1979 model year, the California emissions standards were low enough to permit manufacturers to comply with them by using the same emission control technology used on 49-state vehicles and adjusting the timing of the engines.

In the 1980 model year, the California emission standards became so much more stringent than the 49-state standards that most manufacturers used different emission control technology on their California vehicles (the 3-way catalyst is used on almost all 1980 California models) than is used on most 49-state models, which still employ the oxidation catalyst. For the 1981 model year, both 49-state and California emission standards will require use of a 3-way catalyst. Thus, in 1980, Avanti was faced with the unique dilemma of choosing whether to equip their automobiles with the emission control equipment generally used in California or the equipment generally used in the 49 states.

It chose to use its 49 state emission control system on all its vehicles, and retarded the timing to comply with the California emission standards. However, this adjustment caused Avanti's 1980 automobiles to have a lower average fuel economy than they would have had if equipped with a 3-way catalyst. Using a 3-way catalyst would have allowed Avanti to have used a more optimal timing.

Avanti's decision not to use the 3-way catalyst on all their cars was made for financial reasons. It would have cost Avanti between $250 and $300 for each 3-way catalyst (depending on the size of the catalyst needed), for a total cost of about $55,000 to the company. Avanti projects that it will sell 200 1980 vehicles. Considering that Avanti's net annual profit is about $100,000, it chose to use a less efficient means of controlling emissions, instead of spending half of its net profits. This choice does not appear unreasonable. Accordingly, the agency tentatively concludes that it would not have been economically practicable for Avanti to have used an alternative emissions control system.

Transmission improvements. In the final rule establishing generally applicable fuel economy standards for 1981–1984 model year passenger cars, NHTSA noted that automatic transmission improvements such as lock-up clutch in the torque converter can result in a fuel economy improvement of as much as 10 percent. Since all Avanti automobiles in the 1979 and 1980 model years came with automatic transmissions, this section will examine if it was feasible and practicable to have made such transmission improvements on its 1979 and 1980 cars.

As noted above, Avanti purchases its transmissions from General Motors. General Motors produces a 3-speed automatic transmission with a lock-up clutch. However, General Motors has stated that this transmission was not available to outside companies in either the 1979 and 1980 model years. Ford Motor Company also produces a 4-speed transmission, but also indicated that this was not available to outside companies during the affected model years. In light of these factors, NHTSA tentatively concludes that it would not have been technologically feasible for Avanti to have made transmission improvements on its 1979 and 1980 automobiles.

Improved lubricants. In the final rule setting forth the 1980 and 1981 average fuel economy standards for light truck (43 FR 11995, March 23, 1978), this agency projected that the use of synthetic, lower viscosity, or friction modified lubricants in the crankcase and axle of an automobile would result in at least a three percent fuel economy benefit (two percent from the crankcase lubricants and one percent from axle lubricants). However, the use of crankcase lubricants has not yet been approved by the EPA for use in fuel economy testing. Accordingly, the

agency indicated in that rule that it would not project the use of these lubricants before the 1981 model year.

Although use of modified axle lubricants in fuel economy testing does not require EPA approval, the notice treated those lubricants in the same manner as crankcase lubricants, i.e., assumed that these lubricants would not be used before the 1981 model year. This was due to questons regarding the performnace of modified axle lubricants in durability testing and the availability of such lubricants to the manufacturers generally before the 1981 model year. In light of these facts, any fuel economy benefits which Avanti could have obtained by using these modified crankcase and axle lubricants has not been considered feasible in today's proposed alternative fuel economy standards for the 1979 and 1980 model years.

Reduction of rear axle ratio. In setting fuel economy standards for 1980–81 light trucks and 1981–84 passenger cars, NHTSA stated that the reduction of the ratio of engine speed to vehicle speed (N/V) would generally result in fuel economy improvements. The agency also noted that, when it is possible to make this reduction by such means as reducing the axle ratio, it can be implemented very economically.

Avanti automobiles produced during the 1979 and 1980 model years both use a rear axle ratio of 3.07:1. This ratio is comparable to or less than the ratio for other sports cars. For instance, the Corvette uses 3.07:1, the Datsun 280 ZX uses 3.545 and 3.9, and the Aston Martin uses 3.07 and 3.54. In this agency's technical judgment, it would not have been feasible for Avanti to lower its axle ratio while maintaining a sports car image, and maintaining that image is deemed a significant factor for Avanti's sales levels. Because of this, NHTSA proposes to conclude that it would not have been economically practicable for Avanti to have further increased the fuel economy of its 1979 and 1980 models by reducing the rear axle ratio.

Mix shifts. The term "mix shifts", as used in prior NHTSA fuel economy rulemaking refers to shifting the percentage of vehicles sold by a manufacturer from those models with lower fuel economy to those models with higher fuel economy. Since Avanti markets only one model, it is obviously unable to increase its average fuel economy through the use of mix shifts.

Impact of other Federal standards. Avanti has not claimed any negative fuel economy impacts on its 1979 or 1980 average fuel economy from Federal safety, damageability, emissions, or noise standards, other than the 1980 California emissions standards discussed above. In the absence of a showing to the contrary, NHTSA will continue to assume that any fuel economy loss caused by compliance with other Federal standards will be reflected in the fuel economy test results of the EPA, and will, therefore, be taken into account by the NHTSA in establishing alternative standards.

The need of the Nation to conserve energy. The daily extra U.S. petroleum demand that will result from Avanti achieving an average fuel economy of 14.5 and 15.8 mpg in the 1979 and 1980 model years, respectively, rather than the generally applicable average fuel economy levels of 19.0 and 20.0 mpg in those model years is estimated to be 3.2 barrels per day over the life of the 1979 Avantis and 2.6 barrels per day over the life of the 1980 Avantis. To give a perspective on these numbers, the fuel consumed by passenger cars in the United States is about 5 million barrels each day. For all purposes, the United States currently consumes about 17 million barrels of petroleum each day.

Proposed alternative standards. Based on its tentative conclusions that it would not have been technologically feasible and economically practicable for Avanti to improve the average fuel economy of its 1979 and 1980 automobiles above an average of 14.5 mpg and 15.8 mpg, respectively, that other Federal automoble standards did not affect achievable fuel economy beyond the extent considered in this analysis, and that the national effort to conserve energy will be minimally affected by granting the requested exemptions and establishing alternative standards, NHTSA tentatively concludes that the maximum feasible average fuel economy for Avanti in the 1979 and 1980 model years if 14.5 mpg and 15.8 mpg, respectively. Therefore, the agency proposes to exempt Avanti from the generally applicable standards of 19.0 and 20.0 mpg and to establish alternative standards of 14.5 mpg in the 1979 model year and 15.8 mpg in the 1980 model year.

In consideration of the foregoing, it is proposed that 49 CFR Part 531 be amended by revising § 531.5(b)(1) to read as follows:

§ 531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

(1) Avanti Motor Corporation

Average Fuel Economy Standard

Model year	Miles per gallon
1978	16.1
1979	14.5
1980	15.8

* * * * *

Interested persons are invited to submit comments on this proposal. It is requested but not required that 10 copies be submitted. All comments must be limited so as not to exceed 15 pages in length. Necessary attachments may be appended without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including the purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. Any claim of confidentiality must be supported by a statement demonstrating that the information falls within 5 U.S.C. section 552(b)(4), and that a disclosure of the information would result in significant competitive damage; specifying the period during which the information must be withheld to avoid that damage; and showing that earlier disclosure would result in that damage. In addition, the commenter, or, in the case of a corporation, a responsible corporate official authorized to speak for the corporation, must certify in writing that each item for which confidential treatment is requested is, in fact, confidential within the meaning of section 552(b)(4) and that diligent search has been conducted by the commenter or its employees to assure that none of the specified items has previously been disclosed or otherwise become available to the public.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination and copying in the docket at the above address both before and after that date. To the extent possible, comments filed after the comment closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the comment closing date and too late for consideration in this action will be treated as suggestions for future

rulemaking. NHTSA will continue to file relevant material in the docket as it becomes available after the comment closing date, and interested persons are advised to continue to check the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed, stamped postcard. When the comments are received, the docket supervisor will return the postcard by mail.

Note.—NHTSA has reviewed the impacts of this proposal and determined that they are minimal and that the proposal is not a significant regulation within the meaning of Executive Order 12044. This proposal would not affect the product or level of expenditures by the manufacturer subject to it. Consequently, a draft regulatory evaluation has not been prepared.

The program official and attorney principally responsible for the development of this proposed regulation are Robert Mercure and Stephen Kratzke, respectively.

(Sec. 9, Pub. L. 89–670, 80 Stat. 981 (49 U.S.C. 1657); sec. 301, Pub. L. 94–163, 89 Stat. 901 (15 U.S.C. 2002); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.)

Issued on January 9, 1981.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 81–1713 Filed 1–16–81; 8:45 am]

BILLING CODE 4910–50–M

Reader Aids

Federal Register

Vol. 46, No. 12

Monday, January 19, 1981

INFORMATION AND ASSISTANCE

PUBLICATIONS

Code of Federal Regulations

CFR Unit	202-523-3419 523-3517
General information, index, and finding aids	523-5227
Incorporation by reference	523-4534
Printing schedules and pricing information	523-3419

Federal Register

Corrections	523-5237
Daily Issue Unit	523-5237
General information, index, and finding aids	523-5227
Public Inspection Desk	633-6930
Scheduling of documents	523-3187

Laws

Indexes	523-5282
Law numbers and dates	523-5282 523-5266
Slip law orders (GPO)	275-3030

Presidential Documents

Executive orders and proclamations	523-5233
Public Papers of the President	523-5235
Weekly Compilation of Presidential Documents	523-5235

Privacy Act Compilation 523-3517

United States Government Manual 523-5230

SERVICES

Agency services	523-3408
Automation	523-3408
Dial-a-Reg	
Chicago, Ill.	312-663-0884
Los Angeles, Calif.	213-688-6694
Washington, D.C.	202-523-5022
Magnetic tapes of FR issues and CFR volumes (GPO)	275-2867
Public briefings: "The Federal Register—What It Is and How To Use It"	523-5235
Public Inspection Desk	633-6930
Regulations Writing Seminar	523-5240
Special Projects	523-4534
Subscription orders and problems (GPO)	783-3238
TTY for the deaf	523-5239

FEDERAL REGISTER PAGES AND DATES, JANUARY

1-858.....2
859-1248.....5
1249-1658.....6
1659-2022.....7
2023-2312.....8
2313-2588.....9
2589-2968.....12
2969-3202.....13
3203-3488.....14
3489-3600.....15
3801-4658.....16
4659-5850.....19

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:

Presidential Determinations:

No. 73-10 of January 2, 1973 (Amended by Presidential Determination 81-1 of December 31, 1980).....3491

No. 81-1 of December 31, 1980.....3491

Executive Orders:

11063 (Amended by EO 12259).....1253

11145 (See EO 12258).....1251

11183 (See EO 12258).....1251

11287 (See EO 12258).....1251

11562 (See EO 12258).....1251

11776 (See EO 12258).....1251

11888 (Amended EO 12267).....1251, 4669

11922 (See EO 12258).....1251

11970 (See EO 12258).....1251

12022 (Revoked by EO 12258).....1251

12050 (See EO 12258).....1251

12054 (Revoked by EO 12258).....1251

12059 (See EO 12258.....1251

12061 (Revoked by EO 12258).....1251

12063 (Revoked by EO 12258).....1251

12064 (See EO 12258).....1251

12078 (Revoked by EO 12258).....1251

12084 (See EO 12258).....1251

12093 (Revoked by EO 12258).....1251

12103 (Revoked by EO 12258).....1251

12110 (Superseded by EO 12258).....1251

12130 (Revoked by EO 12258).....1251

12131 (See EO 12258).....1251

12135 (See EO 12271).....4667

12137 (See EO 12258).....1251

12157 (Revoked by EO 12258).....1251

12160 (Amended by EO 12265).....4665

12258 (Amended by EO 12271).....4677

12264.....4659

12265.....4665

12266.....4667

12267.....4669

12268.....4671

12269.....4673

12270.....4675

12271.....4677

12190 (See EO 12258).....1251

12195 (Revoked by EO 12258).....1251

12196 (See EO 12258).....1251

12216 (See EO 12258).....1251

12258.....1251

12259.....1253

12260.....1653

12261.....2023

12262.....2313

12263.....2315

Proclamations:

4600 (Revoked by Proc. 4812).....1249

4667 (See Proc. 4813).....3489

4750 (See Proc. 4813).....3489

4811.....1

4812.....1249

4813.....3489

4814.....3801

4815.....3803

4816.....4679

5 CFR

351.....3805

531.....2317

550.....2323

738.....2582

1203.....2326

Proposed Rules:

359.....3903

715.....1278

7 CFR

Ch. XVIII.....4681

Ch. XXXI.....2971

Subtitle A.....2328

2.....2969, 3203

6.....1659

27.....3203

180.....2328

210.....3, 2329, 3812
215.....3, 2329
220.....2329, 3812
226.....4, 3814
230.....2329
235.....2329, 3812
245.....3814
250.....2331
271.....1421
272.....1421, 2332, 4622
273.....1421, 3194, 4622
274.....1421, 2332
277.....2336
354.....1661
371.....3816
722.....2970
725.....2971
907.....5, 2025, 3493
910.....5, 6, 2336, 4681
916.....1662
917.....1662
982.....2337
1701.....6, 2971
1900.....3817
1945.....2589
2851.....1257
2852.....3824
2855.....7
2856.....7
2858.....1257
2859.....7
2870.....7

Proposed Rules:

210.....3903–3905
220.....3905
271.....4642
272.....4642
273.....4642
274.....4642
278.....4642
411.....3536
420.....3536
421.....3221
422.....3538
423.....3539
425.....3222
426.....3223
427.....3224
428.....3540
431.....3226
432.....3229
433.....3232
434.....3233
435.....3234
436.....3235
437.....3236
438.....3540
907.....4936
908.....4936
979.....2084
982.....2622
987.....1742
991.....3541
1040.....1279
1421.....2630
1701.....3027, 3906–3908
1901.....2900
1940.....2900

8 CFR

211.....2590, 4856
214.....4856
245.....3493
248.....3493
292.....2025

9 CFR

82.....859
307.....1258
319.....1257
331.....2338
350.....1258
351.....1258
354.....1258
355.....1258
362.....1258
381.....1258

Proposed Rules:

318.....1286
381.....1286

10 CFR

73.....2025, 4858
205.....2956
210.....4860
211.....3368, 5722
212.....1246, 3827
456.....1616
712.....2971
1020.....2971

Proposed Rules:

Ch. I.....1742
30.....3908
31.....3908
32.....3908
50.....3541
205.....71
212.....1287
456.....2522
458.....4482
800.....5514

12 CFR

205.....2972
208.....2026
211.....2027
225.....2026
226.....1662
265.....1663, 2027
341.....2974
400.....1132
523.....2029

Proposed Rules:

8.....3237
545.....3909
701.....920, 922
741.....922

13 CFR

101.....10
121.....2591
305.....859
309.....859

Proposed Rules:

113.....931
122.....4937

14 CFR

1.....2280
21.....3494
39.....14–17, 861–867, 2030, 2031, 2594, 3495–3498, 4862–4866
71.....18, 402, 868, 2032, 2595, 2596, 2967, 4866
73.....18, 402, 868, 2967, 3499
75.....402, 868, 2596, 2967
91.....19, 2280
93.....3499
97.....2033
107.....3782
108.....3782
121.....2280, 3782, 5500
129.....3782
135.....3782, 5500
159.....3499
203.....1664

Proposed Rules:

Ch. I.....4944
21.....931, 3775
36.....931
39.....3543
45.....3775
67.....75
71.....932, 2085, 2088, 2630, 3544, 4945–4948
91.....76
93.....932, 933
121.....76, 5484, 5506
125.....76
135.....76, 5484, 5506
145.....5484
147.....5484
221.....934
296.....934
297.....934

15 CFR

Subtitle A.....2339
19.....1574
368.....868
370.....868
371.....20, 1665
372.....868
373.....868, 1665
374.....20
376.....1665
378.....1665
379.....868
385.....868, 1258, 1665
399.....1258, 1665

16 CFR

13.....2034, 2035
305.....2974, 3829
1512.....3203

Proposed Rules:

13.....2355–2361, 3544
423.....935
450.....3547
1307.....3034
1307.....3034
1307.....3034

17 CFR

1.....21
231.....3500
240.....1665
241.....3204
249.....2339
249b.....1665
250.....2035
261.....3500

Proposed Rules:

7.....3027
210.....1288
229.....78
230.....78, 2631, 2637
231.....78
239.....78, 2637
240.....78, 1288
241.....78
249.....78

18 CFR

271.....2975
282.....1666, 2036, 3830, 4867
290.....2596

Proposed Rules:

4.....1291
35.....3909
141.....1743
260.....1744
271.....941
375.....1291
430.....23

19 CFR

4.....4868
152.....2597
353.....1667
355.....3500

20 CFR

404.....4869
416.....4869
615.....2976
655.....4568
656.....3830

Proposed Rules:

404.....2093, 3547, 4584
416.....2093, 3547, 4584, 4949
656.....3910

21 CFR

145.....2339
178.....27, 2341, 3830
201.....2977
203.....28, 1259
430.....2979, 2987, 3831, 3835
431.....28
436.....2979, 2987, 2989, 3831, 3835, 3838
442.....2991, 2992, 3831
444.....2979, 2987, 2994
446.....3835
452.....2995
453.....2996, 3838
510.....1260, 3834
520.....1259, 1260
522.....30, 2998
524.....1261
558.....31, 3834, 3841, 3842
601.....2998

Proposed Rules:

16.....3029, 3030
20.....2364, 3029, 3030
101.....2364
207.....2456
210.....2456
225.....2456
226.....2456
310.....2365, 3030
436.....1298
501.....2456
510.....2456
514.....2456
558.....2456
601.....4634
803.....2364
899.....3029, 3030
1020.....111
1308.....943

22 CFR

18.....2608
51.....2343
306.....1611

Proposed Rules:
17 ... 3547
41 ... 2365

23 CFR
Ch. I ... 32
140 ... 3501
450 ... 5702
630 ... 5702
655 ... 2038
656 ... 2298
1217 ... 32
Proposed Rules:
625 ... 1228, 2020, 2093
630 ... 943
655 ... 2020, 2093
1221 ... 2097

24 CFR
200 ... 2343
201 ... 4872
241 ... 3842
300 ... 1261
510 ... 3503
885 ... 3843
Proposed Rules:
114 ... 3030

25 CFR
52 ... 1668
53 ... 1674
256 ... 4873
Proposed Rules:
115 ... 2366
251 ... 1298
256 ... 33
260 ... 944

26 CFR
1 ... 1676–1719, 3504, 3912
31 ... 3504
154 ... 2042
48 ... 2998
150 ... 4873
Proposed Rules:
1 ... 112, 114, 116, 1744, 1753
26 ... 120
48 ... 129
51 ... 1754, 3560, 4950

27 CFR
4 ... 1725
19 ... 2999
70 ... 2999
240 ... 2999
245 ... 2999
250 ... 2999
270 ... 2999
275 ... 2999

28 CFR
0 ... 3843
16 ... 3509
40 ... 3843
51 ... 870
Proposed Rules:
59 ... 1302
524 ... 2962
544 ... 2962
545 ... 2962
547 ... 2962

29 CFR
1 ... 4306
2 ... 34
4 ... 4320, 4886
5 ... 4380
6 ... 4398
541 ... 3010
1620 ... 4888
1903 ... 3852
1910 ... 4034, 4078
1952 ... 3861–3863
1990 ... 4889
2520 ... 1261, 1265
2550 ... 1266
2604 ... 4893
2610 ... 3509
2652 ... 4894
Proposed Rules:
8 ... 4951
530 ... 3916
1603 ... 3916
1910 ... 3916, 4182, 4412
1918a ... 4182
1952 ... 3919
1955 ... 3919
2520 ... 1304

30 CFR
Ch. VII ... 2043
936 ... 4902
Proposed Rules:
901 ... 1306
913 ... 3238, 4951
914 ... 1309
915 ... 2368
917 ... 3030
918 ... 3238
936 ... 2369
942 ... 1309
944 ... 946
948 ... 1311, 3560

31 CFR
51 ... 1120

32 CFR
Ch. I ... 2344
286f ... 880
298a ... 881
Proposed Rules:
556 ... 3561

33 CFR
40 ... 4912
117 ... 2043
157 ... 3510
181 ... 3514
183 ... 3514
Proposed Rules:
1 ... 946
92 ... 946
117 ... 2120, 2652, 4953
161 ... 946

34 CFR
75 ... 3205
78 ... 881
104 ... 4912
200 ... 5136
201 ... 5136
211 ... 5372
215 ... 5372
230 ... 4536
231 ... 4536
300 ... 3865, 4912, 5460
305 ... 5372
307 ... 5372
309 ... 5372
315 ... 5372
318 ... 5372
322 ... 4913
324 ... 5372
332 ... 3206
338 ... 5372
361 ... 5522
362 ... 5416
365 ... 5522
366 ... 5410
369 ... 5416
370 ... 5416, 5522
371 ... 5416
372 ... 5416
373 ... 5416
374 ... 5416
375 ... 5416
378 ... 5416
379 ... 5416
395 ... 5416
408 ... 3207, 5372
525 ... 5372
526 ... 5372
527 ... 5372
538 ... 3378
539 ... 3387
624 ... 5372
643 ... 5372
644 ... 5372
645 ... 5372
646 ... 5372
649 ... 3394
674 ... 5238
675 ... 5238
676 ... 5238
682 ... 3866, 3871
690 ... 5320
726 ... 5372
735 ... 3873
740 ... 5372
753 ... 4606
757 ... 3877
Proposed Rules:
Subtitle A ... 3920
104 ... 4954
200 ... 5236
201 ... 5236
322 ... 4955
366 ... 4955
369 ... 5436
370 ... 5436
371 ... 5436
372 ... 5436
373 ... 5436
374 ... 5436
375 ... 5436
378 ... 5436
379 ... 5436
540 ... 4560
541 ... 4560
617 ... 4956
618 ... 4956
619 ... 4956
620 ... 4956
621 ... 4956
649 ... 3239
674 ... 5295
675 ... 5295
676 ... 5295
682 ... 3922
683 ... 4956
791 ... 4991
792 ... 4991
793 ... 4991
794 ... 4991

36 CFR
223 ... 2611
1190 ... 4270
Proposed Rules:
7 ... 1312, 1313
13 ... 5642
261 ... 1758
262 ... 1758
801 ... 5578
1215 ... 5566

37 CFR
1 ... 2611
306 ... 884
307 ... 891
308 ... 892
Proposed Rules:
1 ... 2653, 3162, 5001

38 CFR
Proposed Rules:
21 ... 2654

39 CFR
111 ... 35
232 ... 897
Proposed Rules:
111 ... 3568
3001 ... 952

40 CFR
6 ... 3364
30 ... 3017
51 ... 1267
52 ... 35, 36, 898, 2043, 3516, 3883, 4916, 4918
81 ... 899, 3883
86 ... 1590, 1599, 1603
87 ... 2044
122 ... 2045, 2344, 2802
123 ... 1727, 3207, 3517, 5616
160 ... 2344
162 ... 2008, 5696
180 ... 3018
205 ... 4918
257 ... 3021
261 ... 4614
264 ... 2802
265 ... 2802
401 ... 2264
Proposed Rules:
Ch. I ... 3032, 3408
Ch. V ... 2369
7 ... 2306
12 ... 2306
52 ... 133, 953, 1314–1316, 1760, 1761, 3569, 3923, 3924
58 ... 2655
60 ... 1102, 1136, 1317
61 ... 1165, 1318, 3033
86 ... 1910, 5001, 5838
123 ... 954, 2120, 3924
136 ... 3033
180 ... 5003
192 ... 2556
264 ... 2893
265 ... 2893
408 ... 2544
420 ... 1858
430 ... 1430, 2369
431 ... 1430, 2369

434 ... 3136
465 ... 2934
763 ... 3033

41 CFR

Ch. 1 ... 3519
Ch. 101 ... 1731, 3021
1–4 ... 1196
5–6 ... 908
5–14 ... 911
5–60 ... 900
5A–6 ... 908
5A–14 ... 911
5A–60 ... 900
5B–60 ... 900
14–2 ... 1730
29–70 ... 3891
60–1 ... 3892
101–20 ... 3523
101–26 ... 3024
101–35 ... 1213
101–36 ... 1213
101–38 ... 3023

Proposed Rules:

9–15 ... 955
9–50 ... 959
60–20 ... 3916
101–11 ... 3239, 3240

42 CFR

52 ... 4918
442 ... 1268

Proposed Rules:

36 ... 1318
50 ... 5003
405 ... 959, 3794, 5006
435 ... 5008
441 ... 5003
481 ... 959
482 ... 959

43 CFR

Subtitle A ... 2348
9 ... 5772
2090 ... 5794
2091 ... 1634
2200 ... 1634
2210 ... 1634
2220 ... 1634
2230 ... 1634
2240 ... 1634
2250 ... 1634
2260 ... 1634
2270 ... 1634
2300 ... 5794
2310 ... 5794
2320 ... 5794
2340 ... 5794
2350 ... 5794
2920 ... 5772
4100 ... 5784

Proposed Rules:

4 ... 3242
426 ... 3250

Public Land Orders:

1362 (Revoked by PLO 5799) ... 2047
2307 (Revoked by PLO 5798) ... 2046
3917 (Partially revoked by PLO 5802) ... 2047
4849 (Partially revoked by PLO 5799) ... 2047
4863 (Revoked by PLO 5806) ... 2348
5791 ... 2613
5797 ... 2046
5798 ... 2046
5799 ... 2047
5800 ... 1734
5801 ... 1734
5802 ... 2047
5803 ... 1734
5804 ... 2047
5805 ... 2048
5806 ... 2348

44 CFR

Ch. I ... 1270
10 ... 2049
59 ... 1273
60 ... 1273
64 ... 1273, 3212, 3214
65 ... 1274, 1736
67 ... 1275
332 ... 2349

Proposed Rules:

67 ... 1319

45 CFR

95 ... 3527
233 ... 4919
304 ... 1275
1012 ... 5620
1067 ... 1234
1069 ... 4919
1225 ... 1608
1300 ... 4921

Proposed Rules:

Ch. XII ... 960
16 ... 1644
74 ... 1644
301 ... 1319
302 ... 1321
303 ... 1321
1012 ... 5632
1062 ... 961

46 CFR

225 ... 913
284 ... 913
286 ... 913
291 ... 913
502 ... 1276

Proposed Rules:

108 ... 3573
381 ... 2370
401 ... 2656
503 ... 3250
524 ... 5008

47 CFR

0 ... 2352
1 ... 3896
15 ... 4923, 4925
2 ... 3896
73 ... 3530, 3531, 3897
90 ... 3896

Proposed Rules:

Ch. I ... 3925–3939, 5008
2 ... 5009, 5011
22 ... 5011
25 ... 3250
73 ... 3573–3575, 3939, 5011
81 ... 3939
90 ... 5011

49 CFR

Subtitle A ... 2352
171 ... 5298
172 ... 5298
173 ... 5298
177 ... 5298
201 ... 2613
397 ... 5318
512 ... 2049
525 ... 2063
537 ... 2063
555 ... 2063
571 ... 2064, 2618
635 ... 5476
639 ... 5480
642 ... 5820
660 ... 5808
845 ... 3532
1002 ... 2294, 2295
1003 ... 2294, 4926
1011 ... 2294, 3532
1033 ... 1738, 3216, 3533, 3534, 4934
1100 ... 2294, 4926
1136 ... 2295
1137 ... 2294
1331 ... 2295

Proposed Rules:

Ch. V ... 5012
21 ... 5588
23 ... 969
172 ... 2121, 2126
173 ... 2121, 2126
175 ... 2126
178 ... 2126
179 ... 2126
192 ... 39
195 ... 39, 2130
531 ... 5022
571 ... 40, 55, 2132, 2136
604 ... 5394
641 ... 5832
660 ... 5815
1039 ... 134
1056 ... 3941
1109 ... 3942
1201 ... 1323, 2146
1206 ... 1323
1207 ... 1323
1208 ... 1323
1209 ... 1323
1210 ... 1323
1241 ... 2146
1300 ... 1324
1301 ... 1324
1303 ... 1324
1305 ... 1324

50 CFR

17 ... 3178, 3184, 3361, 5730
26 ... 913, 916, 2076
33 ... 917, 918, 2078, 2352, 3218
250 ... 66
285 ... 3025
296 ... 2302, 3534
611 ... 1738, 2079, 2081
652 ... 1740, 3534

Proposed Rules:

17 ... 3188
36 ... 5668
216 ... 1761, 2153
230 ... 3942
611 ... 2153, 2154
643 ... 2153
672 ... 2154

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

DEFENSE DEPARTMENT

Army Department—

83214 12–18–80 / Personal privacy and rights of individuals regarding personal records; exemptions

ENVIRONMENTAL PROTECTION AGENCY

42195 7–19–79 / National Secondary Drinking Water Regulations; specification of secondary maximum contaminant levels (SMCL's)

83227 12–18–80 / Revision to the State Implementation Plan (SIP); State of New Jersey

JUSTICE DEPARTMENT

Prisons Bureau—

83920 12–19–80 / Inmate control, custody, care, treatment, and instruction; central inmate monitoring system

LABOR DEPARTMENT

Employment and Training Administration—

83926 12–19–80 / Alien permanent employment in U.S.; labor certification process

Occupational Safety and Health Administration—

85736 12–30–80 / Respirator-use enforcement policy for occupational exposure to cotton dust

SECURITIES AND EXCHANGE COMMISSION

83478 12–19–80 / Increase in filing fee for associated persons of non-member broker-dealers

TRANSPORTATION DEPARTMENT

81547 12–11–80 / Airworthiness directives; Rockwell International Model NA 265—40 and —60 Series Aircraft

Rules Going Into Effect Tuesday, January 20, 1981

INTERIOR DEPARTMENT

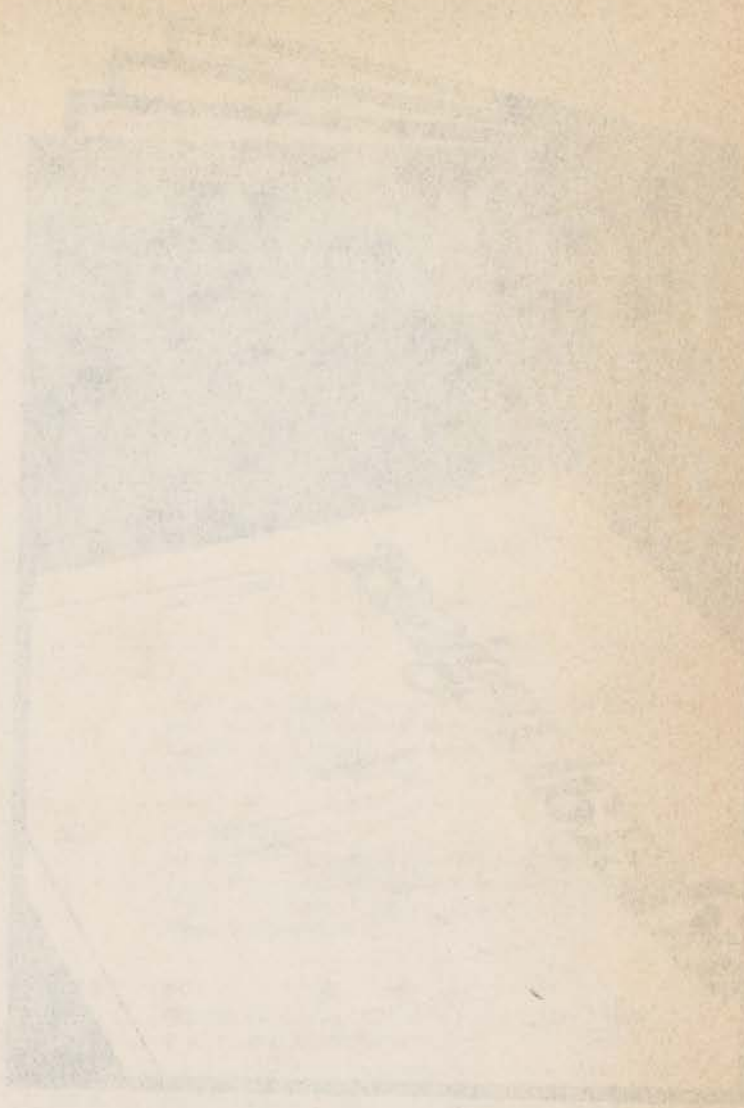
Land Management Bureau—

85023 12–24–80 / California; Partial revocation of reclamation withdrawal

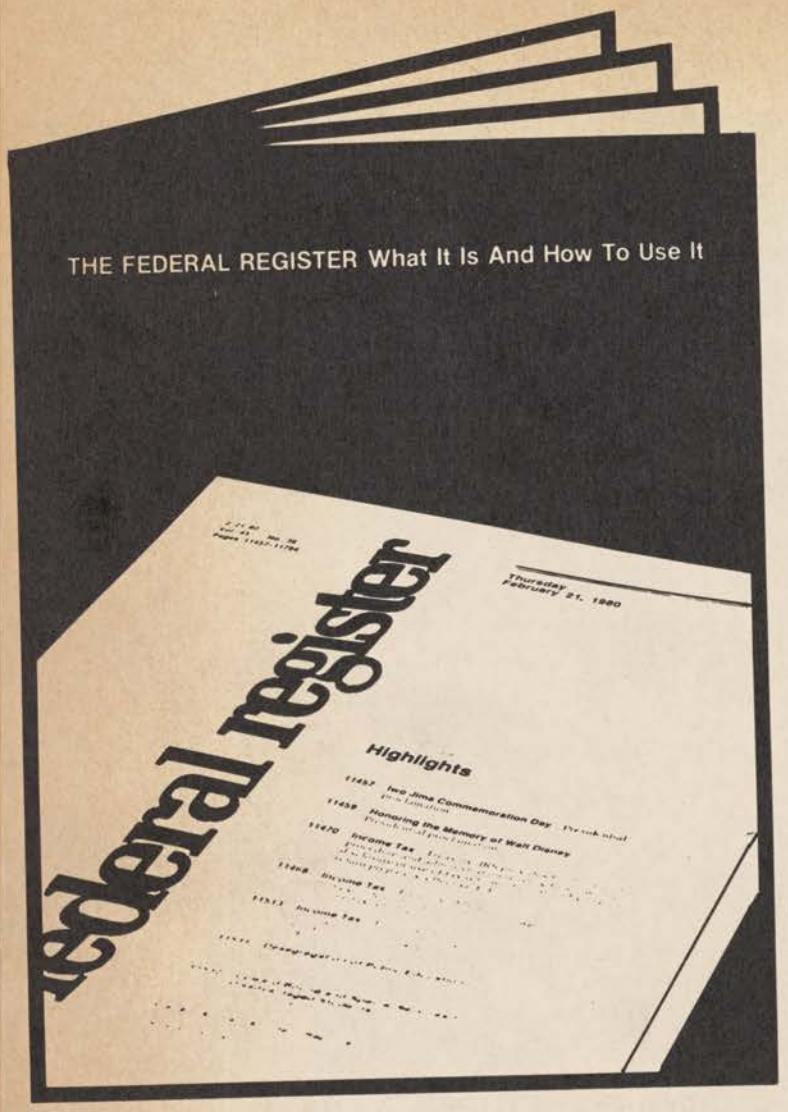
List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

A complete listing for the second session of the 96th Congress is published in the Reader Aid section of the issue of January 7, 1981



NOW AVAILABLE !



The Federal Register: What It Is and How To Use It

A Guide for the User of the Federal Register—Code of Federal Regulations System

This handbook is used for the educational workshops conducted by the Office of the Federal Register. For those persons unable to attend a workshop, this handbook will provide guidelines for using the *Federal Register* and related publications, as well as an explanation of how to solve a sample research problem, and a discussion of how the consumer can be a participant in the regulatory process.

Price $3.50

ORDER FORM Mail To: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed is $ _____ ☐ check,
☐ money order, or charge to my
Deposit Account No.
☐☐☐☐☐☐☐☐–☐

Order No._____

VISA® master charge THE INTERBANK CARD

Credit Card Orders Only

Total charges $_____ Fill in the boxes below.

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Please send me_____copies of **The Federal Register - What It Is and How To Use It,** at $3.50 per copy, Stock No. 022-003-01041-6.

Name—First, Last

Company name or additional address line

Street address

City State ZIP Code

(or Country)

PLEASE PRINT OR TYPE

For Office Use Only

Quantity		Charges
_____	Enclosed	
_____	To be mailed	
_____	Subscriptions	
	Postage	
	Foreign handling	
	MMOB	
	OPNR	
_____	UPNS	
_____	Discount	
_____	Refund	

1-19-81
Vol. 46—No. 12
BOOK 2:
Pages
5027-5456

federal register

Book 2 of 3 Books
Monday, January 19, 1981

5136 Part II—ED:
Financial Assistance to Local and State Agencies to Meet Special Educational Needs, and Financial Assistance to Local Educational Agencies for Children With Special Educational Needs

5238 Part III—ED:
National Direct Student Loan Program; College Work-Study Program; and Supplemental Educational Opportunity Grant Program; Final Regulations and Proposed Rulemaking

5298 Part IV—DOT/RSPA and FHwA:
Radioactive Materials; Routing and Driver Training and Routing Exemptions

5320 Part V—ED:
Pell Grant Program; Family Contribution Schedules

5334 Part VI—EPA:
Pesticide Products Containing Dimethoate; Rebuttable Presumption Against Registration and Continued Registration, and Intent to Cancel Registration and Deny Applications for Registration

5372 Part VII—ED:
Selection Criteria for Fiscal Year 1981; Program Regulations

5394 Part VIII—DOT/UMTA:
Charter Bus Operations

5410 Part IX—ED:
Centers for Independent Living

5416 Part X—ED:
Vocational Rehabilitation Service Projects; Final Regulations and Proposed Rulemaking

5438 Part XI—DOE:
Adoption of Guidelines on Citizen Participation in Local Transportation Planning

Notices

Federal Register
Vol. 46, No. 12
Monday, January 19, 1981

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Allegheny National Forest Land and Resource Management Plan: Elk, Forest, McKean, and Warren Counties, Pennsylvania; Intent to Prepare an Environmental Impact Statement

Pursuant to the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture will prepare an environmental impact statement on the proposed Land and Resource Management Plan for the Allegheny National Forest in Pennsylvania.

The plan is being prepared in accordance with requirements of the Secretary's regulations developed pursuant to the National Forest Management Act of 1976. It will propose management direction for the natural and human resources within the proclamation boundaries of the Allegheny National Forest.

The planning process will begin with identification of public issues, management concerns, and resource use and development opportunities. Planning criteria will be developed, and data will be collected and analyzed to determine how the identified issues and concerns can be best resolved. An assessment of the capability of the land to produce resource outputs, and a determination of the public's future demands for these outputs will be made. Methods for resolving the identified public issues will be developed from this information, and will be used to formulate alternatives.

Alternatives will display a range of resource outputs at several expenditure levels. Each alternative will represent a cost-effective combination of management practices which can best meet the objectives of the alternative. In addition, each identified major public issue will be addressed; each alternative will specify methods to maintain or enhance renewable resources, and a no-change alternative will be included.

A preferred alternative will be selected by ranking the alternatives according to their physical, biological, social, and economic effects. It will include the best combination of resource uses on the Forest and will also provide for a continuous monitoring and evaluation process.

A draft environmental impact statement will be released around April 1983. The final land and resource management plan and environmental impact statement will be released approximately 8 months later.

Public participation will be an integral part of the planning process. A response form, meeting, and other public involvement tools will be used to identify issues early in the planning process. Each public involvement activity will be announced through the news media and mailings to interested agencies, organizations, and individuals.

Steve Yurich, Regional Forester of the Eastern Region, is responsible for approval of the Forest Plan, and John P. Butt, Forest Supevisor of the Allegheny National Forest is the responsible official in charge of preparation and implementation of the plan.

Further information about the planning process can be obtained by calling Larry Brown, Planning Staff Officer on the Allegheny National Forest at 814–723–5150. Written comments on this Notice of Intent should be directed to: Forest Supervisor, Allegheny National Forest, P.O. Box 847, 222 Liberty Street, Warren, PA 16365.

James H. Freeman,
Director of Planning, Programming and Budgeting.
January 8, 1981.
[FR Doc. 81–1859 Filed 1–16–81; 8:45 am]
BILLING CODE 3410–11–M

Environmental Impact Statements; Guidelines; Correction

The Forest Service published a notice in the **Federal Register**, Volume 45, No. 247, Monday, December 22, 1980, at page 84113 providing guidelines for the format to be used for environmental impact statements (EIS's). The notice is hereby corrected as follows.

Pending revision of Forest Service Manual Chapter 1950—The Forest Service NEPA Process, environmental impact statements prepared for Regional plans developed under the National Forest Management Act of 1976 shall follow the format set forth in the Council on Environmental Quality (CEQ) NEPA regulations, 40 CFR 1502.10–1502.18. This format shall also be used for land and resource management plans for units of the National Forest System unless an exception is approved by the responsible official.

All other EIS's for which a notice of intent is published subsequent to the date of this notice should generally follow this format. However, the format may be modified in the interest of clarity and brevity. Those EIS's for which a notice of intent was published prior to this notice may be prepared in accordance with the format as published in the **Federal Register**, Vol. 44, No. 147, Part IV, July 30, 1979, and contained in Forest Service Manual 1952.3

Dated: January 13, 1981.
J. Lamar Beasley,
Acting Chief.
[FR Doc. 81–1899 Filed 1–16–81; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 2–81]

Foreign-Trade Zone—North Las Vegas, Nev.; Application and Public Hearing

Notice is hereby given that an application has been submitted to the Foreign-Trade Zones Board (the Board) by the State of Nevada, through its Department of Economic Development, requesting authority to establish a general-purpose foreign-trade zone in North Las Vegas, within the Las Vegas Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 12, 1981. The applicant is authorized to make this proposal under Nevada Revised Statutes 273A.010–273A.050.

The applicant proposes to establish a 70-acre foreign-trade zone near the North Las Vegas Airport. The zone will be located on Cheyenne Avenue between Highland and Revere Streets,

North Las Vegas, within the 175-acre Frontier West Industrial Park. The proposed zone operator, Las Vegas Opportunities Industrialization Center (OIC), initially plans to construct three 20,000-square foot buildings on 30 acres, reserving the remaining 40 acres for future development.

The proposed zone/industrial park project is a cooperative effort by the State, the Las Vegas Latin Chamber of Commerce, and the Las Vegas OIC to improve the economy of the Las Vegas Special Impact Area, the westside community of Las Vegas and North Las Vegas designated as economically distressed by Commerce's Economic Development Administration (EDA). In addition, the project is part of the State's development strategy of diversifying the state-wide and local economies, reducing dependence on the gaming and service sectors.

The application contains evidence concerning the need for and possible uses of zone services in the Las Vegas area. A variety of businesses have indicated an interest in using the zone for processing, light manufacture, packing, storage, cold storage and distribution of produce, meat products, coin-operated machines, computers and office furniture.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report thereon to the Board. The committee consists of: Stuart S. Keitz (Chairman), Program Manager, Import Administration, U.S. Department of Commerce, Washington, D.C. 20230; John E. Brady, Los Angeles District Director, U.S. Customs Service, Region VII, 300 South Ferry Street, San Pedro, California 90731; and Colonel Gwynn A. Teague, District Engineer, U.S. Army Engineer District Los Angeles, P.O. Box 2711, Los Angeles, California 90053.

As part of its investigation, the Examiners Committee will hold a public hearing on February 4, 1981, beginning at 9 a.m., in the Board Room of the Las Vegas Convention Center, 3150 Paradise Road, Las Vegas, Nevada. The purpose of the hearing is to help inform interested persons about the proposal, to provide an opportunity for their expression of views, and to obtain information useful to the examiners.

Interested parties are invited to present their views at the hearing. They should notify the Board's Executive Secretary of their desire to be heard in writing at the address below or by phone (202/377–2862) by February 2, 1981. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary at any time from the date of this notice through March 4, 1981. Evidence submitted during the post-hearing period is not desired unless it is clearly shown that the matter is new and material and that there are good reasons why it could not be presented at the hearing. A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, International Arrivals Building, McCarran Airport, Las Vegas, Nevada 89111.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2006, 14th and E Streets, NW., Washington, D.C. 20230.

Dated: January 12, 1981.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 81-1767 Filed 1-16-81; 8:45 am]

BILLING CODE 3510-25-M

International Trade Administration

Plastic Animal Identification Tags From New Zealand; Final Affirmative Cuntervailing Duty Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Final affirmative countervailing duty determination.

SUMMARY: The U.S. Department of Commerce ("the Department") determines that the government of New Zealand makes available incentive programs that constitute bounties or grants within the meaning of the countervailing duty law; that the manufacturer, producer, and exporter of plastic animal identification tags utilize these programs and receive tax deductions, exemptions, and credits; and that critical circumstances do not exist in this case. Therefore the Department refers this case to the International Trade Commission for a determination regarding injury.

EFFECTIVE DATE: January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Roland L. MacDonald, Jr., Import Administration Specialist, Office of Investigations, International Trade Administration, Department of Commerce, Washington, D.C. 20230, (202) 377–4087.

SUPPLEMENTARY INFORMATION:

Procedural Background

On August 1, 1980, the Department received a petition in proper form from the Y-Tex Corporation in Cody, Wyoming. On behalf of U.S. producers of plastic animal identification tags, the petitioner alleged that the government of New Zealand provides to manufacturers, producers, and exporters of such tags certain benefits that are bounties or grants ("subsidies") within the meaning of section 303 of the Tariff Act of 1930 (19 U.S.C. 1303) ("the Act").

In response, on August 25, 1980, the Department published a notice (45 FR 56380) stating that it was initiating a countervailing duty investigation of these imports. It added that because New Zealand is not a country under the Agreement within the meaning of section 701(b) of the Act (19 U.S.C. 1671(b)), section 303 of the Act applies to this investigation.

Although a determination of injury to a domestic industry usually is not required in investigations under section 303, it is required in investigations concerning nondutiable merchandise. Therefore, because animal identification tags are nondutiable, the International Trade Commission (ITC) also conducted an investigation. On September 25, 1980, the ITC issued a preliminary determination that there is a reasonable indication that imports of these tags from New Zealand are materially injuring, or are threatening to materially injure, a U.S. industry (45 FR 63573).

On November 3, 1980, the Department published a notice of "Preliminary Affirmative Countervailing Duty Determination" (45 FR 72727), finding that critical circumstances do not exist in this case; that the "tax credit" amount is $438,819 (all monetary references are in New Zealand dollars); that the "tax credit" was received under the Increased Export Taxation Incentive program, which is a subsidy within the meaning of the countervailing duty law; and that the amount of the subsidy on exports to the United States is 6.7 percent ad valorem.

Imports Investigated

Plastic animal identification tags are used for the temporary or permanent identification of animals, such as cattle, hogs, sheep, and goats. The tags vary between 1.75 and 7.5 square inches of surface area. Numbers stamped into the plastic tags are used for identification or information. All these tags are currently classifiable under the provision for "other" agricultural and horticultural machinery and implements, in item 666.00 of the Tariff Schedules of the United States.

Foreign Producer

In 1964, Delta Plastics, Ltd., was founded to market products to the

agricultural sector. In December 1979, Allflex Holdings, Ltd., was established in New Zealand as a publicly owned company, with Delta Plastics, Ltd., as a subsidiary operating company.

Delta's most successful product is the Allflex animal identification tags, where sales increased from $181,000 in 1971 to $5.1 million in 1979. As New Zealand's only exporter of these tags, Delta saw its tag exports grow from 29 percent of total sales in 1973 to 87 percent in 1979.

Delta is New Zealand's only exporter of animal identification tags. Approximately 50 percent of Delta's tag exports go to the United States. The four U.S. companies importing these tags are: Allflex Tag Co., in Culver City, California; G.C. Hanford Manufacturing Co., in Syracuse, New York; Vet Brand, Inc., in Torrance, California; and Diamond Shamrock Corp., in Cleveland, Ohio.

The Allflex Tag Co., a wholly owned subsidiary of Delta, acts as Delta's U.S. agent by conducting a retail mail order business for Allflex tags; helps Delta's two master agents, Vet Brand and G.C. Hanford, with various problems; and maintains a complete stamping operation for numbering and personalizing tags. In another U.S. operation, Delta and G.C. Hanford Manufacturing Co. began a joint venture in early 1980 called the Allflex Manufacturing Co., Inc., which is expected to supplement, rather than replace the imported tags.

U.S. Producers

Seven U.S. companies produce animal identification tags. Of those, three manufacture both one and two-piece tags, one manufactures two-piece tags only, and three manufacture one-piece tags only. In 1969 and 1970 the petitioner introduced a flexible two-piece tag but found no market for it at that time; in 1978 Y-Tex reintroduced the two-piece tag. The largest producer is Temple Tag Co., in Temple, Texas.

Programs Used by Delta and Found To Be Subsidies

Of the programs identified in the New Zealand's Income Tax Act 1976, we have determined that some are used by Delta and are subsidies within the meaning of the countervailing duty law. These programs appear in the form of special tax deductions, credits, and exemptions and are listed (except for Machinery for Export Production; Exemption from Sales Tax) in Part IV, Income Tax Act 1976, Deductions in Calculating Assessable or Nonassessable Income.

The programs providing a tax deduction are listed on the government of New Zealand's tax form as deductions from net profit and they are: Investment Allowance; Increased Exports of Goods; and Export of Goods to New Markets. Each program has its own methodology of converting expenditures, sales, and allowances into tax deductions. The deductions from each program are added together for a total deduction amount which is subtracted from Delta's taxable income after normal deductions are taken. Delta used the special deductions provided in part IV of the Income Tax Act of 1976 to offset net taxable income and eliminate its 1980 income tax liability. As a result Delta did not pay taxes on its 1980 net profit.

In addition, since special deductions exceeded net income after normal tax deductions, Delta established a prescribed (paper) loss for which it received tax credits. Added to the Income Tax Act 1976 by section 17 of the 1978 Income Tax Amendment, the program Credit in Relation to Export of Goods (section 157A) provides the methodology for converting the prescribed loss into a tax credit. A "tax credit" is a cash payment from the government of New Zealand to the taxpayer . The "tax credit" (cash payment) amount is obtained by multiplying the prescribed loss by 45 percent.

Therefore, these programs provided Delta with two separate benefits: (1) The deductions completely offset net taxable income, thereby eliminating its income tax liability; and (2) the conversion of the prescribed loss to tax credits provides a cash payment from the government of New Zealand to Delta. Since all these programs provide special benefits to ear tag exporters and most (except for one regional aid program) are direct incentives to and benefits on exports, they are all subsidies, and most are export subsidies, within the meaning of the countervailing duty law.

Delta used the following programs to offset net income and to obtain a prescribed loss: (We have identified the net effect each program has on the total subsidy amount).

1. Investment Allowances. Sections 118 through 123 of th Income Tax Act 1976 cover investment allowances. Section 118, a general provision relating to investment allowances, defines an investment allowance as a deduction permitted under sections 119 to 123 of the Act. Allowable for new manufacturing plants and machinery purchased on or before July 30, 1976, the deduction is taken from net profit and is over and above the existing allowance for depreciation. The total investment allowance deduction is calculated by adding all the allowances used.

Delta used the following investment allowances during the investigation period.

A. Regional investment allowance on certain new plants an machinery (section 119, Income Tax Act 1976). The new manufacturing plant or machinery must be used in New Zealand in the production of assessable income. Delta's deduction is calculated by multiplying the percentage specified in the Sixth Schedule of the Act (5 percent) by the cost of the new plant or machinery. The percentage listed in the Sixth Schedule is based on the regional location of the new plant or machinery. Because this allowance is available in some, but not all regions, it is regarded as a domestic subsidy in its entirety.

Since this program is related to both domestic and export sales, we allocated the allowance over total sales of animal identification tags. On this basis we found a subsidy of 0.24 percent.

b. Investment allowance on new manufacturing plants and machinery used for export (section 120). The new manufacturing plant or machinery must be used in New Zealand in the production of assessable income. Delta had to develop an export performance plan or an export development plan to be eligible for this program. To calculate the allowance, Delta selected a method that provided an allowance of 20 percent of the expenditure. The allowance was allocated over total export sales of animal identification tags for a subsidy of 1.03 percent.

c. Investment allowances on new plants and machinery used in high-priority activity (section 121A). High-priority activity means any activity that is periodically recognized by the Minister of Finance and the Minister of Trade and Industry as having high priority. Although to qualify a corporation must meet certain domestic and export standards, the program is basically related to exports. Delta's allowance under this program was 15 percent of the expenditure. This allowance was allocated over total export sales of animal identification tags for a subsidy of 0.60 percent.

2. Increased Export of Goods (section 156). This program permits Delta a deduction when (a) there is an increase of export sales for the income tax year or (b) there are export sales for the income tax year and an increase in export sales for the preceding income tax year. For futher explanation of this program, refer to the "Preliminary Affirmative Countervailing Duty Determination" (45 FR 72727). For this

deduction we computed a subsidy of 10.84 percent.

3. Export of Goods to New Markets (section 157). "New market export goods" are export goods that the taxpayer has sold to a new market. Designed to encourage export sales to new markets, this program defines such markets as either existing markets to which a new product is exported or new markets for existing products. This deduction from net profit is based on the value of export sales to the approved new market (the Secretary of Trade and Industry determines whether the market is separate and distinct). For this deduction we computed a subsidy of .03 percent.

Machinery for Export Production: Exemption from Sales Tax. In this program, machinery and appliances used in the production of goods for export may be granted an exemption from sales tax. Delta obtained a subsidy amount of 0..44 percent from this program.

Program Not in Effect Or Not Currently Used by Delta

Listed in the Income Tax Amendment Act 1979, and the Income Tax Act 1976, Part IV Grants and Suspensory Loans, the following programs, were not in effect for the 1980 tax year or were in effect but not used by Delta. They appear in the form of tax deductions, grants, suspensory loans, and special import licensing provisions. A more detailed description of these programs is available in our public file of this case.

1. *Export Incentives* (Programs listed are amendments or alternatives to existing programs cited above under Programs Used by Delta and Found to be Subsidies. These programs apply to tax on income from April 1, 1980).

a. Export performance incentive for qualifying goods (section 156A).

b. Export performance incentive for qualifying services (section 156B).

c. Export performance incentive for qualifying overseas projects (section 156D).

d. Export market development and tourist promotion incentive (section 156F).

2. *Grants and Suspensory Loans* (These programs are in effect but not used by Delta).

a. Forestry encouragement grants (section 168).

b. Export market development grants (section 170).

c. Development grants for new markets (section 171).

(d) Export suspensory loans and rural exports suspensory loans (section 172).

e. Regional development suspensory loans (section 173).

f. Export programs grants scheme (EPGS).

3. Export Market Development and Tourist Promotion Expenditure (Section 154). This applies to expenditures (i.e. market research, advertising, and travel expenses) incurred primarily for the purpose of seeking opportunities for the export of goods that have been manufactured in New Zealand. Delta deducted 50 percent of its total promotion expenditures.

For the 1980 tax year, Delta has not yet received a benefit through this program as the New Zealand's Inland Revenue Department is reviewing its claims for sales and travel expenses. Therefore we have not calculated a subsidy amount under this program.

4. *Export Incentive Licensing.*

Verification

We verified the information used in reaching this determination by examining the government tax laws, corporate records, and tax returns; and by meeting with and consulting officials from Delta and the New Zealand and U.S. governments, who are familiar with specific programs at issue in this case.

Critical Circumstance Determination

We noted in our preliminary determination that the rate of increase at which imports were penetrating the U.S. market had been leveling off during the 18 months before June 1980. Further information shows that the trend has continued through September 1980. Therefore, pursuant to section 705(a)(2), I affirm the finding that there have not been massive imports of animal identification tags from New Zealand over a relatively short period. Accordingly, liquidations will not be suspended retroactively, as provided in section 703(e)(2).

Final Determination

I hereby determine that the government of New Zealand provides bounties or grants (subsidies) within the meaning of section 303 of the Tariff Act with respect to the manufacture, production, or exportation of animal identification tags. The aggregate net amount of these benefits equals 13.18 percent ad valorem on exports to the United States, consisting of the following subsidy amounts:

	Percent
Regional investment allowance on certain new plants and machinery	0.24
Investment allowance on new manufacturing plants and machinery used for export	1.03
Investment allowances on new plant and machinery used in high priority activity	0.80
Increased export taxation	10.84
Export of goods to new markets	0.03
Machinery for export production: Exemption from sales tax	0.44
Total	13.18

Although the Department offered Y-Tex and Delta an opportunity to present oral views in accordance with § 355.35 of the Commerce Department Regulations (19 CFR 355.35), neither party requested a hearing.

Customs officers are directed to continue until further notice the suspension of liquidation ordered in the preliminary determination. Effective January 1981, and until further notice, a cash deposit, bond or other security in the new amount of 13.18 percent ad valorem must be posted on all such tags entering the United States, or being withdrawn from warehouses, for consumption.

If the International Trade Commission makes an affirmative final determination concerning material injury to an industry in the United States, the Department will issue a Countervailing Duty Order.

This notice is published in accordance with sections 303 and 706 of the Act (19 U.S.C. 1303, 1671e), and § 355.36 of the Department of Commerce Regulations (19 CFR 355.36).

Robert E. Herzstein,

Under Secretary for International Trade.

January 12, 1981.

[FR Doc. 81-1725 Filed 1-16-81; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Intent To Conduct Scoping Meeting and Prepare Environmental Impact Statement on Proposed Estuarine Sanctuary, Mullica River, New Jersey

SUMMARY: The Office of Coastal Zone Management (OCZM), National Oceanic and Atmospheric Administration (NOAA), intends to conduct a scoping meeting on February 9, 1981, and prepare a draft environmental impact statement (DEIS) on a proposed estuarine sanctuary at Mullica River in the Great Bay area off the coast of New Jersey. In accordance with the provisions of the National Environmental Policy Act (NEPA) and Section 315 of the Coastal Zone Management Act (CZMA). Designation of the sanctuary would protect and manage approximately 3,300 acres of important estuarine habitat in Atlantic and Burlington counties, located

approximately 12 miles north of Atlantic City.

DISCUSSION: This estuarine sanctuary proposal is currently being developed in consultation with the State of New Jersey, Federal agencies and affected public groups. The proposal, as a Federally-assisted action, has been reviewed by the New Jersey Department of Community Affairs, in accordance with OMB Circular A–95.

The Office of Coastal Zone Management will hold a scoping meeting on February 9, 1981, at 10:00 a.m. in the Navy Conference Room at Page Building #1, Office of Coastal Zone Management, 2001 Wisconsin Ave. NW., Washington, D.C. 20235. Interested parties who wish to submit suggestions, comments, or substantive information concerning the scope or content of this proposed environmental impact statement are invited to attend. Parties who wish to respond in writing should do so by February 19, 1981. The DEIS will be prepared in compliance with the Council on Environmental Quality (CEQ) regulations (FR, Vol. 43 November 29, 1978).

Comments may be submitted in writing or by telephone to: Mr. Jim MacFarland, Estuarine Sanctuary Program Manager, Estuarine Sanctuary Program Office (202/653–7301), Office of Coastal Zone Management, NOAA, 3300 Whitehaven Street NW., Washington, D.C. 20235.

For further information contact: Mr. Milt Martin, Estuarine Sanctuary Project Officer, Estuarine Sanctuary Program Office (202/653–7301), Office of Coastal Zone Management, 3300 Whitehaven Street NW., Washington, D.C. 20235.

(Federal Domestic Assistance Catalog No. 11.420 Coastal Zone Management Estuarine Sanctuaries)

Dated: January 13, 1981.

Donald W. Fowler,

Deputy Assistant Administrator for Coastal Zone Management.

[FR Doc. 81–1802 Filed 1–16–81; 8:45 am]

BILLING CODE 3510–08–M

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Gulf of Mexico Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94–265), will meet to review status reports on development of fishery management plans; consider foreign fishing applications, if any; and conduct other fishery management business.

DATES: The meeting, which is open to the public, will convene on March 3, 1981, at approximately 1:30 p.m., and adjourn at approximately 5 p.m., and on March 4, 1981, convene at 8:30 a.m., and adjourn at approximately noon.

ADDRESS: The meeting will take place at the Cavalier Room, St. Anthony Hotel, 300 East Travis, San Antonio, Texas.

FOR FURTHER INFORMATION CONTACT: Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609, Telephone: (813) 228–2815.

Dated: January 14, 1981.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 81–1892 Filed 1–16–81; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Controls on Certain Wool Sweaters From the People's Republic of China

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing a level of restraint of 183,706 dozen for wool sweaters in Category 445/446, produced or manufactured in the People's Republic of China and exported during the period which began on October 19, 1980 and extends through January 16, 1982.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), and December 24, 1980 (45 FR 85142))

SUMMARY: Pursuant to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 17, 1980, between the Governments of the United States and the People's Republic of China, consultations have been held concerning imports into the United States of wool sweaters in Category 445/446 from the People's Republic of China. Notice of the intention to hold these consultations was published in the **Federal Register** on October 27, 1980 (45 FR 70960). Under the terms of the bilateral agreement, the People's Republic of China has been obligated to limit its exports to the United States of these products during the ninety-day consultation period which began on October 19, 1980 to 70,343 dozen. In the event a mutually satisfactory resolution is not reached, the Government of the People's Republic of China is further obligated to limit its exports of these products to the United States for the twelve-month period beginning on January 17, 1981 to 113,363 dozen.

Inasmuch as a mutually satisfactory solution has not yet been reached between the two governments, the United States Government has decided, in carrying out its responsibilities in implementing these provisions of the bilateral agreement, to prohibit entry of imports in Category 445/446 in excess of 183,706 dozen, the combined levels of the two periods defined in the agreement, during the period which began on October 19, 1980 and extends through January 16, 1982.

EFFECTIVE DATE: January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Carl J. Ruths, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–4212).

SUPPLEMENTARY INFORMATION: On December 4, 1980, there was published in the **Federal Register** (45 FR 80324) a letter dated November 28, 1980 to the Commissioner of Customs from the Chairman of the Committee for the Implementation of Textile Agreements which established levels of restraint for certain categories of cotton and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1981. The notice document which preceded this letter described the consultation mechanism which applies to categories of textile products under the bilateral agreement, like Category 445/446, which are not subject to specific ceilings and for which levels may be established during the year. In the letter published below, pursuant to the bilateral agreement, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of wool sweaters in Category 445/446, produced or manufactured in the People's Republic of China and exported during the period which began on October 19, 1980 and extends through January 16, 1982, in excess of 183,706 dozen. In the event that a different and mutually satisfactory solution is reached with the People's Republic of China, an

appropriate notice will be published in the Federal Register.

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

United States Department of Commerce

International Trade Administration

January 14, 1981.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 17, 1980, between the Governments of the United States and the People's Republic of China, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on January 19, 1981 and for the period which began on October 19, 1980 and extends through January 16, 1982, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 445/446, produced or manufactured in the People's Republic of China and exported on and after October 19, 1980, in excess of 183,706 dozen. [1]

Textile products in Category 445/446 which have been exported to the United States prior to October 19, 1980 shall not be subject to this directive.

Textile products in Category 445/446 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), and December 24, 1980 (45 FR 85142).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the People's Republic of China and with respect to imports of wool textile products from China have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 81-1910 Filed 1-16-81; 8:45 am]

BILLING CODE 3510-25-M

[1] The level of restraint has not been adjusted to reflect any entries after October 18, 1980.

COMMUNITY SERVICES ADMINISTRATION

Decision To Fund the National Congress of Neighborhood Women, Brooklyn, New York and To Conduct a National Clearinghouse and Outreach Center for Low-Income Women

AGENCY: Community Services Administration.

ACTION: Notice to all Boards of Directors of CAA(s) or local governing officials.

SUMMARY: The Community Services Administration is notifying all Boards of Directors of Community Action Agencies (CAAs) or if there is no such agency, to the local governing officials in accordance with Section 232 of the Economic Opportunity Act of 1964, as amended, that a decision has been made to fund the National Congress of Neighborhood Women Brooklyn, New York to provide a national resource clearinghouse which focuses on low-income women. CAA's or local governing officials have 30 days from the date of this notice to express approval or disapproval. Comments should be sent to the CSA: c/o Mary Ann MacKenzie (address below). The plan of the project is to strengthen the capabilities of low-income women in the efforts to identify and attain resources to improve the quality of life for their families and communities. There will be a special effort to broaden the representation of low-income women on policy making bodies which subsequently affect their social and economic well-being; and to assure improvement in the employment status of women. A copy of the funding plan is available at the Community Services Administration c/o Mary Ann MacKenzie, 1200 19th Street, N.W., Washington, D.C. 20506.

This funding will support NCNW's capacity to assist community groups to enable women to improve their economic conditions through job skills training, education resources and adjunctive support services. This project is the result of a planning effort jointly funded by the Community Services Administration, the Department of Labor Women's Bureau, the Department of Education and Housing and Urban Development.

DATE: This notice becomes effective January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Mary Ann MacKenzie, Community Services Administration, 1200 19th Street, N.W., Washington, D.C. 20506, Telephone (202) 254-6390. Teletypewriter (202) 254-6218.

(Sec. 602, 78 Stat. 503; 42 U.S.C. 2942)

Richard J. Rios,

Director.

[FR Doc. 81-1806 Filed 1-16-81; 8:45 am]

BILLING CODE 6315-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Boards for the Correction of Military Records Form of Index to the Decisions of the Boards for the Correction of Military Records (Nondischarge Cases)

AGENCY: Department of the Army, DOD.

ACTION: The public comment period announced in the Federal Register of October 30, 1980, [45 FR 71839] to allow users of the Index to the Decisions of the Boards for the Correction of Military Records and other interested members of the public to suggest to the Department of Defense any specific changes to the form of the present index used for nondischarge cases that they believe would increase its convenience to users is hereby extended to February 27, 1981.

Dated: January 6, 1981.

Francis X. Plant,

Director, Army Military Review Boards Agency.

[FR Doc. 81-1858 Filed 1-16-81; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Office for Civil Rights

Annual Operating Plan for Fiscal Year 1981

AGENCY: Department of Education.

ACTION: Notice of Final Annual Operating Plan for Fiscal Year 1981.

SUMMARY: The Office for Civil Rights (OCR) issues its Annual Operating Plan (AOP) for Fiscal Year 1981. The AOP sets forth the compliance and enforcement, technical assistance, and program management activities that OCR plans to conduct in FY 1981.

FOR FURTHER INFORMATION CONTACT: Kristine M. Marcy, Deputy Assistant Secretary for Civil Rights, Office of Planning and Compliance Operations.

Office for Civil Rights, Department of Education, (RM. 5074, Switzer Bldg.), 400 Maryland Avenue, S.W., Washington, D.C. 20202, (202) 245–0301.

SUPPLEMENTARY INFORMATION: The Office for Civil Rights (OCR) issued its proposed Annual Operating Plan (AOP) for FY 1981 for public comment in the Federal Register on August 13, 1980, (45 FR 53858–53860). The comments received on the proposed AOP are summarized below, each being followed by OCR's response. Each comment was carefully considered. However, OCR was unable to accommodate every change requested. Several of the comments were based on misunderstandings or misinterpretations of the data or narrative contained in the proposed plan and required no substantive revisions to the plan. In other instances, OCR has revised the final FY 1981 AOP to incorporate requested changes. Where the final plan has been revised due to updated workload statistics or projections, these changes are noted in the plan itself.

Comments and Responses

COMMENT: The projection of complaint closures and investigative years assigned to complaints would require an annual productivity rate of approximately 17 case closures per investigator. In the past, discrepancies between projected and actual complaint investigator productivity rates resulted in reallocation of staff from reviews to handle incoming complaints. If steps have been taken to assure the necessary productivity rate, these should be cited.

RESPONSE: The number of FY 1981 complaint closures cited in the proposed plan was the total number of closures expected, both investigated and uninvestigated (closed because of the lack of OCR jurisdiction or for various administrative reasons). Uninvestigated closures are usually secured by administrative support staff located in the OCR regional offices. Accordingly, such closures do not require the expenditure of investigative time. During FY 1980, approximately half of all closures were investigated. In FY 1981, 2,485 of the expected 4,507 complaint closures will be closed by investigative staff. Therefore, it is projected that each of the 296 investigative staff years assigned to complaint investigation activities will produce 8.39 closures.

COMMENT: More investigative time should be assigned to Title IX enforcement. More discretionary time should be assigned to Title IX to compensate for the lack of complaints. One-third of the resources not devoted to the Age Discrimination Act of 1975 should be assigned to each of the other three statutes (Title VI, Title IX and Section 504).

RESPONSE: OCR regrets that it is unable to accommodate this request. Much of OCR's FY 1981 investigative staff time is committed, either by law, regulation or court order, to complaint investigation, pre-grant review and monitoring review activities, as well as to the completion of compliance reviews in progress. Most of this nondiscretionary time is allotted to complaint investigations and, based on recent trends, 43 percent of that time will be slated for the enforcement of Section 504. OCR's FY 1981 discretionary time (34 investigative years) is limited, and an attempt to balance the heavy complaint time devoted to Section 504 or the pre-grant and monitoring review time devoted to Title VI with a relatively heavy investment of discretionary time for Title IX would leave virtually no time for initiating new compliance reviews under Section 504 or Title VI. It should be noted that 35 percent of OCR's FY 1981 discretionary time has been allocated to the enforcement of Title IX.

COMMENT: More investigative time should be assigned to the area of vocational education, particularly under Title IX.

RESPONSE: Due to the limited amount of FY 1981 discretionary investigative time (discussed above), OCR is reluctant to increase the staff time allotment for any given issue. Such action would only serve to reduce or entirely consume the time allocated to another issue.

COMMENT: Multijurisdictional review sites are selected on the basis of probable Section 504 or Title VI violations. At least one-third of the reviews in each category should be selected primarily because of anticipated Title IX problems.

RESPONSE: Most compliance review site selections are made, at least in part, on the basis of survey data showing probable compliance problems. There are five multijurisdictional review issues identified in this plan: within school discrimination, school discipline, vocational education, special purpose schools and vocational rehabilitation services. OCR has and uses survey data for site selections for all of these issues, except vocational rehabilitation services. In each case, this data includes information on the sex of the beneficiaries and potential discrimination on that basis. Usually, multijurisdictional review selections are made on the basis of expected compliance problems, shown by survey data and other sources of information, under several or all jurisdictions. However, sometimes selections are made on the basis of expected compliance problems under Title IX alone.

COMMENT: Greater diversity in postsecondary reviews is needed, both in issues and in academic level (graduate versus undergraduate). For example, issues such as health services and student health insurance, housing equality, counseling, student employment, placement services and general support services should also be addressed.

RESPONSE: Due to the amount of discretionary investigative time available in FY 1981, OCR is not able to conduct reviews of other issues without reducing the limited amount of time already allocated to those issues identified in this plan. Vocational education was added as a postsecondary issue, but the time was reallocated from elementary and secondary education issues. Furthermore, given the amount of resources devoted to desegregation of higher education systems and Title IX intercollegiate athletics, OCR is not in a position to undertake any new major issue areas at the postsecondary level. For example, considerable policy development is needed in the area of counseling as it is subject to Title IX. OCR is initiating a policy development effort in the area of career interest inventories and may be able to proceed with compliance reviews in the counseling area in FY 1982.

COMMENT: The scope of reviews concerning graduate and professional school admissions should be expanded to include discrimination on the basis of race, national origin and handicap in addition to sex.

RESPONSE: It is believed that access of minorities and handicapped persons to graduate and professional schools is limited primarily because of the use of standarized admissions tests. Considerable policy development is needed in the area of testing as it applies to Title VI and Section 504 before OCR conducts reviews in these areas. The underenrollment of women in graduate and professional schools is not believed to result from the use of standarized tests, but rather from other factors. Therefore, OCR will pursue this issue only under Title IX during FY 1981.

COMMENT: If the AOP does not specify the number of compliance reviews projected, it should include criteria by which the number of compliance reviews will be determined (e.g., the ratio of investigative years to size of institution, complexity of issue,

or the amount of data required to make a finding).

RESPONSE: Although the amount of investigative time allotted for a specific review is contingent on the size of the institution, data requirements and issue complexity, it is difficult to establish a standard rule for staff time allotment, even for a specific issue. However, for illustrative purposes, the average amount of staff time being allotted per review under each FY 1981 review issue has been added to the final plan under Table 2.

COMMENT: OCR should allot enough investigative time to ensure that recipients have complied with conciliation agreements and plans for voluntary compliance (i.e., monitoring reviews).

RESPONSE: Because compliance reviews, and the staff effort required to do them, can be concentrated on those recipients believed to be in serious noncompliance with major civil rights requirements, discretionary staff time can be best used this way. Due to the limited amount of such time available in FY 1981, it was impossible to schedule any significant amount of time for a self-initiated monitoring review program. OCR will, of course, continue to monitor compliance plans and conciliation agreements when the need arises (e.g., when survey data, communications from complainants, media publicity, or other sources indicate the need for renewed OCR involvement).

COMMENT: Technical assistance activities should be focused on Title VI and Title IX in addition to Section 504.

Response: OCR's FY 1981 technical assistance contract strategy has been revised and this change has been reflected in the final FY 1981 AOP. In FY 1980, 100 percent of OCR's technical assistance contract expenditures dealt with Section 504. In FY 1981, OCR plans to significantly broaden the scope of its technical assistance contract strategy to include Title VI and Title IX.

Comment: Plans to issue major policy statements critical to the implementation of an enforcement program should be specified in the AOP.

Response: It is difficult, if not impossible, to project even an approximate date for the release of a significant policy statement. Such major statements are sometimes provided in draft form to the public for comment before they are finalized and adopted. The setting of an arbitrary date might tend to reduce the time allowed for the public to respond or the time for OCR to review and incorporate such input into a final policy document. Furthermore, the timing of a major policy statement can be delayed pending the outcome of an OCR investigation, court litigation or action in another forum which will have a direct impact on OCR's final policy stance. Finally, it is not possible to predict what unforeseen, critical issues might arise during the year requiring immediate attention and thus delaying other planned work. Because of these highly variable factors, OCR is reluctant to set dates for the issuance of major policy statements.

FY 1981 Annual Operating Plan

The basic purpose of the Office for Civil Rights (OCR) is to ensure that no person is unlawfully discriminated against by Federal education fund recipients in the delivery of services or the provision of benefits on the basis of race, national origin, sex, handicap or age. The jurisdictional authorities under which OCR operates include Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. Covered under these authorities are 50 State education agencies, 16,000 local education agencies, 3,200 institutions of higher education, 50 State rehabilitation agencies and their subrecipients, as well as other institutions such as libraries and museums which receive financial assistance from the Department of Education. The job of protecting the Federal civil rights of 12 million minority group members, 4 million handicapped persons and 26 million women who attend public schools or postsecondary institutions rests almost exclusively with OCR, as does the responsibility for guaranteeing these rights for potential students.

OCR's strategy to ensure compliance with Federal civil rights statutes involves two basic types of activities: compliance activities and technical assistance activities. Many of OCR's compliance activities are required by various statutes, regulations and court orders (complaint investigations, ESAA pre-grant reviews, *Lau* plan monitoring, and monitoring of State higher education system desegregation). OCR engages in two types of discretionary (non-required) compliance activities: compliance reviews and remedial plan monitoring. OCR concentrates its discretionary investigative activities on those recipients which are believed to be in serious noncompliance with a major civil rights requirement.

Through the transfer of information, material and skills, OCR encourages recipients to comply voluntarily with, and beneficiaries to understand their rights under, Federal civil rights statutes. OCR staff, including headquarters staff and the Regional Technical Assistance Staff, Department of Education (ED) program offices and contracted personnel are major vehicles used by OCR to deliver technical assistance.

During FY 1980, OCR (in the Department of Health, Education and Welfare) developed a policy on the enforcement of Title IX as it relates to intercollegiate athletics (December 11, 1979, 44 FR 71413–71423). During FY 1981, OCR will investigate all complaints it has received alleging violations of Title IX in the area of intercollegiate athletics. Approximately 144 such complaints, involving more than 100 institutions and filed with OCR (in HEW and ED) during the last several years, are currently pending. The investigations will cover not only the specific allegations cited in the complaints but will be expanded in scope so that thorough reviews of the entire intercollegiate athletics programs of the affected institutions can be made.

The following narrative and tables describe the activities that OCR plans for FY 1981.

I. Regional Investigatory Activities

A total of 415 investigative staff years will be assigned to compliance and enforcement work in FY 1981 as follows:

	Investigator time	
	Staff years	Percent
Complaint investigations	296	71
Compliance reviews	71	17
ESAA pregrant reviews	30	7
Lau monitoring	10	3
Adams monitoring	8	2
Total	415	100

A. Complaint Investigations

Table 1, below, shows projected complaint receipts, closures, and opening and ending inventories by jurisdiction. In order to determine the level of investigative staff resources required to process these complaints, the following determinations and projections were made.

—OCR had a pending caseload of 1,942 complaints as of October 1, 1980.

—During FY 1981, OCR will receive 4,090 complaints.

—During FY 1981, OCR will close 4,507 complaints, of which 2,485 will be investigated.

—OCR will have a pending caseload of 1,525 complaints as of October 1, 1981.

Based on these projections, 296 investigative years will be allocated to complaints.

This plan anticipates fewer pending complaints as of October 1981 than did the proposed plan. This revised expectation results primarily from a lower number of pending complaints as of October 1980 than was expected and a revised projection showing a lower number of FY 1981 complaint receipts than was anticipated earlier. However, a small number of additional investigative staff years are being reallocated to complaint investigation activities in order to close the number of complaints necessary to reach the October 1981 projected number of pending complaints. This is because OCR's investigator productivity rate for complaint processing was lower at the end of FY 1980 than expected and, as a result, it is now anticipated that the average productivity rate for FY 1981 will be lower than originally projected.

B. Compliance Reviews

A total of 71 investigator years will be available to conduct compliance reviews in FY 1981. This activity will include completing reviews started in previous years, monitoring remedial action plans resulting from reviews conducted in previous years, and initiating new reviews. The total number of investigator years slated for compliance reviews in this plan is lower than the number in the proposed plan. This revision is a result of new lower estimates of staff time necessary to complete reviews already in progress.

The issues to be covered in the reviews conducted during FY 1981 are presented in Table 2, below. These issues were identified on the basis of survey results, findings from previous complaint investigations and compliance reviews, and related research findings. Table 2 also indicates the amount of investigative years to be assigned to each issue. Shortly after the beginning of each quarter of FY 1981, OCR will make available to the public, upon request, information on the specific types of compliance reviews it will initiate during that quarter.

C. ESAA Pre-Grant Reviews

OCR is responsible for reviewing applications for funding under the Emergency School Aid Act (ESAA). ESAA funds are used to encourage the voluntary elimination, reduction, or prevention of minority group isolation, and to aid school children in overcoming educational disadvantages. ESAA pre-grant reviews ensure that the practices of grant applicants conform to certain civil rights requirements prior to the awarding of Federal funds. In FY 1981, 30 investigator years will be allocated to conduct 665 ESAA pregrant reviews. An analysis of workload data has indicated that the level of staff resources assigned to this activity in the proposed plan was high. Therefore, the staff allocation for this activity has been revised downward, but still reflects an increase over the FY 1980 allocation of 15 years.

D. Mandated Monitoring Activities

During FY 1981, OCR will review recipients to determine whether they are complying with the terms of compliance agreements. These activities will include *Adams* higher education desegregation and *Lau* plan monitoring.

1. *Adams* Higher Education Desegregation Plan Monitoring—OCR is currently monitoring higher education desegregation plans of six States. In FY 1981, eight investigator years will be allocated to monitoring the desegregation activities of these States. Additional reviews will be completed during this period, and it is expected that monitoring of additional plans will commence in FY 1981.

2. *Lau* Plan Monitoring—OCR is required to monitor the implementation of *Lau* plans by recipients. In FY 1981, 10 investigator years will be allocated to monitoring 25 such plans. The level of effort for this activity has been revised downward from that shown in the proposed plan, but the total staff allocation still represents an increase over the FY 1980 allocation of eight years.

E. Summary

Table 3 summarizes the allocation of investigative years by recipient groups. Table 4 summarizes the allocation by jurisdiction.

II. Technical Assistance Activities

Over 20,000 education institutions which receive Federal funds must comply with a number of comlex rights requirements. Because of the numbers involved, OCR is unable to investigate the policies or practices of each recipient. In order to encourage these institutions to voluntarily comply with the law, OCR, either through headquarters or regional staff, provides technical assistance to recipients and works with ED program staff to help recipients understand their civil rights obligations. These assistance activities complement OCR's compliance activities by extending the range of OCR's impact beyond those recipients who are directly covered by an OCR investigation and by enabling OCR to accomplish its mission more efficiently and effectively. By combining a forceful compliance reveiw program with an effective assistance program, OCR will be able to make substantial progress toward achieving broad compliance with civil rights guarantees.

During FY 1981, OCR will plan and coordinate Department-wide initiatives to incorporate civil rights activities into Department of Education program operations. It will assist in the development of, and coordinate, civil rights and equal education program technical assistance strategies for implementation by other Departmental components; reveiw Departmental programs providing financial and technical assistance to assure that they support civil rights compliance; and serve as liaison to other Federal agencies on civil rights technical assistance program efforts. OCR will also solicit the support of other Departmental programs and components in strengthening civil rights and equal educational opportunity; provide technical assistance directly; and design, manage and evaluate OCR's own program of technical assistance contracts.

A total of 80 technical assistance staff years will be available in FY 1981 to provide consultation, conduct on-site visits, participate in workshops and respond to telephone and written requests for information and materials. This effort will be provided by OCR staff, including both head-quarters staff and Regional Technical Assistance Staff, as well as contracted personnel. In FY 1980, 100 percent of OCR's technical assistance contract expenditures dealt with Section 504. In FY 1981, OCR plans to significantly broaden the scope of its technical assistance contract strategy to include Title VI and Title IX.

III. Program Management Activities

In order to effectively carry out its compliance, enforcement and technical assistance activities, OCR conducts a comprehensive legal, management and evaluation program that includes:

—Formulating regulations, policies, and investigations manuals;

—Providing technical guidance on cases and reviews referred from regional offices;

—Conducting hearings before Administrative Law Judges on the compliance of Federal fund recipients with civil rights requirements;

—Monitoring State higher education desegragation and *Lau* plans;

—Meeting with school district representatives, college and university officials, compliants, and civil rights groups to discuss OCR activities;

—Conducting OCR national surveys and data collection projects to obtain

information on recipients and beneficiary populations;

—Operating a data base management system to assure that complaint processing times are met;

—Providing basic training to new investigators as well as training on policy initiatives for experienced investigators and legal staff; and

—Conducting systematic on-site reviews of techincal assistance contractors' activities.

Table 1. *Fiscal year 1981 Annual Operating Plan*

[Projected fiscal year 1981 complaint workload]

	Title VI race/ national origin	Title IX	Section 504	Age	Total
Pending Oct. 1, 1980	369/78	583	893	19	1,942
Fiscal year projected new complaints	1023/204	695	2086	82	4,090
Fiscal year 1981 closures (total)	1172/270	1082	1938	45	4,507
Projected complaints pending Oct. 1, 1981	220/12	196	1041	56	1,525

Note.—Projected fiscal year 1981 new complaints were distributed according to the proportions each jurisdiction represented in the complaints received from Oct. 1, 1979 to Sept. 30, 1980. Similarly, the projected fiscal year 1981 closures were distributed according to the proportions each jurisdiction represented in the closures occurring between Oct. 1, 1979 and Sept. 30, 1980.

Table 2.—*Fiscal year 1981 Annual Operating Plan*

[Compliance reviews scheduled]

Issue	Description of violation	Investigator years planned	Average Number of staff years per review
ELEMENTARY AND SECONDARY EDUCATION			
Identification of and Services to Limited-English Proficient (LEP) Children.	Discrimination against non-English speaking (NES) or limited-English proficient (LEP) children.	6	.50
Within School Discrimination: Classroom Assignments, Tracking and Ability Grouping, Special and Physical Education, and Secondary School Athletics.	Discriminatory assignment of students on the basis of race, national origin, sex and/or handicap to courses (including industrial arts and home economics), classrooms, special programs, ability groups, and physical education programs. (Special programs would include those for the educable mentally retarded as well as those for the gifted and talented, e.g., advanced mathematics or science.) This issue would also cover biased counseling and appraisals of students as well as unequal opportunities involving athletics.	9	.54
School Discipline: Expulsions and Suspensions.	Discriminatory disciplinary treatment of students on the basis of race, national origin, sex and/or handicap.	5	.61
Vocational Education: Access, Admissions and Job Placement.	Discrimination on the basis of race, national origin, sex and/or handicap in vocational education programs and courses.	10	.42
Special Purpose Schools: Program Availability and Least Restrictive Environment.	Discrimination in admissions, accessibility, treatment or employment in State administered special purpose schools on the basis of race, national origin, sex, and/or handicap.	5	.34
Unserved Special Education	Discrimination on the basis of handicap in the provision of a free and appropriate education. These efforts will include several joint reviews of State education agencies with the Office of Special Education and Rehabilitative Services.	4	.81
School Segregation	Discriminatory assignment of students to schools on the basis of race or national origin.	5	.81
POSTSECONDARY EDUCATION			
Program Accessibility for the Handicapped.	Lack of program accessibility and accommodations for handicapped students in postsecondary school programs.	8	.23
Graduate and Professional Schools: Admissions.	Discrimination on the basis of sex in admissions to graduate and professional schools.	8	.24
Intecollegiate Athletics: Overall Program Equality [1].	Lack of comparable intercollegiate athletic facilities and programs for women based on their interests and abilities.	2	.50
Vocational Rehabilitation Services.	Discrimination in the provision of services and benefits to severely mentally and physically handicapped individuals, and/or discrimination on the basis of race, national origin and/or sex in the provision of educational services and benefits.	3	.81
Higher Education Desegregation	Completion of compliance reviews of State higher education systems to determine whether they continue to bear the vestiges of their former segregated status.	3.	.50
Vocational Education: Access, Admissions and Job Placement.	Discrimination on the basis of race, national origin, sex and/or handicap in vocational education programs and courses.	3	.21

[1] Two investigator staff years are being devoted to compliance reviews in addition to the investigation of complaints in this area.

Table 2.—*Fiscal year 1981 Annual Operating Plan—Continued*

[Compliance reviews scheduled]

Issue	Description of violation	Investigator years planned	Average Number of staff years per review

Table 3.—*Fiscal year 1981 Annual Operating Plan*

[Investigative years allocated to each type of recipient]

Type of recipient	Complaints	Compliance reviews	ESAA pregrant reviews	Monitoring			
				Adams	Lau	Total	Percent
Elementary and secondary schools.	207	46	30	0	10	293	71
Post-secondary education institutions.	89	25	0	8	0	122	29
Total	296	71	30	8	10	415	100

Table 4.—*Fiscal year 1981 Annual Operating Plan*

[Investigative Years Allocated to Each Jurisdiction]

Jurisdiction	Complaints	Compliance reviews	ESAA pregrant previews	Monitoring			
				Adams	Lau	Total	Percent
TITLE VI							
Race	77	15	20	8	0	120	29
National Origin	18	11	10	0	10	49	12
Title IX	71	22	0	0	0	93	22
Section 504	127	23	0	0	0	150	36
Age	3	0	0	0	0	3	1
Total	296	71	30	8	10	415	100

Dated: January 13, 1981.

Shirley M. Hufstedler,

Secretary of Education.

[FR Doc. 81-1782 Filed 1-16-81; 8:45 am]

BILLING CODE 4000-01-M

Office of Elementary and Secondary Education

Desegregation of Public Education; Closing Date for Transmittal of Applications

AGENCY: Department of Education.

ACTION: Notice of Closing Date for the Transmittal of Applications for Fiscal Year 1981 Grants.

Applications are invited for new projects under the following Desegregation of Public Education programs:

(1) State Educational Agency (SEA) programs for race, sex and national origin desegregation assistance under section 403 of the Civil Rights Act of 1964.

(2) Desegregation Assistance Center (DAC) programs for race, sex, and national origin desegregation assistance under section 403 of the Act.

(3) Training Institute (TI) programs for race and sex desegregation assistance under section 404 of the Act.

(4) School Board Grants for sex desegregation assistance under section 405 of the Act.

The Secretary does not, by this notice, invite applications for the Special Grants to School Boards for Race and National Origin Desegregation. Applicants for these grants may apply at any time, but should first review the eligibility requirements contained in 34 CFR 270.04 and 270.71 (a) and (b) (formerly 45 CFR 180.04 and 180.71 (a) and (b)).

Authority for these programs is contained in Title IV of the Civil Rights Act of 1964 (42 U.S.C. 2000c–2000c–5).

The purpose of these programs is to help solve problems related to the race, sex, and national origin desegregation of public elementary and secondary schools.

Closing Date for Transmittal of Applications: An application for a grant must be mailed or hand delivered by March 12, 1981.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Washington, D.C. 20202, Attention: 84.004A.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept a hand delivered application between 8:00 a.m. and 4:30 p.m.

(Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: An applicant for a race, sex or national origin desegregation assistance center may apply to provide assistance in one of the following service areas.

(a) *Service areas for race desegregation assistance:*

(i) Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island.

(ii) New York, New Jersey, Puerto Rico, Virgin Islands.

(iii) Pennsylvania, Delaware

(iv) Maryland, Virginia, West Virginia, District of Columbia.

(v) Kentucky, Tennessee, North Carolina, South Carolina.

(vi) Mississippi, Alabama, Georgia, Florida.

(vii) Minnesota, Wisconsin, Michigan.

(viii) Illinois, Indiana.

(ix) Ohio.

(x) Iowa, Nebraska, Kansas, Missouri.

(xi) Arkansas, Louisiana, Oklahoma.

(xii) New Mexico, Texas.

(xiii) North Dakota, South Dakota, Montana, Colorado, Wyoming, Utah.

(xiv) California, Arizona, Nevada.

(xv) Hawaii, Guam, American Samoa, Trust Territory of the Pacific Islands, Commonwealth of the Northern Mariana Islands.

(xvi) Oregon, Washington, Idaho.

(xvii) Alaska.

(b) *Service areas for sex desegregation assistance:*

(i) Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island.

(ii) New York, New Jersey, Puerto Rico, Virgin Islands.

(iii) Pennsylvania, Delaware, Maryland, Virginia, West Virginia, District of Columbia.

(iv) North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Kentucky, Tennessee.

(v) Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota.

(vi) Texas, Louisiana, Oklahoma, Arkansas, New Mexico.

(vii) Iowa, Nebraska, Kansas, Missouri.

(viii) North Dakota, South Dakota, Montana, Colorado, Wyoming, Utah.

(ix) California, Nevada, Arizona.

(x) Hawaii, Guam, American Samoa, Trust Territory of the Pacific Islands, Commonwealth of the Northern Mariana Islands.

(xi) Oregon, Washington, Idaho.

(xii) Alaska.

(c) *Service areas for national origin desegregation assistance:*

(i) Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Puerto Rico, Virgin Islands.

(ii) Pennsylvania, Delaware, Maryland, District of Columbia, Virginia, West Virginia, North Carolina, South Carolina, Kentucky, Tennessee, Georgia, Alabama, Mississippi, Florida.

(iii) Ohio, Indiana, Illinois, Michigan, Minnesota, Wisconsin, Missouri, Kansas, Iowa, Nebraska.

(iv) Texas, Louisiana, Arkansas.

(v) Montana, North Dakota, South Dakota, Wyoming, Colorado, Utah, Oklahoma.

(vi) New Mexico, Arizona, Nevada.

(vii) Southern California (that part of California south of the northern boundaries of San Luis Obispo, Kern, and San Bernardino Counties).

(viii) Northern California (that part of California not included in Area (vii)).

(ix) Washington, Oregon, Idaho.

(x) Hawaii, Guam, Trust Territory of the Pacific Islands, American Samoa, Commonwealth of the Northern Mariana Islands.

It should be noted that two additional service areas have been established for this year in each of the three categories—race, sex, and national origin. These areas are Alaska, Hawaii, Guam, American Samoa, Trust Territory of the Pacific Islands, Commonwealth of the Northern Mariana Islands. Because of the geographic isolation of these areas, it is more effective to establish separate service areas.

Applicants must submit a separate application for each desegregation assistance center award as required in 34 CFR 270.38(a) (formerly 45 CFR 180.38(a)). Applicants wishing to apply in more than one category are invited to do so.

In those instances where an applicant submits more than one proposal, a section must be included in each proposal to indicate the proposed plan for coordination of the projects and the cost benefits which would be realized if the applicant receives more than one award.

Available Funds: The fiscal year 1981 appropriation for assistance under Title IV is $45,675,000. It is anticipated that, of that amount, approximately 107 awards will be made for race desegregation assistance, approximately 102 awards will be made for sex desegregation assistance, and approximately 96 awards will be made for national origin desegregation assistance. The approximate distribution of funds by program is as follows:

Program	Number of awards
(1) State Educational Agencies	86
(2) Desegregation Assistance Centers	40
(3) Training Institutes	22
(4) School Boards: Sex	48
(5) School Boards: Race/National Origin	109

This distribution of awards is only an estimate and does not bind the Department of Education.

Application Forms: Application forms and program information packages are expected to be ready for mailing by January 26, 1981. They may be by writing to Dr. Shirley D. McCune, Deputy Assistant Secretary for Equal Educational Opportunity Programs, U.S. Department of Education, Room 2001A, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The Secretary strongly urges that the narrative portion of the applicaton not exceed 40 pages in length. The Secretary further urges that applicants not submit information that is not requested.

Applicable Regulations: Regulations applicable to these programs include the following:

(a) Regulations governing the Desegregation of Public Education programs, 34 CFR Part 270 (formerly 45 CFR Part 180).

These regulations were published in the **Federal Register** on July 26, 1978 (45 FR 32372).

(b) The Education Division General Administrative Regulations (EDGAR), 34 CFR Parts 75 and 77 (formerly 45 CFR Parts 100a and 100c).

These regulations were published in the **Federal Register** on April 3, 1980 (45 FR 22494).

Further Information: For further information contract Ms. M. Patricia Goins, Director, Division of Equity Training and Technical Assistance, Equal Educational Opportunity Programs, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 2031, FOB–6, Washington, D.C. 20202. Telephone (202) 245–8840.

(42 U.S.C. 2000c—2000c–5)

(Catalog of Federal Domestic Assistance No. 84.004A, Desegregation of Public Education Program)

Dated: January 13, 1981.

Thomas K. Minter,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 81-1783 Filed 1-16-81; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Application for Presidential Permit PP-74; Power Authority of the State of New York

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application by the Power Authority of the State of New York (PASNY) for a Presidential permit for a 345 kilovolt international transmission line.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has received an application from the Power Authority of the State of New York to construct a 345 kV transmission line from the United States to Canada crossing the Niagara River at a point several miles north of Niagara Falls, New York.

FOR FURTHER INFORMATION CONTACT:

James M. Brown, Jr., System Reliability and Emergency Response Branch, Department of Energy, Room 4110, 2000 M Street NW., Washington, D.C. 20461, (202) 653-3825

Lise Courtney Howe, Office of General Counsel, Department of Energy, Room 5E-064, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-2900

SUPPLEMENTARY INFORMATION: On December 17, 1980, ERA received an application from PASNY for authority to construct a 345 kV transmission line from the United States to Canada crossing the Niagara River near Niagara Falls, New York. The transmission line will be used to deliver approximately 2000 megawatts of surplus capacity from the Sir Adam Beck switchyard of Ontario Hydro in the Province of Ontario to the PASNY Niagara Power Plant switchyard in the State of New York.

PASNY proposes to install two 345 kV circuits in an existing underground power tunnel which extends from the area of the 345 kV Niagara Power Plant switchyard to the headworks of the Niagara powerdam, where the tunnel terminates. The Niagara River will be spanned by a double circuit 345 kV overhead crossing from the headworks of the powerdam to a new tower owned by Ontario Hydro on the Canadian side of the river. The new tower will be located in an existing transmission line right-of-way. The total length of the 345 kV transmission facilities on the New York side of the river is less than one mile, of which only 700 feet consists of the overhead crossing from the headworks of the dam to the International Border; the remainder will be placed in the existing PASNY tunnel.

According to PASNY the principal benefits of the proposed interconnection are: (1) Increased capability for transferring power between Canada and New York, thereby permitting purchases of surplus power from Ontario; (2) displacement of oil-fired generation in New York by less costly imported electricity; (3) increased capabilities for emergency transfers between Canada and New York; and (4) increased ability to transfer to Ontario Hydro power generated at the Niagara Project using, when available, Ontario Hydro's unused Niagara River water allocation.

Under section 201(f) of the Federal Power Act, any State or any agency, authority, or instrumentality of a State is exempted from the provisions of Part II of the Act. Accordingly, PASNY is not required to request from ERA authority to export electric energy pursuant to section 202(e) of the Federal Power Act, and ERA review of this proposed project will be limited to the issuance of a Presidential Permit pursuant to Executive Order 10485, as amended.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the System Reliability and Emergency Response Branch, Economic Regulatory Administration, Room 4110, 2000 M Street NW., Washington, D.C. 20461, in accordance with §§ 1.8 or 1.10 of the Rules of Practice and Procedure (18 CFR 1.8, 1.10).

Any such petitions and protest should be filed on or before February 16, 1981. Protests will be considered by ERA in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with ERA and will, upon request, be made available for public inspection and copying at the ERA Docket Room, Room B-210, 2000 M Street NW., Washington, D.C., and at the Systems Reliability and Emergency Response Branch, Room 4110, 2000 M Street NW., Washington, D.C.

Dated: January 12, 1981.

Howard F. Perry,

Acting Assistant Administrator for Utility Systems, Economic Regulatory Administration.

[FR Doc. 81-1709 Filed 1-16-81; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 81-04-NG]

Boundary Gas, Inc.; Application for Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy gives notice of receipt of the application of Boundary Gas, Inc. (Boundary) to import natural gas from Canada. Boundary proposes to import and resell up to 185,000 Mcf per day of natural gas for a contract term of ten years to its stockholders, which are 13 natural gas distribution companies and an interstate pipeline serving the Northeastern United States. TransCanada Pipelines Ltd. (TransCanada) is the Canadian exporter. Tennessee Gas Pipline Company, a Division of Tenneco, Inc. (Tennessee), will provide transportation for the gas in the United States. The application is filed with ERA pursuant to Section 3 of the Natural Gas Act and the Secretary of Energy's Delegation Order No. 0204-54. Protests or petitions to intervene are invited.

DATES: Protests or petitions to intervene are to be filed on or before February 18, 1981.

FOR FURTHER INFORMATION CONTACT:

Leonard B. Levine (Division of Natural Gas), Economic Regulatory Administration, 2000 M Street NW., Room 7108, RG-55, Washington, D.C. 20461, (202) 653-3286.

James K. White (Assistant General Counsel for Natural Gas and Mineral Leasing), Department of Energy, 1000 Independence Ave. SW., Room 5E-074, GC-15, Washington, D.C. 20585, (202) 252-2900.

SUPPLEMENTARY INFORMATION: Under its contract with TransCanada, Boundary will be enitled to purchase a daily contract quantity of 185,000 Mcf of natural gas for resale to its fourteen stockholders. Boundary's stockholders (repurchasers) are all located in the Northeastern United States and include Bay State Gas Company (Massachusetts/New Hampshire/

Maine), Berkshire Gas Company (Massachusetts), Boston Gas Company (Massachusetts), The Brooklyn Union Gas Company (New York), Connecticut Gas Company (Connecticut), Consolidated Edison Company of New York, Inc. (New York), Fitchburg Gas and Electric Light Company (Massachusetts), Gas Service, Inc. (New Hampshire), Haverhill Gas Company (Massachusetts), Long Island Lighting Company (New York), Manchester Gas Company (New Hampshire), National Fuel Gas Supply Corporation (New York/Pennsylvania), New Jersey Natural Gas Company (New Jersey), and Valley Gas Company (Rhode Island). All of the repurchasers except National Fuel Gas Supply Corporation are natural gas distribution companies. National Fuel Gas Supply Corporation is an interstate pipeline company principally serving its affiliated distribution companies.

The primary term of the natural gas purchase contract is ten years, with one additional year for the delivery of contract quantities of gas not delivered during the primary contract term. The primary contract term is to commence with first delivery, but not later than November 1, 1982. The price is to be the price as determined by the Canadian government for natural gas exported to the United States, currently U.S. $4.47 per MMBtu.

Boundary states that it has a take-or-pay obligation to TransCanada, which requires it to take and pay for, or nevertheless pay for, an annual quantity of gas equal to 75 percent of the daily contract quantity (185,000 Mcf) times the number of days in the contract year. The repurchasers will share any take-or-pay obligation incurred. Each repurchaser is assigned a minimum annual quantity according to its percentage entitlement to buy gas from Boundary. To the extent that a repurchaser releases gas which is taken by other repurchasers, its minimum annual quantity is reduced accordingly.

Boundary does not intend to own or operate any facilities necessary for the transportation of the gas. Tennessee will own and operate all facilities needed to provide transportation services for Boundary. Boundary states that Tennessee will apply for regulatory approval to construct any facilities necessary to transport the gas.

Boundary has submitted market analysis data which it believes indicate a need for this gas. Boundary states in its application that the Canadian gas it proposes to import will account for about 9 percent of the repurchasers' collective gas supplies.

Other Information

The ERA invites protests or petitions for intervention in the proceeding. Such protests or petitions are to be filed with the Division of Natural Gas, Economic Regulatory Administration, Room 7108, RG–55, 2000 M Street NW., Washington, D.C. 20461, in accordance with the requirements of the rules of practice and procedure (18 CFR 1.8 and 1.10). Such protests or petitions for intervention will be accepted for consideration if filed no later than 4:30 p.m., on February 2, 1981.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing which may be convened herein must file a petition to intervene. Any person desiring to make any protest with reference to the petition and application for certificate should file a protest with the ERA in the same manner as indicated above for petitions to intervene. All protests filed with ERA will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

A hearing will not be held unless a motion for a hearing is made by any party or persons seeking intervention and is granted by ERA, or if the ERA on its own motion believes that a hearing is required. If a hearing is required, due notice will be given.

A copy of Boundary's petition is available for public inspection and copying in Division of Natural Gas Docket Room, Room 7108, 2000 M Street NW., Washington, D.C. 20461 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on January 12, 1981.

F. Scott Bush,

Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration.

[FR Doc. 81–1703 Filed 1–16–81; 8:45 am]

BILLING CODE 6450–01–M

[ERA Case No. 63011–9162–01–24; Docket No. ERA–FC–80–017]

Great Western Malting Co.; Availability of Tentative Staff Analysis

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of availability of tentative staff analysis.

SUMMARY: On March 4, 1980, Great Western Malting Company. (Great Western) petitioned the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for a permanent cogeneration exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or the Act), which prohibit the use of petroleum or natural gas in new powerplants..

Great Western proposes to install a 20,100 KW gas-fired combustion turbine to produce electricity and hot water heat for the company's production process.

On April 22, 1980, after a prepetition conference held in Washington, D.C., Great Western submitted a revised petition to ERA. ERA accepted the petition on June 13, 1980, and published notice of its acceptance in the **Federal Register** on June 20, 1980 (45 FR 41693). Publication of the Notice of Acceptance commenced a 45-day public comment period pursuant to section 701 of FUA. During this period, interested persons also were afforded an opportunity to request a public hearing. The comment period ended August 4, 1980. Comments were received from Region X of the Environmental Protection Agency (Seattle, Washington). No hearing was requested.

ERA's staff has reviewed the information presently contained in the record of the proceeding. A tentative Staff Analysis has been prepared which recommends that ERA issue an order granting a permanent cogeneration exemption to permit Great Western to use natural gas as a primary energy source in the cogneration facility.

ERA will issue a final order granting or denying the petition for a permanent exemption from the prohibitions of the Act within six months, unless extended by ERA, after the public comment period provided for in this notice has expired. Notice of, and a statement of reasons for, any extension will be published in the **Federal Register.**

DATES: Written comments on the Tentative Staff Analysis and requests for a public hearing are due on or before February 2, 1981.

ADDRESS: Fifteen copies of written comments, and any request for a public hearing shall be submitted to: Department of Energy, Case Control Unit, Box 4629, Room 3214, 2000 M Street NW., Washington, D.C., 20461. Docket Number ERA–FC–80–017 should be printed clearly on the outside of the envelope and on the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Jack C. Vandenberg, Office of Public Information, Economic Regulatory Administration, Department of Energy, 2000 M Street NW., Room, B–110, Washington, D.C. 20461, Phone (202) 653–4055.

Louis T. Krezanosky, Economic Regulatory Administration, Department of Energy, Room 3012B,

2000 M Street NW., Washington, D.C. 20461, Phone (202) 653–4208.

Douglas F. Mitchell, Office of General Counsel, Department of Energy, 1000 Independence Avenue SW., Room 6B–178, Washington, D.C. 20585, Phone (202) 252–2967.

The public file containing a copy of the Tentative Staff Analysis and other documents and supporting material on this proceeding is available for inspection upon request at ERA, Room B-110, 2000 M Street NW., Washington, D.C., Monday through Friday, 8:00 a.m.–4:30 p.m.

SUPPLEMENTARY INFORMATION: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE), on May 15, 1979, and May 17, 1979, published in the **Federal Register** (44 FR 28530, 28950), an interim rule to implement provisions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 et seq. (FUA or the Act). A final rule published on June 6, 1980 (45 FR 38276), became effective August 5, 1980, but those sections of the interim rule relating to the cogeneration exemption (44 FR 28994) were continued. FUA prohibits the use of natural gas or petroleum in certain new major fuel burning installations and powerplants unless an exemption for such use has been granted by ERA.

Great Western Malting Company (Great Western) plans to install a 20.1 MW gas-fired cogeneration powerplant to produce electricity and hot water heat for its malting process at its Vancouver, Washington facility. The cogeneration facility will consist of a General Electric LM 2500 gas turbine generator connected to a Johnston waste heat recovery boiler, and three oil-fired stand-by boilers. The gas turbine has a design heat input rate of 183 MM BTU's per hour and each stand-by boiler has a design heat input rate of 55.6 MM BTU's per hour. The waste heat boiler will receive no supplemental firing. All of the electricity produced by the gas turbine will be sold to local utilities, while heat exhaust from the turbine will be utilized by the waste heat boiler to produce hot water used to provide indirect heat for Great Western's production activities. The stand-by boilers will furnish additional process heat on very cold days and serve as a backup system when the gas turbine is down for repairs or maintenance. In either case, the stand-by boilers will not be used in the production of electricity. Pursuant to FUA section 103(a)(7)(B)(ii), the cogeneration facility will be treated as a powerplant because more than half of its annual electric power generation will be sold. Great Western estimates that the cogeneration facility will consume approximately 1,626 to 1,992 MM cu. ft. of natural gas per year (4.5 to 5.5. MM cu. ft. per day), and expects that it will begin commercial operation in November 1981. In accordance with 10 CFR 503.37, Great Western petitioned ERA for a permanent cogeneration exemption from the provisions of FUA to enable it to burn natural gas as a primary energy source in the facility.

Tentative Staff Analysis

On the basis of an analysis of information presented in Great Western's petition, review of the comments received from EPA, and discussions with interested parties, the Staff has concluded that ERA should grant the requested permanent cogeneration exemption.

Based upon the information provided by Great Western, ERA conducted an analysis which was reviewed by the DOE's Office of Environment, in consultation with the Office of the General Counsel, and DOE has concluded that the granting of this exemption is not a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act of 1969. Accordingly, neither an environmental impact statement nor an environmental assessment is required.

Terms and Conditions

Section 214(a) of the Act gives ERA the authority to attach terms and conditions to any order granting an exemption. The staff of ERA has tentatively determined and recommends that any order granting the requested permanent cogeneration exemption should pursuant to section 214(a) of the Act, be subject to the following terms and conditions:

A. Great Western will operate its natural gas- or oil-fired boilers instead of its cogeneration powerplant whenever the generation of electricity by its cogeneration powerplant would result in less than full utilization of alternate fuel capacity available to the West Group of the Northwest Power Pool.

B. This order shall not take effect until the 60th calendar day after its publication in the **Federal Register.**

The Tentative Staff Analysis does not constitute a decision by ERA to grant the requested exemption. Such a decision shall, in accordance with 10 CFR 501.68, be based on the entire record of this proceeding, including any comments received on the Tentative Staff Analysis.

Issued in Washington, D.C., on January 12, 1981.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 81-1704 Filed 1-16-81; 8:45 am]

BILLING CODE 6450-01-M

[ERA Case No. 51892-2092-23-22; Docket No. ERA-FC-80-039]

Missouri Public Service Co.; Acceptance of Petition for Exemption to the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance of petition for exemption pursuant to the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: On November 7, 1980, Missouri Public Service Company (MPS) petitioned the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for a permanent peakload powerplant exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978 42 U.S.C. 8301 et seq. (FUA or the Act), which prohibit the use of petroleum or natural gas as a primary energy source in new powerplants. A final rule setting forth the procedure for petitioning and the criteria for an exemption was published in the **Federal Register** on June 6, 1980 (45 FR 28376 and 45 FR 38302), 10 CFR Part 500. This rule became effective August 5, 1980.

The peakload powerplant for which the petition was filed is a natural gas-fired 77,885 kilowatt combustion turbine unit to be installed at MPS' generating plant at Pleasant Hill, Missouri. MPS certifies the unit will be operated solely as a peakload powerplant and will be operated only to meet peakload demand for the life of the plant. Under 10 CFR 503.41, MPS has requested a permanent exemption to construct the unit. ERA's decision in this matter will determine whether the proposed powerplant qualifies for the requested exemption.

ERA has accepted this petition pursuant to 10 CFR 501.3 and 501.63. In accordance with section 701(c) and section 701(d) of FUA, and 10 CFR 501.31 and 501.33 of the regulations, interested persons are invited to submit written comments in regard to this matter, and any interested person may submit a written request that ERA convene a public hearing.

DATES: Written comments are due on or before March 5, 1981. A request for public hearing must be made by any

interested person within this same 45 day period.

ADDRESSES: Fifteen copies of written comments shall be submitted to: Department of Energy, Economic Regulatory Administration Case Control Unit (FUA), Box 4629, Room 3214, 2000 M Street NW., Washington, D.C. 20461.

Docket No. ERA–FC–80–039 should be printed clearly on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Jack C. Vandenberg, Office of Public Information, Economic Regulatory Administration, Department of Energy, 2000 M Street NW., Room B–110, Washington, D.C. 20461, Phone (202) 653–4055.

Louis T. Krezanosky, New Powerplants Branch, Economic Regulatory Administration, Department of Energy, 2000 M Street NW., Room 3012B, Washington, D.C. 20461, Phone (202) 653–4208.

CHRISTINA SIMMONS, OFFICE OF GENERAL COUNSEL, DEPARTMENT OF ENERGY, 6B–178 FORRESTAL BLDG., 1000 INDEPENDENCE AVENUE NW., WASHINGTON, D.C. 20585, PHONE (202) 252–2967.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption to do so has been granted by ERA. MPS has filed a petition for a permanent peakload powerplant exemption to use natural gas as a primary energy source in its proposed Ralph Green Unit No. 3 combustion turbine. The unit will have a fuel heat input rate of 867.6 MM Btu per hour at peak capacity.

To qualify for a peakload powerplant exemption under 10 CFR 503.41, a petitioner must certify to ERA that the powerplant will be operated solely as a peakload powerplant and to meet peakload demand for the life of the powerplant.

MPS submitted a certified statement by a duly authorized officer, Mr. Richard Green, President of MPS, to the effect that the proposed gas-fired combustion turbine will be operated solely as a peakload powerplant and will be operated only to meet peakload demand for the life of the plant.

Mr. Green also certifies that the maximum design capacity of the powerplant is 77,885 kilowatts and that the maximum generation that will be allowed during any 12-month period is the design capacity times 1,500 hours or 116,827,500 Kwh.

On August 11, 1980, DOE published in the **Federal Register** (45 FR 53199) a notice of proposed amendments to guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). The grant or denial of certain FUA permanent exemptions, including the permanent exemption for peakload powerplants, is among the classes of actions that DOE, pursuant to the guidelines, has proposed be categorically excluded from the requirement to prepare an Environmental Impact Statement pursuant to NEPA. This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. MPS has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption. DOE's Office of Environment, in consultation with the Office of the General Counsel, will review the completed Environmental checklist submitted by MPS pursuant to 10 CFR 503.15(b)(2) together with other relevant information. Unless it appears during the proceeding on MPS' exemption that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

ERA hereby accepts the filing of the petition for a permanent peakload exemption as adequate for filing. ERA retains the right to request additional relevant information from MPS at any time during the pendency of this proceeding. As set forth in 10 CFR 501.3(d), the acceptance of the petition by ERA does not constitute a determination that MPS is entitled to the exemption requested.

The public file containing documents on these proceedings and supporting material is available for inspection upon request at: ERA, Room B–110, 2000 M Street NW., Washington, D.C. 20461, Monday–Friday, 8:00 a.m.–4:30 p.m.

Issued in Washington, D.C., on January 11, 1981.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 81–1705 Filed 1–16–81; 8:45 am]

BILLING CODE 6450–01–M

Moyle Petroleum Co.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of action taken and opportunity for comment on consent order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective date: December 31, 1980. Comments by February 18, 1981.

ADDRESS: Send comments to: Kenneth E. Merica, District Manager of Enforcement, Economic Regulatory Administration, P.O. Box 26247, Belmar Branch, Lakewood, Colorado, 80226.

FOR FURTHER INFORMATION CONTACT: Kenneth E. Merica, District Manager of Enforcement, Economic Regulatory Administration, P.O. Box 26247, Belmar Branch, Lakewood, Colorado, 80226, (303) 234–3195.

SUPPLEMENTARY INFORMATION: On December 31, 1980, the Office of Enforcement executed a Consent Order with Moyle Petroleum Company (Moyle) of Rapid City, South Dakota. Under 10 CFR 20 5.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

Moyle, with its home office located in Rapid City, South Dakota, is a firm engaged in the business of purchasing covered products and reselling them to wholesale purchasers and ultimate consumers, without substantially changing their form and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211 and 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Moyle, the Office of Enforcement of ERA and Moyle entered into a Consent Order, the significant terms of which are as follows:

1. ERA alleges that Moyle violated the gasoline price regulations contained in 10 CFR 212.93 of the Mandatory Petroleum Price Regulations by exceeding its "maximum legal selling price" for the covered gasoline products sold to Moyle's wholesale and retail customers, during the period March 1, 1979, through June 30, 1979 (audit period).

2. Moyle has agreed to pay $12,173.48 into a special fund administered by ERA in settlement of the alleged overcharges to its customers during that period.

3. Moyle has agreed to pay a civil penalty of $1,000.00.

4. The provisions of 10 CFR 205.199J are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, Moyle agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of Moyle's sales to its customers during the audit period, the sum of $12,173.48, within 10 business days of Moyle's receipt of the executed Order. Refund of those overcharges will be in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have been passed through as higher prices to subsequent purchasers. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submissions of Written Comments

A. *Potential Claimant:* Interested persons who believe that they have a claim to all or a portion of the settlement amount specified in I.2., above, should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notifications of a claim to Kenneth E. Merica, District Manager of Enforcement Economic Regulatory Administration, P.O. Box 26247, Belmar Branch, Lakewood, Colorado, 80226. You may obtain a free copy of this Consent Order, with proprietary information deleted, by writing to the same address or by calling (303) 234–3195.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Moyle Petroleum Company Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on February 18, 1981. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f), and 10 CFR 1004.11.

Issued in Lakewood, Colorado, on the 7th day of January 1981.

Kenneth E. Merica,

District Manager, Rocky Mountain District, Economic Regulatory Administration.

Concurrence by:

Stephen G. Plichta,

Acting Regional Counsel.

[FR Doc. 81–1706 Filed 1–16–81; 8:45 am]

BILLING CODE 6450–01–M

[ERA Case No. 65016–9152–27–22; Docket No. ERA–FC–80–025]

Owatonna Public Utilities; Availability of Staff Analysis

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of availability of tentative staff analysis.

SUMMARY: On April 21, 1980, Owatonna Public Utilities (Owatonna) petitioned the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for a permanent peakload powerplant exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or the Act), which prohibit the use of petroleum or natural gas in new powerplants.

Owatonna plans to install a 25,000 KW natural gas/oil-fired combustion turbine unit to be known as Unit No. 7 in Owatonna, Minnesota. Owatonna certifies that the unit will be operated solely as a peakload powerplant and will be operated only to meet peakload demand for the life of the plant.

ERA accepted the petition on July 10, 1980, and published notice of its acceptance in the **Federal Register**, on August 25, 1980, (45 FR 56383).

Publication of the notice of acceptance commenced a 45-day public comment period pursuant to section 701 of FUA. Interested persons were also afforded an opportunity to request a public hearing. The comment period ended October 9, 1980.

Comments were received from Region V of the Environmental Protection Agency (EPA). EPA comments indicate that additional information should be developed which includes a Prevention of Significant Deterioration applicability determination for Owatonna's boiler and an emissions inventory if No. 2 fuel oils with 0.3 percent and 0.5 percent sulfur content are used. No hearing was requested.

ERA's staff has reviewed the information contained in the record of this proceeding. A Tentative Staff Analysis has been prepared which recommends that ERA issue an order granting the permanent peakload powerplant exemption to Owatonna. ERA will issue a final order granting or denying the petition for a permanent peakload powerplant exemption within six months, unless extended by ERA, after the public comment period provided for in this notice has expired. Notice of, and a statement of reasons for any extension will be published in the **Federal Register.**

DATES: Written comments on the Tentative Staff Analysis and requests for a public hearing are due February 2, 1981.

ADDRESSES: Fifteen copies of any written comments, or requests for a public hearing should be submitted to: Department of Energy, Case Control Unit, Box 4629, Room 3214, 2000 M Street N.W., Washington, D.C. 20461. Docket Number ERA–FC–80–025 should be printed clearly on the outside of the envelope and on the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Jack C. Vandenberg, Office of Public Information, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room B–110, Washington, D.C. 20461, Phone (202) 653–4055

Louis T. Krezanosky, Economic Regulatory Administration, Department of Energy, Room 3012B, 2000 M Street, N.W., Washington, D.C. 20461, Phone (202) 653–4208

Douglas F. Mitchell, Office of General Counsel, Department of Energy, 1000 Independence Avenue, S.W., Room 6B–178, Washington, D.C. 20585, Phone (202) 252–2967

The public file containing a copy of the Tentative Staff Analysis and other documents and supporting materials on

this proceeding is available for inspection upon request at: ERA, Room B–110, 2000 M St. N.W., Washington, D.C., 20461, Monday through Friday, 8:00 a.m. to 4:30 p.m.

SUPPLEMENTARY INFORMATION: The Economic Regulatory Administration (ERA) published an interim rule on May 15 and 17, 1979 (44 FR 28530, 28950) to implement provisions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8310 *et seq.* (FUA or the Act). A final rule, published on June 6, 1980 (45 FR 38276), became effective August 5, 1980.

FUA prohibits the use of natural gas or petroleum in certain new major fuel burning installations and powerplants unless an exemption for such use has been granted by ERA.

Owatonna Public Utilities (Owatonna) plans to install a 25,000 KW natural gas/oil-fired combustion turbine unit to be called Unit No. 7 on the western edge of the City of Owatonna, approximately two miles from Owatonna's present plant site. Based upon estimates by Owatonna, the proposed unit is expected to consume approximately 54,000 barrels of No. 2 fuel oil per year (118 bbl/day). Unit No. 7 is scheduled for commercial operation in May 1982.

Owatonna submitted a sworn statement with the petition signed by Mr. David M. Martin, General Manager of Owatonna, as required by 10 CFR 503.41(b)(1). In his statement, Mr. Martin certifies that Unit No. 7 will be operated solely as a peakload powerplant only to meet peakload demand for the life of the plant. He also certified that the maximum design capacity of the unit is 25,000 KW and that the maximum generation that the unit will be allowed during any 12-month period is the design capacity times 1,500 hours or 37,500,000 Kwh.

Under the requirements of 10 CFR 503.41(b)(1)(ii), if a petitioner proposes to use natural gas or to construct a powerplant to use natural gas in lieu of an alternative fuel as a primary energy source, it must obtain an air quality certification from the Administrator of the Environmental Protection Agency or the Director of the Appropriate state air pollution control agency. This certification must state that the use by the powerplant of any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air control region or any area within the region, of a pollutant for which any national air quality standard is or would be exceeded. However, since ERA has determined that there are no presently available alternate fuels which may be used in the proposed powerplant, no such certification can be made. The certification requirement is therefore waived with respect to this petition.

Tentative Staff Analysis

On the basis of Owatonna's sworn statements and information provided, the staff recommends that ERA grant the requested peakload powerplant exemption. Based upon the information provided by Owatonna, ERA conducted an analysis which was reviewed by DOE's Office of Environment, in consultation with the Office of General Counsel, and DOE has concluded that the granting of this exemption is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. Accordingly, neither an environmental impact statement nor an environmental assessment is required.

Terms and Conditions

Section 214(a) of the Act gives ERA the authority to include terms and conditions in any order granting an exemption. Based upon the information submitted by Owatonna and upon the results of the staff analysis, the staff of ERA has tentatively determined and recommends that any order granting the requested peakload powerplant exemption should, pursuant to Section 214(a) of the Act, be subject to the following terms and conditions:

A. Owatonna shall not produce more than 37,500,000 Kwh during any 12-month period with Unit No. 7. Owatonna shall provide annual estimates of the expected periods (hours during specific months) of operation of Unit No. 7 for peakload purposes (e.g., 8:00–10:00 am and 3:00–6:00 pm during the June–September period, etc.). Estimates of the hours in which Owatonna expects to operate Unit No. 7 during the first 12-month period shall be furnished within 30 days from the date of this order.

B. Owatonna shall comply with the reporting requirements set forth at 10 CFR 503.41(d).

C. The quality of any petroleum to be burned in the unit will be the lowest grade available which is technically feasible and capable of being burned consistent with applicable environmental requirements.

D. Owatonna shall comply with the terms and conditions which may be imposed pursuant to the environmental requirements set forth at 10 CFR 503.15(b).

Issued in Washington, D.C. on January 11, 1981.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 81–1707 Filed 1–16–81; 8:45 am]

BILLING CODE 6450–01–M

Proposed Analysis of Electric Power System Blackout Impacting the States of Utah, Wyoming and Idaho

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of intent to initiate a detailed analysis of the causative factors of an electric power system blackout that affected customers in Utah, and parts of Wyoming and Idaho on January 8, 1981. The restoration procedures employed also will be reviewed.

SUMMARY: The Division of Power Supply and Reliability of the Economic Regulatory Administration plans to perform a technical analysis of the electric power system conditions and the initiating event(s) that led to a wide scale electric power blackout on January 8, 1981, which affected more than 1.5 million people. This analysis will be conducted under the authority of Section 311 of the Federal Power Act. Data will be requested from the involved electric utilities; on-site inspections of certain electric utility facilities and briefings/interviews with electric utility personnel also will be conducted. In addition to the technical analysis, the socio-economic impacts of this outage will be quantified in a general way and the restoration procedures employed will be reviewed. A formal report of this analysis will be published upon completion of the study.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard E. Wiener, Director, Division of Power Supply and Reliability, Department of Energy, Room 4103, 2000 M Street, N.W., Washington, D.C. 20461, 202–653–3899

Mr. James M. Brown, Jr., Chief, System Reliability and Emergency Response Branch, Department of Energy, Room 4110, 2000 M Street, N.W., Washington, D.C. 20461, 202–653–3825.

SUPPLEMENTARY INFORMATION: A major electric power system blackout affecting all of the State of Utah and portions of the States of Idaho and Wyoming occurred on January 8, 1981. This blackout affected over 1.5 million people.

Preliminary information has indicated that the system outage was initiated by the failure of a 345 kV transmission line

between the Utah Power and Light Company's Camp Williams and I90 South Substations. Since individual transmission lines are subject to failure from many different causes, electric utility systems normally are planned and operated to allow the unexpected outage of a facility with only minimal impact on the electric power system. In this situation, it is apparent that there were other causative factors involved. The overall purpose of this analysis is to ascertain those factors.

In particular, information will be gathered to determine the electric utility operating conditions prior to the blackout and the events leading to the blackout. Possible equipment malfunction or failure, human operator actions and the established operating procedures of the electric utilities involved will be reviewed. Special emphasis will be given to those changes in procedures, equipment installation, maintenance and operator training techniques that could be employed by the involved electric utilities to minimize the probability of a recurrence. The major impact of this outage was on the Utah Power and Light System and therefore this analysis will focus on that system. The impacts on neighboring utilities as well as the overall regional impacts also will be ascertained, and regional operating procedures reviewed as an element of this analysis.

Any person desiring to submit information or to obtain additional information concerning this analysis should contact the Director, Division of Power Supply and Reliability, Economic Regulatory Administration, Room 4103, 2000 M St., N.W., Washington, D.C. 20461 on or before February 9, 1981.

Dated: January 9, 1981.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

January 9, 1981.

[FR Doc. 81-1702 Filed 1-16-81; 8:45 am]

BILLING CODE 6450-01-M

Robert E. Park; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of action taken and opportunity for comment on consent order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective date: December 31, 1980. Comments by February 18, 1981.

ADDRESS: Send comments to: Kenneth E. Merica, District Manager of Enforcement, Economic Regulatory Administration, P.O. Box 26247, Belmar Branch, Lakewood, Colorado, 80226.

FOR FURTHER INFORMATION CONTACT: Kenneth E. Merica, District Manager of Enforcement, Economic Regulatory Administration, P.O. Box 26247, Belmar Branch, Lakewood, Colorado, 80226, (303) 234-3195.

SUPPLEMENTARY INFORMATION: On December 31, 1980, the Office of Enforcement executed a Consent Order with Robert E. Park (Park) of Casper, Wyoming. Under 10 CFR 20 5.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

Park, with its home office located in Casper, Wyoming, is a crude oil producer as defined in 10 CFR 212.31 and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211 and 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Park, the Office of Enforcement of ERA and Park entered into a Consent Order, the significant terms of which are as follows:

1. The ERA alleges that during the audit period certain volumes of crude oil produced and sold from the Boyd Miller No. 1 Lease were improperly characterized as "stripper well" crude oil exempt from the "old" oil or "lower tier" ceiling price rule contained in 10 CFR 212.73. The ERA further alleged that during the December 1, 1973 through April 30, 1976 (audit period) certain sales of crude oil were made by Park at prices in excess of the maximum allowable prices in violation of 10 CFR Part 212, Subpart D.

2. Park has agreed to pay $100,000 into a special fund administered by ERA in settlement of the alleged overcharges to its customers during that period.

3. Park has agreed to pay a civil penalty of $10,000.00.

4. The provisions of 10 CFR 205.199J are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, Park agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of Park's sales to its customers during the audit period, the sum of $100,000, on or before January 15, 1981. Refund of those overcharges will be in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have been passed through as higher prices to subsequent purchasers. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to CFR 205.199I(a).

III. Submissions of Written Comments

A. *Potential Claimant:* Interested persons who believe that they have a claim to all or a portion of the settlement amount specified in I.2., above, should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notifications of a claim to Kenneth E. Merica, District Manager of Enforcement Economic Regulatory Administration, P.O. Box 26247, Belmar Branch, Lakewood, Colorado, 80226. You may obtain a free copy of this Consent

Order, with proprietary information deleted, by writing to the same address or by calling (303) 234–3195.

You should identify your comments on written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Robert E. Park Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on February 18, 1981. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f) and 10 CFR 1004.11.

Issued in Lakewood, Colorado, on the 7th day of January 1981.

Kenneth E. Merica,

District Manager, Rocky Mountain District, Economic Regulatory Administration.

Concurrence By:

Stephen G. Plichta,

Acting Regional Counsel.

[FR Doc. 81-1708 Filed 1-16-81; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 81-02-NG]

Transcontinental Gas Pipe Line Corp. and Algonquin Gas Transmission Co.; Joint Application for an Order Authorizing Importation of Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for an order authorizing the importation of natural gas from Canada into the United States.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy gives notice of receipt of the joint application of Transcontinental Gas Pipe Line Corporation (Transco) and Algonquin Gas Transmission Company (Algonquin Gas) for ERA authorization to import up to 305,882 Mcf of natural gas per day from Canada for a period of approximately 20 years. The gas allegedly will be used to supply primarily high priority consumers in the Southeastern and mid-Atlantic regions and in New England. The import will require construction of a new pipeline system, the New England States Pipeline Company (NESP) system, which will cross the U.S. border near Calais, Maine, and extend to Burrillville, Rhode Island. The application is filed with ERA pursuant to Section 3 of the Natural Gas Act and the Secretary of Energy's Delegation Order No. 0204–54. Protests or petitions to intervene are invited.

DATES: Protests or petitions to intervene are to be filed on February 18, 1981.

FOR FURTHER INFORMATION CONTACT:

Stephen J. Gary (Division of Natural Gas), Economic Regulatory Administration, 2000 M Street, N.W., Room 7108, Washington, D.C. 20461, (202) 653–3286

James K. White (Assistant General Counsel for Natural Gas and Mineral Leasing), Office of General Counsel, Department of Energy, 1000 Independence Ave., N.W., Forrestal Building, Room 5E064, Washington, D.C. 20585, (202) 252–2900

SUPPLEMENTARY INFORMATION: Transco and Algonquin Gas have requested authority to import from Canada up to 305,882 Mcf of natural gas per day, to be divided equally between them, with deliveries contemplated to commence on November 1, 1983. The supplier of the gas is Pan-Alberta Gas Ltd. (Pan-Alberta). The term of the Gas Sales Contracts with Pan-Alberta is for 15 years, with a possible extension for an additional 5 years. Pan-Alberta will charge the applicants the price established by the Canadian National Energy Board for natural gas exports, currently U.S. $4.47 per MMBtu.

The applicants' contracts with Pan-Alberta require that they each take-or-pay for 85 percent of their maximum daily volume of 152,941 Mcf, calculated on an annual basis, or 47,450,000 Mcf per year for each purchaser. There is provision for make up in the subsequent contract year of any volumes that were unable to be taken in any contract year. The contract provides for refund of amounts paid for gas not taken at the expiration of the contract term.

The applicants state that the gas will be imported at a point on the international border near Calais, Maine, and transported through a new pipeline, the NESP system, jointly owned and operated by Transco and Algonquin Gas, to Burrillville, Rhode Island, where it will connect with existing Algonquin Gas facilities.

Transco serves 69 distribution company customers serving primarily high priority markets from Atlanta, Georgia, to the New York metropolitan area. Transco states in the application that there is a "demonstrated need" for the proposed importation and cites curtailments to its customers beginning in the early 1970's. Transco further states that it "expects deliveries to decline at a rapid rate" in the future. Transco supports these conclusions by reference to data submitted previously by Transco in other ERA dockets. Transco has included no new data or analysis in this application.

Algonquin Gas serves distribution company customers in New England, who in turn serve approximately half of the retail customers. Algonquin Gas indicates that over 92 percent of New England's retail gas customers are residential. Algonquin Gas states that the proposed importation "will provide an incremental gas supply in place of costly imported oil" and will make available new gas to offset "potential" declines in gas purchased by Algonquin Gas from its only existing pipeline gas supplier, Texas Eastern Transmission Corporation (Texas Eastern). Texas Eastern has informed Algonquin Gas that due to the absence of an adequate gas supply it does not intend to replace its existing firm gas contracts with long-term agreements but rather will allow them to remain effective only on a year-to-year basis after 1989. Algonquin Gas has not submitted any market analysis data with the application.

Other Information

The ERA invites protests or petitions for intervention in the proceeding. Such protests or petitions are to be filed with the Division of Natural Gas, Economic Regulatory Administration, Room 7108, RG–55, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with the requirements of the rules of practice and procedure (18 CFR 1.8 and 1.10). Such protests or petitions for intervention will be accepted for consideration if filed no later than 4:30 p.m., on February 2, 1981.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing which may be convened herein must file a petition to intervene. Any person desiring to make any protest with reference to the petition and application for certificate should file a protest with the ERA in the same manner as indicated above for petitions to intervene. All protests filed with ERA will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

A hearing will not be held unless a motion for a hearing is made by any party or persons seeking intervention and is granted by ERA, or if the ERA on its own motion believes that a hearing is required. If a hearing is required, due notice will be given.

A copy of the Transco/Algonquin Gas application is available for public inspection and copying in Room 7108, 2000 M Street, N.W., Washington, D.C. 20461 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on January 12, 1981.

F. Scott Bush,

Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration.

[FR Doc. 81-1710 Filed 1-16-81; 8:45 am]

BILLING CODE 6450-01-M

Order Authorizing Transmission of Electric Energy to Mexico, Amending Prior Authorization

On October 2, 1980, San Diego Gas and Electric (SDG&E) filed an application with the Economic Regulatory Administration (ERA), pursuant to Section 202(e) of the Federal Power Act, for an amendment to its existing authorization to export electric energy to Mexico. SDG&E requests that its authority to export electricity which previously was granted on January 21, 1980 (45 FR 6643), be extended to February 28, 1981. No other changes were requested in the terms of that authorization.

By Federal Power Commission Order issued December 29, 1970, in Docket E-7545, SDG&E was authorized to transmit electric energy from the United States to Mexico at a rate not to exceed 60 megawatts over facilities specified in Docket No. E-7544. On January 21, 1980, this authority was amended to allow SDG&E to export approximately 40-50 megawatts of electric energy to Commission Federal de Electricidad (CFE) on an emergency basis and to receive up to 32 MW from CFE during an emergency on the SDG&E system.

Notice of this application has not been given previously in the **Federal Register**. If any person desires to make any protest with reference to this Order, he should on or before January 30, 1981, file with the ERA, Washington, D.C. 20461, petitions to intervene or protest in accordance with the Rules of Practice and Procedure. ERA will consider all such petitions filed.

ERA Finds: (1) The proposed extension of the authority to transmit electric energy from the United States to Mexico as originally granted on January 21, 1980, will not impair the sufficiency of electric supply within the United States and will not impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of ERA.

(2) The method of public notice given in this matter is reasonable.

ERA Orders: (A) SDG&E is hereby authorized to transmit electric energy from the United States to Mexico until February 21, 1981, in accordance with the terms and conditions set forth in the application and subject to the provisions of the Order of January 21, 1980, as amended by this Order.

(B) The electric energy which SDG&E is hereby authorized to transmit from the United States to Mexico shall be transmitted over the facilities specified in the aforementioned Presidential Permit issued by the Federal Power Commission on December 29, 1970, Docket No. E-7544.

(C) The authorization herein granted may be modified from time to time or terminated by further order of ERA but in no event shall such authorization extend beyond the date of termination or expiration of the Presidential Permit, as amended, referred to in Paragraph (B) above.

(D) SDG&E shall conduct all operations pursuant to the authorization herein granted in accordance with the provisions of the Federal Power Act and pertinent rules, regulations or orders issued or adopted by ERA.

(E) SDG&E shall provide for the installation and maintenance of adequate metering equipment to measure the flow of all electric energy transmitted from the United States to Mexico pursuant to the authority herein granted; shall make, keep and preserve full and complete records with respect to the movement of such energy; and shall furnish, in triplicate to the ERA with respect to such transmission of energy, reports annually on or before February 15, showing the kilowatts per hour delivered, the maximum kw rate of transmission, and the consideration received therefore during each month of the preceding calendar year.

(F) This authorization to tranmit electric energy from the United States to Mexico shall not be transferable or assignable, but in the event of the involuntary transfer of the facilities used for such transmission by operation of law (including such transfers to receivers, trustees, or purchasers under foreclosure or judicial sale) said authorization shall continue in effect temporarily pending the making of an application for permanent authorization and decision thereon, provided notice is given in writing within 30 days following such event to ERA accompanied by a statement that the physical facts relating to sufficiency of supply, rates, and nature of use remain substantially the same as before the transfer.

(G) The aforementioned order of the ERA issued January 21, 1980, in ERA Docket No. PP-49, is hereby amended by extending that authorization until February 28, 1981.

Dated: January 13, 1981.

Howard F. Perry,

Acting Assistant Administrator, Economic Regulatory Administration.

[FR Doc. 81-1618 Filed 1-16-81; 8:45 am]

BILLING CODE 6450-01-M

Union Texas Petroleum Corp.; Action Taken on Consent Order

Pursuant 10 CFR 205.199(J), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of final action taken on a Consent Order. Under the terms of 10 CFR 205.199(c), no Consent Order involving sums in excess of $500,000 shall become effective until ERA publishes notice of its execution and solicits public comments with respect to its terms.

On December 5, 1980, ERA published a notice of a Proposed Consent Order which was executed between Union Texas Petroleum Corporation and the DOE (45 FR 80561, December 5, 1980). With that notice, and in accordance with 10 CFR 205.199(J), ERA invited interested persons to comment on the proposed Consent Order. Also, in that notice, and in accordance with 10 CFR 205.283, interested parties who believe that they have a claim to all or a portion of the refund were instructed to provide notification to ERA.

Three parties submitted written notification of claims and two of these parties submitted comments on the terms and conditions of the Consent Order. ERA has concluded that the Consent Order as executed between the DOE and Union Texas Petroleum Corporation is an appropriate resolution of the compliance proceedings described in the Notice published December 5, 1980, and hereby gives notice that the Consent Order shall become effective as proposed, without modification, on January 19, 1981.

Issued in Dallas, Texas, this 7th day of January, 1981.

Wayne I. Tucker,

Southwest District Manager, Economic Regulatory Administration.

[FR Doc. 81-1619 Filed 1-16-81; 8:45 am]

BILLING CODE 6450-01-M

Crystal Oil Co.; Proposed Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Proposed Consent Order and opportunity for Comments.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed

Consent Order and provides an opportunity for public comment on the proposed Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATE: December 22, 1980.

COMMENTS BY: February 18, 1981.

ADDRESS: Send comments to: Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, Texas 75235 [Phone] (214) 767–7745.

SUPPLEMENTARY INFORMATION: On December 22, 1980, the Office of Enforcement of the ERA executed a proposed Consent Order with Crystal Oil Company, located in Shreveport, Louisiana. Under 10 CFR Section 205.199J(b), a proposed Consent Order which involves a sum of $500,000 or more in the aggregate, excluding penalties and interest, becomes effective only after the DOE has received comments with respect to the proposed Consent Order. Although the ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate an alternative Consent Order.

I. Consent Order

Crystal Oil Company is, through its subsidiary companys, a firm engaged in the refining of crude oil and the marketing of diesel, motor gasoline and other refined petroleum products, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, and 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of sales of diesel, motor gasoline and other refined petroleum products, the Office of Enforcement, ERA, and Crystal Oil Company entered into a Consent Order, the significant terms of which are as follows:

1. The period covered by the Consent Order was August 1973 through December 1975, and included all sales of diesel, motor gasoline, and other refined petroleum products which were made during that period.

2. Crystal Oil Company, did not apply in a manner acceptable to the DOE the provisions of 6 CFR Part 150, Subpart L, and 10 CFR Part 212, Subpart E, when determining the amount of increased costs available to be charged for its sales of covered products; and, as a consequence, charged prices in excess of the maximum lawful sales prices resulting in overcharges to its customers.

3. In order to expedite resolution of the disputes involved, the Department of Energy and Crystal Oil Company, have agreed to a settlement in the amount of $6,025,000. Crystal Oil Company has agreed to reduce its unrecovered increased costs available for recovery in sales of gasoline by $5,000,000. This reduction to unrecovered increased costs of motor gasoline will be reflected by Crystal submitting a revision to the last month's Refiners' Monthly Cost Allocation Report filed prior to the signature date of this Consent Order. Crystal Oil Company has agreed to a cash refund $1,000,000 and this money has been deposited into a interest bearing escrow account. The Department of Energy will receive this refund plus any accumulated interest following the effective date of the Consent Order. The remaining $25,000, representing a compromise of a civil penalty, was paid by Crystal Oil Company. The negotiated settlement was determined to be in the public interest as well as the best interests of the Department of Energy and Crystal Oil Company.

4. The provisions of 10 CFR Section 205.199J, including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In the Consent Order, Crystal Oil Company agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Economic Regulatory Administration, arising out of the transactions specified in I.1, the sum of $6,025,000 in the manner specified in I.3 above. Refunded overcharges plus any interest will be in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, Economic Regulatory Administration. These funds will remain in a suitable account pending the determination of their proper disposition.

The Department of Energy intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the Economic Regulatory Administration at this time. Proof of claims is not being required. Written notification to the Economic Regulatory Administration at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the Department of Energy irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The Economic Regulatory Administration invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas TX 75235. You may obtain a free copy of this Consent Order by writing to the same address or by calling (214) 767–7745.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Crystal Oil Company, Consent Order." We will consider all comemnts we receive by 4:30 pm, local time, on February 18, 1981. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Dallas, Texas on the 6th day of January, 1981.

Wayne I. Tucker,

Southwest District Manager, Economic Regulatory Administration.

[FR Doc. 81-1817 Filed 1-16-81; 8:45 am]

BILLING CODE 6450-01-M

230 kV International Transmission Line, San Diego County, California to Tijuana, Mexico; Record of Decision

Pursuant to Regulations of the Council on Environmental Quality (40 CFR Part 1505), Implementing Procedures of U.S. Department of Energy (45 F.R. 20694):

Decision

The U.S. Department of Energy (DOE) has decided to issue a Presidential Permit to San Diego Gas & Electric Company (SDG&E) to construct, connect, operate and maintain electric transmission facilities at the international border between the United States and Mexico. This permit is being issued pursuant to the authority of Executive Order 10485, as amended by Executive Order 12038.

Project Description

SDG&E proposes to construct and operate approximately 14 kilometers (9 miles) of 230 kV electrical transmission line from their Miguel Substation, located in the southern part of San Diego County, California, to the United States/Mexican border at a point located at longitude 116 degrees, 53 minutes, 48.6 seconds. From the border the line will extend to the Tijuana Substation in Mexico, located approximaely 5 kilometers (3 miles) south of the border. The project will provide for the economic exchange of electricity between SDG&E's transmission system and the Commission Federal de Electricidad de Mexico's Baja California Norte (CFE-BCN) system. A second purpose of the proposed interconnection is to improve the reliability of both the SDG&E and CFE systems.

Further details concerning this project can be found in the "Final Environmental Impact Statement, Environmental Impact Report, 230 kV International Transmission Line, San Diego County, California to Tijuana, Mexico, San Diego Gas & Electric Company (DOE/EIS-0067)." This statement was jointly issued by the U.S. Department of Energy and the California Public Utilities Commission and was noticed on November 17, 1980, by the Environmental Protection Ageny (45 FR 75749).

Description of Alternatives

The following alternatives were considered by DOE in reaching its decision:

1. Deny SDG&E's application for a Presidential Permit (no Federal action);
2. Conservation of electricity;
3. Purchase of power from other U.S. sources;
4. Additional generating capacity; and
5. Alternate transmission line routing.

Alternatives 4 and 5 contain options within each alternative. Under alternative 4, both geothermal power production and the installation of gas turbine generators to provide peaking power were considered. Both alternate new transmission corridors and upgrading existing transmission lines were considered under alternative 5.

Basis for Decision

Executive Order 10485, as amended by Executive Order 12038, provides for the Economic Regulatory Administration (ERA) of the DOE granting a Presidential Permit to construct, connect, operate and maintain a transmission line crossing an international border. Prior to issuing such a permit, ERA must determine that it is in the public interest to do so. ERA has been delegated related responsibility under the Federal Power Act for promoting the voluntary interconnection and coordination of facilities for the generation, transmission and sale of electric energy in order to assure an aboundant supply of electricity throughout the United States.

An intertie between SDG&E and CFE-BCN will result in both economic and reliability gains for both systems. Economic exchanges will occur when electricity that is supplied from one utility system replaces power that is being produced by more expensive sources in the other system. Increased reliability is afforded by excess capacity available during off-peak hours and also by diversity of peak load. The diversity of peak load exists due to SDG&E and CFE-BCN experiencing their system peaks at different times of the day. In addition, interconnecting the two systems would allow power exchanges to meet emergency situations without power outages.

The ERA staff conducted several production cost studies to determine the electricity exchanges and other benefits that may result from this project. These studies were conducted assuming three oil cost scenarios: equal oil costs for SDG&E and CFE-BCN, CFE-BCN paying 10 percent less for oil than SDG&E, and CFE-BCN paying 20 percent less for oil than SDG&E. Economic savings to the combined systems were $20.2 million, $22.1 million and $28.8 million respectively for these senarios in the period 1982-1990. Further, oil savings on the SDG&E system ranged from 480,000 to 1,800,000 barrels per year, which furthers national energy policy goals.

The output of these studies also indicated that the bulk power supply reliability of both systems would be improved by this interconnection due primarily to the availability of excess capacity during off-peak hours and on-peak load diversity. SDG&E will benefit from this increase in reliability since the capacity of several of SDG&E's generating units is large in comparison to their peak demand. Therefore, the outage of a single unit can significantly reduce the total generating capacity operating at any time. Further, interconnections with other United States utilities are minimal, providing a power import capability of less than 10 percent of the peak system demand.

Discussion of Environmentally Preferred Alternatives

Of the five alternatives, alternatives 1, 2 and 3 along with one option of alternative 5 were judged to be environmentally preferred. Alternative 4 and the alternate line routing option of alternative 5 would have environmental impacts of at least the magnitude of the proposed project. The construction of geothermal generation in the Imperial Valley (alternative 4 option) has possible adverse environmental impacts including land subsidence; air quality degradation from hydrogen sulfide emission; induced seismicity; increased salinity of the Salton Sea; accidental releases of geothermal fluids onto irrigated lands; and disposal of solid wastes derived primarily from the pretreatment of spent geothermal fluids before they are injected into a reservoir. A gas turbine peaking unit (the other option of alternative 4) may or may not be possible to construct under the provisions of the Powerplant and Industrial Fuel Use Act (Pub. L. 95-620, 92 Stat. 3289). If an exemption could be obtained for a gas trubine unit, the environmental consequences of constructing and operating it include generation of air pollution emissions; consumption of gas, a nonrenewable resource; and various land use impacts associated with the use of 25 to 50 acres for the plant site. In addition, both options of alternative 4 would require the construction of transmission facilities to deliver their output to the load centers. Alternate line routing would require more land than the proposed route and would have higher

visual impacts. Since these alternatives offered no substantive advantages over the proposed project, they were rejected.

DOE's denial of SDG&E's application for a Presidential Permit (alternative 1) would eliminate construction of the transmission line and any concurrent visual impacts, as well as potential impacts to cultural resources and rare and endangered plant species. This alternative, however, would eliminate an opportunity to reduce fuel consumption by SDG&E's oil-and gas-fired generators. If the SDG&E and CFE–BCN systems are interconnected, economy interchanges will provide an opportunity to reduce consumption of these scarce fuels. This, in turn, would have the net effect of reducing air pollution emissions. This alternative would contradict national energy policy to minimize the use of oil and gas for electric power generation. Therefore, this alternative was rejected.

Alternative 2 consists of reducing use of electrical power through various conservation measures. These conservation measures include installing insulation, weather stripping, conservation lighting, water heater insulation, attic ventilation, solar shade screens, and energy efficient appliances; setting back thermostats; and cogeneration. This conservation would have to be implemented in addition to existing and future conservation measures that are already being pursued by SDG&E.

The conservation alternative is not known to have any direct adverse environmental consequences, although the manufacturing of many conservation devices such as insulation, weather stripping, and solar shade screens utilizes petroleum products and nonrenewable resources.

This alternative does not allow enhancement of reliability of the economic exchange of energy. It is also uncertain how much effect this alternative could have since SDG&E is already aggressively pursuing conservation goals. Therefore, any reduction in SDG&E's use of oil and gas is uncertain with this alternative. In view of these considerations, this alternative was rejected.

Purchasing additional power from other sources within the United States (alternative 3) can have a wide range of environmental consequences depending on the location and type of source supplying the power. SDG&E currently purchases power from other utilities through its transmission facilities from the San Onofre nuclear power plant. These facilities are also used to transfer SDG&E's share of the output from this plant. Upon completion of the additional units planned for this site, the existing transmission line will be fully loaded. Therefore, additional power transfers would necessitate the building of additional transmission lines. The most likely source for these additional transfers would be Arizona and New Mexico utilities. In both cases, the necessary transmission lines would be of similar construction to the proposed project but of much greater length. It appeared that relying on purchases from other sources in the United States would eventually lead to more transmission line construction than the proposed project.

This alternative could have the advantage of reducing the U.S. balance of payments deficit by not purchasing power from Mexico. However, since there is no contract for firm exchanges, sales to Mexico could equal or ecxeed purchases in any time period. It was felt that the likely impacts of this alternative outweighed the possible benefits and it was rejected.

The option of upgrading an existing transmission line under alternative 5 could result in less land use impacts than the proposed project. There is presently a transmission line between SDG&E and CFE–BCN consisting of a 138 kV segment between Miguel Substation and Otay Substation and San Ysidro Substation. One of these 69kV lines extends south into Mexico terminating at the Frontera Substation, located just east of the international border crossing. Upgrading this line would consist of constructing a 230kV line along the existing route.

The Frontera Substation does not have capability for 230kV nor is 230kV capability planned for this substation. Rather, CFE–BCN plans to eliminate the Frontera Substation. Providing 230kV capability to Frontera would require construction of a 230kV transmission line from the Tijuana Substation across the urbanized sector of Tijuana. Construction of such a transmission line on the United States side of the international border is restricted by safety hazard and height limitations surrounding Brown Field and the Tijuana Airport.

Construction of a 230kV transmission line along the existing route between Miguel Substation and Frontera Substation would impact the urbanized portions of Chula Vista and the San Ysidro section of the City of San Diego. These impacts include visual intrusion and television and radio interference in those areas immediately adjacent to the transmission line. Rights-of-way acquisition through this urbanized area would necessitate displacement of residents. The existing rights-of-way width varies from 0 to 250 feet.

Based on the foregoing, it was concluded that alternative 5 was not feasible. DOE, therefore, rejected this option.

Considerations in Implementation of the Decision

All practicable means to minimize environmental harm from the selected alternative have been adopted and made a part of the Presidential Permit. SDG&E will be required to place and maintain suitable structures to reduce to a reasonable degree the possibility of contact or inductive interference between the line and any other facilities. Precautions will be taken to minimize radio and television interference with SDG&E being responsible for taking appropriate corrective action where warranted. Transmission structures will be located so as to minimize damage to vernal pools and open water crossings and no structures will be placed in any 100-year floodplain. Construction methods will be restricted to those least damaging to the environment with appropriate restorative actions being required after the project is completed. Archeological and historic sites will be preserved. Oil and fuel storage will not be permitted within 200 feet of an open body of water or used or disposed of in any manner that would permit drainage into a stream or river or entrance into the groundwater. Use of herbicides will be restricted to only those absolutely necessary and least harmful. These herbicides will be applied in a safe, controlled manner to avoid contamination of any water source. Appropriate lights and markers will be placed on certain facilities to prevent their posing a hazard to aircraft used by the United States Border Patrol. SDG&E will be required to minimize the impact on vegetation and wildlife during construction, operation and maintenance of the transmission line. DOE will monitor the mitigation activities to assure conformance with the Presidential Permit and final EIS.

Dated: January 12, 1981.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

[FR Doc. 81-1820 Filed 1-16-81; 8:45 am]

BILLING CODE 6450-01-M

Office of the Secretary

Voluntary Agreement and Plan of Action To Implement the International Energy Program, International Energy Agency; Meetings

In accordance with section 252(c)(1)(A)(i) of th Energy Policy and Conservation Act (42 U.S.C. 6272), notice is hereby provided of the following meetings:

A meeting of Subcommittees A and C of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on January 27, 1981, at the offices of British Petroleum Co. Ltd., Britannic House, London, England, beginning at 9:30 a.m. The agenda for the Subcommittee A meeting is as follows:

1. Proposed inclusion of synfuels in Emergency Sharing System.
2. Proposed Emergency Management Manual changes arising from AST–3.
3. Three week lead time to reduce demand in a crisis.
4. Proposed inclusion of naphtha and bunkers in emergency reserves.
5. AST–3 Appraisal Report and related items (continued from January 6 meeting).
6. Relationship between national and international allocations systems pursuant to IEP.
7. Quantification of emergency reserves to provide 90 days at all times.
8. Data questions, including:

—Report on December 17, 1980 SEQ *ad hoc group meeting.*

—Extension of stocks at sea reporting.

—Possbile amendments and alternatives to QA and QB.

9. Product allocation to countries with insufficient refining capacity.

The agenda for the Subcommittee C meeting is as follows:

1. IEA Dispute Settlement Centre Procedures for Arbitration.
2. Legal clearances for AST–3.
3. IEA Secretariat's energy legislation summary.
4. Implementation of any amendment to the IEP.
5. Legal clearances for a real emergency:

A. Under Treaty of Rome;

B. Under U.S. and any other national legislation.

6. Legal clearances relating to Governing Board's December 9, 1980, decision for correcting imblances:

A. Under Treaty of Rome;

B. Under U.S. and any other national legislation.

7. March 15, 1981 expiry of U.S. legislative antitrust defense for IEA activities.
8. Future work program.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, these meetings will not be open to the public.

Pursuant to section 252(c)(3) of the Energy Policy and Conservation act, a verbatim transcript of this meeting will be made; the transcript, with such deletions as are determined to be necessary or appropriate pursuant to E.O. 12065 (43 FR 28949, July 3, 1978), E.O. 11932 (41 FR 32691, August 5, 1976) and 22 CFR 9a.1-9a.8, will be available in the Reading Room of the Department of Energy, Room 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:00 p.m. weekdays except Federal holidays.

Issued in Washington, D.C., January 12, 1981.

Craig S. Bamberger,

Assistant General Counsel, International Trade and Emergency Preparedness.

[FR Doc. 81–1711 Filed 1–16–81; 8:45 am]

BILLING CODE 6450–01–M

Davis (West Virginia) Pumped Storage Project Alternatives Study; Public Meeting

AGENCY: Department of Energy (DOE).

ACTION: Notice of public meeting.

SUMMARY: Participation is invited in a meeting to discuss comments received on the draft report of a study of alternatives to the Davis (West Virginia) Pumped Storage Project.

DATE: 1–4 p.m., Thursday, February 5, 1981.

ADDRESS: Room 5E–069, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. DOE published a 3-volume contractor's draft report entitled "A Study of Alternatives to the Davis (West Virginia) Pumped Storage Project," DOE/RA/50280–1, on December 22, 1980 for thirty (30) days of public comment ending January 21, 1981. The Davis project is a 1000 megawatt hydroelectric pumped storage facility proposed by the subsidiary utility companies of Allegheny Power System, a holding company. The proposed site of the Davis Project is in the Canaan Valley of Tucker County, West Virginia, near Davis. In response to a June 21, 1979 directive from the President of the United States, DOE sponsored a contract study to examine the energy, economic, and environmental merits of various energy supply and conservation alternatives and to compare them with the Davis Project.

DOE will conduct the public meeting in accordance with the following agenda:

I. Schedule for production and distribution of final study report (DOE Project Manager)

II. Comments received and proposed changes to draft study report (ICF, Inc.)

III. Other business

Organizations are requested to limit their attendance to key participants as space is severely limited.

After consideration of public comments and the discussion at the public meeting, DOE will have the study contractor prepare a final study report for publication. Those who have already received the draft report will automatically receive the same number of copies of the final report without making an additional request. All new requests should be directed as noted below.

FOR FURTHER INFORMATION CONTACT: Virginia Ballengee, U.S. Department of Energy, RA–72, Mail Stop 3344 Federal Building, Washington, D.C. 20461. (Telephone 202/633–8963.)

Issued in Washington, D.C. on January 12, 1981.

Ruth M. Davis,

Assistant Secretary for Resource Application, Department of Energy.

[FR Doc. 81–1823 Filed 1–16–81; 8:45 am]

BILLING CODE 6450–01–M

Price Support Loans for Municipal Waste Energy Projects

AGENCY: Office of Energy From Municipal Waste, Office of Conservation and Solar Energy Department of Energy.

ACTION: Solicitation Announcement for Loan Applications and Notice of Presubmission Conference.

SUMMARY: Title II of the Energy Security Act, Pub. L. 96–294, 94 Stat. 611, authorizes the Department of Energy (DOE) to establish a program to provide price support loans to municipal waste energy projects to reduce the dependence of the United States on imported petroleum and natural gas.

On October 29, 1980, DOE published a proposed rule in the **Federal Register**, 45 FR 71746, to implement the authority provided to DOE to issue price support loans for new or existing facilities producing biomass energy from municipal waste. The proposed rule also provided for the submission of applications for price support loans on a voluntary basis during the rulemaking period in an initial competition cycle which will end 10 days after the rule becomes effective, but in no event before January 15, 1981.

This Solicitation Announcement is issued pursuant to sections 485.30(c) and

485.31 of the proposed rule to provide additional information to prospective applicants desiring to immediately file applications for price support loans during the initial competitive cycle.

The information contained in this Announcement is applicable only to the initial competition cycle which began with the publication of the proposed rule (Oct. 29) and ends at 4:30 p.m. (local time) on the tenth calendar day following the effective date of the final rule. A new solicitation Announcement will be issued after the closing of this competition cycle to provide information for the next competitive cycle.

Presubmission Conference

A presubmission conference will be held on February 3, 1981, at 9 a.m. in Room 2105, 2000 M Street, N.W., Washington, D.C. The purpose of the conference is to provide an opportunity for prospective applicants to ask any questions they may have regarding the preparation and submission of an application for a price support loan in the initial competition cycle. Questions regarding applications for price support loans should be submitted in writing prior to the conference to the Contracting Officer at the address below. An edited record of the conference, including questions and answers given, will be made available to any party requesting it. Requests for the presubmission conference record should be sent to Public Hearings Division, Department of Energy, Room B210 Box XW, 2000 M Street, N.W., Washington, D.C. 20461.

Eligible Projects

Applications are being solicited for price support loans to stimulate energy production from municipal waste, including industrial waste to the extent specified in the October 29, 1980 proposed rule, as specifically described hereinafter. All applications must comply with the provisions of the proposed rule published on October 29 in the **Federal Register** (45 FR 71746). To the extent that the final rule differs from the proposed rule, applications submitted now may require amendments to insure compliance with the final regulation. Therefore, applicants undertake some risk that they may be required to incur expenses for modifications of applications submitted during this initial competitive cycle. DOE reserves the right to make awards to only those projects, if any, which in the exercise of the selection official's sole discretion, best accomplish the programmatic objectives of DOE. No portion of the applicant's preparation costs or incidental costs will be paid by DOE, whether or not any award is made.

The Application Approving Official may, in his discretion, issue conditional commitments to make a price support loan subject to compliance with the provisions of the final rule.

Applications for price support loans for existing projects, as defined in Section 485.2(t), (aa) and (bb) of the proposed rule published on October 29 in the **Federal Register** are eligible during the first solicitation cycle. Applications for new projects which are realistically estimated to be, at the time of application, within nine months of completion of project financing, or some reasonable time period close thereto, as determined by DOE may be submitted during this initial solicitation.

Information Requirements

To assist project sponsors and potential applicants in the preparation of applications, the following information is provided:

a. *Existing projects:* Proponents should include input and output data, sales records, project financial statements including the prior years operating statement and at least 5 years of future expected cash flow.

b. *New Projects:* DOE desires to select and support projects that are reasonably assured of construction and successful operation. Evidence of such assurance include the following:

(1) Selection of a viable technology and a competent vendor or vendors;

(2) A commitment from an energy buyer by either a letter of intent or a purchase contract;

(3) A commitment of adequate waste supply to the project in the form of letters of intent or contracts. This commitment must provide evidence that the committed waste supply is available. Weights of waste committed are the principal appropriate evidence;

(4) Lists and schedules for or actual construction and operating permits required for the facility; and

(5) A financing plan including bond resolutions, bond indenture statements and similar instruments or evidence of completion of financing for the project.

In addition to the above, all applicants must submit the following:

a. Assurances that the project will not substantially inhibit the competitive access of the waste recycling business to waste paper supplies and other source separated materials.

b. Two copies of the most recent feasibility study for the project or if the study is not available, a summary of the feasibility study.

c. Two copies of the most recent environmental report on the project if available.

A project sponsor which has not substantially accomplished the items and actions listed in this section, and which cannot realistically expect to do so within nine months, or some reasonable time period close thereto, is advised not to apply at this time and is encouraged to consider applying in a future solicitation cycle.

Evaluation and Ranking of Applications

DOE will consider the following (listed in order of priority) in comparatively ranking and evaluating applications:

1. The project's technical feasibility;
2. The project's market potential and economic feasibility;
3. The project's financial structure;
4. The management plan; and
5. The environmental, health, safety, and socioeconomic impacts of the proposed project.

Items 1., 2., and 3., will be given equal weight. Items 4., and 5. will be given significantly lesser weight.

Other Information

a. DOE will publish as soon as practicable, a list of all proposals received under this solicitation. The list will identify the applicant, and the size and location by city of the facility.

b. All proposers are reminded that these proposals are subject to OMB Circular A–95 which requires that State and local clearing houses be notified prior to or concurrent with the submission of the proposal.

c. The payments received by any successful applicant under this solicitation may only be applied to the allowable Operating and Maintenance costs of the project.

d. DOE presently intends to issue another solicitation announcement for municipal waste energy projects in March, 1981, which will include both price support loans and loan guarantees. The amount of funds available will be determined at that time.

Projects

The Department of Energy may award up to $75,000,000 in price support loans for the initial competition cycle. Price support loans for municipal waste energy projects involving industrial waste will be available only for wood processing waste, paper processing waste, and waste from food processing (including waste from fruit and vegetable processing, nut packing, grain milling, sugar refining, and similar materials, but excluding waste from meat processing and dairy products

industries) which do not constitute the wastes or residues of agricultural activities, wood harvesting activities of production of forest products.

In evaluating applications in this competition cycle, priority will be given to existing projects and new projects that a) have a high probability of commercial success; b) are near to commencement of construction, and c) that produce or conserve the most energy at the earliest date. All critical components of the facility proposed must have been tested at or near full-scale under commercial conditions and for a period sufficient to assess the operating and maintenance requirements of the proposed system.

Application Submission

Price support loan applications should be submitted with an original and seven legible copies and must be received by the proper location no later than 4:30 p.m. on the 10th day following the day of publication of the final rule. The estimated publication date of the final rule is scheduled to be published in February 1981. Applications should be submitted as follows: Ms. Jan L. Atkinson, Contracting Officer, Procurement and Assistance Management Directorate, Room J–009, 1000 Independence Ave., S.W., Washington, D.C. 20585.

Issued in Washington, D.C., on January 13, 1981.

Robert L. Van Ness,

Director, Office of Financial Incentives, Procurement and Assistance Management Directorate.

Public Notice of Proposed Floodplain/Wetlands Action; Louisiana

AGENCY: Department of Energy.

ACTION: Drilling and Flow Testing a Geopressured Geothermal Well at the Gladys McCall Well Site in Cameron Parish, Louisiana; opportunity for comment.

SUMMARY: The Department of Energy invites interested parties to comment on a proposed floodplain/wetlands action consisting of drilling, flow testing, and reinjecting fluids produced from a well drilled into the geopressured Frio Formation in Cameron Parish, Louisiana. Flow testing will be performed over a period of three years. Tests will be performed to determine physical and chemical properties of the produced fluid, including temperature, pressure, dissolved solids and gas content, and to determine the economic feasibility of exploiting the geopressured resource.

The proposed test well facilities will be located within the Louisiana coastal floodplain/wetland zone which is subject to storm surges and subsequent flooding. The proposed testing facilities will utilize an existing well pad and dike system prepared for a well previously drilled and abandoned by the petroleum industry. An existing road will provide access to the site, so that surrounding wetlands will not be disturbed.

The 100-year flood level is above the existing dike and road systems, so the proposed action is on a floodplain as defined in 10 CFR 1022. An environmental assessment is being prepared for this action which will include the floodplain/wetlands assessment required by 10 CFR Part 1022.

SUPPLEMENTARY INFORMATION: Originally the Gladys McCall well test was to have been conducted using the existing abandoned well which had been drilled through the Frio Formation geopressured zone in an attempt to find a producible natual gas reservoir. Subsequent Department of Energy attempts to reenter and redrill the well in order to produce geopressured geothermal fluids were unsuccessful, so the well was replugged and abandoned.

The currently proposed project involves drilling a new test well at the site of the existing abandoned well. Produced fluids, after passing through the test facility, will be injected into formations overlying the producing formation. An existing disposal well will be reopened and deepened to a depth of about 3,500 feet. That well, and up to three additional new wells, will be used for disposing of the spent geothermal fluids by reinjection.

During the first year of the project, intermittent 15-day flow tests will be conducted at flow rates between 20,000 and 40,000 barrels per day. During the next two years, long term tests will be conducted at a flow rate of 40,000 barrels per day.

Total fluid production over the three year project period is expected to be about 50 million barrels. The depth of the producing formation is about 17,000 feet, and spent fluids will be reinjected at depths of about 3,500 feet.

After the tests have been completed, the wells will be plugged and abandoned, all surface facilities will be removed from the site, and the site will be restored, to the extent possible, to its original contours. All wastes which cannot be injected underground will be collected and disposed of at a landfill operated in compliance with applicable local, state, and Federal regulations.

Identification of Issues

The following issues will be addressed in the assessment of the effects of the proposed action on the floodplain:

- Effects on lives and property.
- Effects on natural and beneficial floodplain/wetland values.
- Alternatives to the proposed action.

Comments

All interested parties are invited to submit comments regarding these issues by February 3, 1981 to: Mr. Robert E. Oliver, RA–242, Division of Geothermal Energy, M.S. 3344, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461, (202) 633–8814.

Comments received after that date will be considered to the extent practicable.

For general information on the assessment process, contact: NEPA Affairs Division, Office of Environmental Compliance and Overview, Office of the Assistant Secretary for Environment, Attn: Mr. Raymond Pelletier, Room 4G–064, Forrestal Building, Washington, D.C. 20585, (202) 252–4610.

Dated at Washington, D.C., this 9th day of January 1981 for the United States Department of Energy.

Ruth C. Clusen,

Assistant Secretary for Environment.

[FR Doc. 81–1821 Filed 1–16–81; 8:45 am]

BILLING CODE 6450–01–M

Inquiry and Request for Comments on Development of the Naval Oil Shale Reserves

AGENCY: Department of Energy.

ACTION: Notice of inquiry and request for comments.

SUMMARY: Pursuant to 10 U.S.C. Chapter 641, the Department of Energy (DOE) has the authority to prescribe regulations and take any proper action to accomplish its responsibilities regarding the Naval Oil Shale Reserves (NOSRs). To date, no regulations concerning the development of the NOSRs have been proposed because the decision to develop the NOSRs has not yet been made. Before any such decision would be effective, production of shale oil must be approved by the President and authorized by a Joint Resolution of Congress. In addition, the required Environmental Impact Statement must be completed. DOE is in the process of considering the various alternatives which exist regarding the development of the NOSRs. If the decision to develop the NOSRs is made, implementing regulations may be necessary. By this

Notice, DOE is requesting comments on the issues relating to the development of the NOSRs by lease or other appropriate contractual or financial vehicle.

It should be noted that DOE is not soliciting proposals for the development of the NOSRs. In view of the fact that the decision to develop has not been made and that production of shale oil is not authorized, DOE does not intend to award a contract on the basis of this Notice, or otherwise pay for the preparation of the comments submitted.

DATE: Written comments are due by 4:30 p.m., March 16, 1981.

ADDRESS: All comments should be sent to: Office of Naval Petroleum and Oil Shale Reserves, U.S. Department of Energy, Federal Building, Mail Code RA–3344, 12th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20461, Attention: Dr. C. M. Wong, (202) 633–8641.

FOR FURTHER INFORMATION CONTACT:

Peter M. Frank, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Mail Code GC–11, Washington, D.C. 20585, (202) 252–1202.

Mary H. Egger, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Mail Code GC–11, Washington, D.C. 20585, (202) 252–2900.

Robert Lawton, Director, Office of Leasing, Policy Development, Office of Naval Petroleum and Oil Shale Reserves, U.S. Department of Energy, Federal Building, Mail Code RA–3344, 12th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20461, (202) 633–9326.

SUPPLEMENTARY INFORMATION:

I. Background
II. Issues for Comment
III. Comment Procedures

I. Background

There are three Naval Oil Shale Reserves (NOSRs). NOSRs 1 and 3 are located in Colorado and NOSR 2 is located in Utah.

A map at the end of this Notice shows the locations of NOSRs 1 and 3. These reserves are adjacent to each other and are easily accessible from the nearest town, Rifle, Colorado, located about seven miles SE on the reserves.

NOSR 1 consists of 40,760 acres and was established by an Executive Order issued by President Wilson in 1916. It is located in the rugged highland country, north of the Colorado River in Garfield County, Colorado. It occupies the southeast corner of the Piceance Creek structural basin where the surface rocks are of the Green River formation. NOSR 1 cover approximately 40,000 acres and is now known to contain approximately 2.5 billion barrels of oil recoverable from shale mineable by conventional surface and underground mining systems.

Naval Oil Shale Reserve Number 3 was established by an Executive Order issued by President Coolidge in 1924. This reserve borders NOSR 1 on the east and on the south, and consists of approximately 14,000 acres. It is located on the lower ground which slopes downward to the south toward the Colorado River, from the base of the Roan Cliffs. NOSR 3 contains essentially no oil shale. Its withdrawal was considered necessary to afford working space and areas for spent shale disposal during the anticipated development of NOSR 1.

An Act of June 4, 1920 (41 Stat. 813) placed the Naval Petroleum Reserves in the possession and under the authority of the Secretary of the Navy. Until 1962, the Secretary of the Navy had no authority for the development or operation of the oil shale reserves. Public Law 87–796, October 11, 1962, empowered the Secretary to take possession of all properties inside the NOSRs and gave him essentially the same powers over the oil shale reserves as he had over the petroleum reserves. In 1977, jurisdiction over the 140,000 acre NOSRs (which includes NOSR 2, located in Utah) was transferred to the Secretary of Energy by virtue of the Department of Energy Organization Act (Public Law 95–91).

Under auspices of the Department of the Interior, a comprehensive research program was conducted on NOSR 1 during the period 1944–1955, resulting in the development of the Room-and-Pillar system of mining oil shale and the Gas Combustion system of retorting oil shale. The experimental mine, retorting plant and an associated housing project were (and still are) located on NOSRs 1 and 3 at a site named Anvil Points.

Production on the NOSRs has been limited to that associated with oil shale research at the Anvil Points Facility on NOSRs 1 and 3. This work has been accomplished by a private contractor, Development Engineering, Inc., which has a lease from DOE. This lease will expire in 1982. The lessee completed a major shale oil production program for the Department of Defense in 1978, during which approximately 100,000 barrels of shale oil was produced using the Paraho direct heating process. This shale oil has been refined and tested by the Department of Defense.

Coreholes were drilled on NOSRs 1 and 2 by the Department of Interior during this period, and samples of the cores were analyzed. A complete resource assessment of NOSR 1 was recently completed by the Government's management support system engineering contractor.

Market, technology, and environmental impact uncertainties, as well as the necessarily large investment capital, have caused some delay in the private development of oil shale. DOE policy is to promote private development, principally through such financial incentives as tax credits, loan guarantees, and guaranteed markets. Current law provides that the Secretary of Energy shall re-examine from time-to-time the need for the production of shale oil from the NOSRs.

DOE has legislative authority to explore, develop, and/or lease all the NOSRs. Before full-scale production of shale oil from the NOSRs can be initiated, however, such production must be approved by the President and authorized by a joint resolution of Congress. In addition, the Committees on Armed Services of the Senate and the House of Representatives must be consulted and the President's approval must be obtained prior to the lease of any part of the NOSRs. These approvals have not been sought or obtained to date.

There are several NOSR 1 development options having different financial impacts, despite the relatively similar environmental impacts foreseen in commercial-scale development. These options include, among others, leasing, joint government-industry ventures, and entirely government-owned contractor operated (GOCO) facilities. Any development option selected must satisfy the Department's statutory responsibility to use the reserves for national defense purposes, as defined by 10 U.S.C. 7420(a)(1). (*See* also 10 U.S.C. 7421, 7422, 7423.)

II. Issues for Comment

To assist in the consideration and development of the various alternatives available for the development of the Naval Oil Shale Reserves (NOSRs), DOE seeks the views of all interested persons. Respondents are invited to offer comments on any topic germane to this matter. DOE is especially interested in public comment on the issues below.

DOE does not have the requisite Congressional or Presidential authority to initiate development of the NOSRs at this time and, therefore, *does not intend to award a contract on the basis of this request for comments, or otherwise pay for the comments or any preparation expenses.* No decision has been made as to what future course of action will be taken regarding the development of the NOSRs. Comments on the following specific matters are requested:

1. Is it timely and necessary to develop the NOSRs for additional domestic production for national defense purposes? Or, is there an adequate amount of federal and non-federal shale lands available so that DOE can postpone its decision on the development of the NOSRs?

2. What contraints (*e.g.*, technological limitations, water availability, adverse socioeconomic effects, financing without Government assistance) exist which would hamper the early development of the NOSRs? Assuming the effects of these constraints can be mitigated, what is the optimum mechanism (*e.g.*, leasing, GOCO, joint venture) which would accomplish early development and production of the NOSRs?

3. One of the options for the development of NOSR 1 is leasing:

(a) Is leasing a viable alternative for the timely development of NOSR 1?

(b) Would leasing create any unique environmental effects which could not be mitigated?

(c) What would be an appropriate basis for the awarding of leases—*e.g.*, noncompetitive, competitive, small business set asides?

(d) Should bonus bidding, work commitment, sliding scale royalty, net profit sharing procedures be considered?

(e) What is an appropriate lease term? Should adjustment provisions be utilized?

(f) What is an appropriate range of tract sizes? Should these tracts be leased at one time or at specified intervals?

(g) What kind of due diligence requirements regarding development and continuous operations should be utilized?

(h) Should the suspension or deferment of royalty and bonus payments be considered as a means for achieving production guarantees? If so, what is suggested as an appropriate measure for providing socioeconomic impact assistance to areas affected by NOSR development?

(i) Would the leasing of NOSR 1 be viable without Government financial assistance?

(j) What effect will the leasing of NOSR 1 have on (1) current development efforts on federal and non-federal oil shale lands, (2) oil shale development technology, and (3) reaching the goal of 400,000 barrels per day of shale oil production by 1990?

(k) Would retention of an option to purchase any shale oil produced from NOSR 1 be acceptable?

4. Are there other financial or contractual mechanisms (*e.g.*, licensing) better suited for developing NOSR 1 and insuring the Government of a guaranteed production?

III. Comment Procedures

You are invited to participate in this inquiry by mailing or by hand-delivering written data, views, or arguments with respect to the issues set forth in this notice and other relevant matters to the Office of Naval Petroleum and Oil Shale Reserves, at the address listed at the beginning of this Notice. You should submit ten copies of your comments and clearly indicate that they are in response to this NOI by marking both the envelope and the comments with: "NOI—Development Policy Options, Naval Oil Shale Reserves, Docket No. NPR B001". We will consider all comments received by 4:30 p.m., March 16, 1981.

Any information considered to be confidential must be clearly identified, and submitted separately, one copy only. DOE reserves the right to determine the confidential status of the information and to treat the information according to this determination.

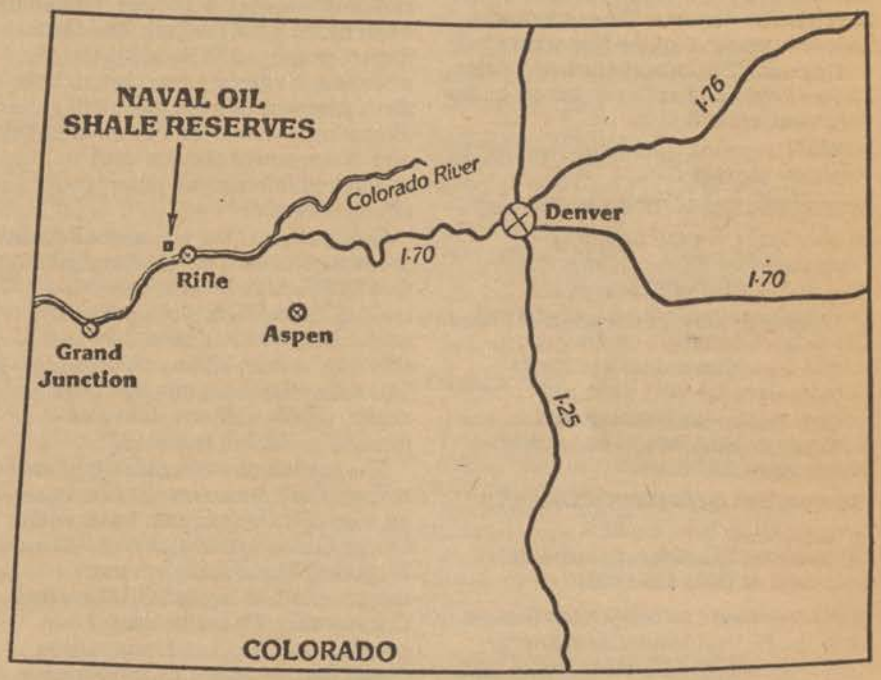
Public hearings are not required at this preliminary stage in the process.

Issued in Washington, D.C. on January 14, 1981.

Ruth M. Davis,

Assistant Secretary, Resource Applications.

Location of Reserves



[FR Doc. 81-1902 Filed 1-16-81; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Solar Energy

Energy Conservation Program for Consumer Products; Petition for Waiver of Consumer Product Test Procedures From Norris Industries (Case No. D-001)

Correction

In FR Doc. 80-40692, published at page 86527, on Wednesday, December 31, 1980, on page 86528, in the third column, under *"4. calculation of derived results from test measurements.—4.1 per-cycle water energy consumption using electrically heated water.", in the equation, the definition of "K", the temperature now reading ".0240" should have read ".00240".*

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

[RD-FRL 1726-2]

Review of the Department of Energy's Conservation and Solar Energy Program; Section 11 Report

Note.—This document originally appeared in the **Federal Register** for Thursday, January 15, 1981. It is reprinted in this issue at the request of the agency.

AGENCY: Environmental Protection Agency.

ACTION: Request for public comment on final report.

SUMMARY: The Environmental Protection Agency (EPA) announces the release of the Section 11 Report to the President and Congress under the direction of the Federal Nonnuclear Energy Research and Development Act of 1974 (Pub. L. 93-577). The Report is the product of a year long analysis of the Department of Energy's (DOE) Conservation and Solar Energy Program. Public comments on the document are solicited.

DATES: Comments should be received by February 15, 1981.

ADDRESSES: Copies of the Report may be obtained from the Center for Environmental Research Information, US E.P.A. Office of Research and Development Publications, Cincinnati, OH 45268. Comments on the Report should be addressed to: Section 11 Coordinator (RD-681), Office of Environmental Engineering and Technology, EPA, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Gregory Ondich, at the EPA, Washington DC address above, or by telephone at (202) 426-9434.

SUPPLEMENTARY INFORMATION: Section 11 of the Federal Nonnuclear Energy Research and Development Act of 1974 (Pub. L. 93-577) directs the responsible agency (formerly the Council on Environmental Quality, currently EPA) to carry out a continuing analysis of the Federal nonnuclear research and development program to evaluate "(1) the adequacy of attention to energy conservation methods and (2) the adequacy of attention to environmental protection and the environmental consequences of the application of energy technologies."

The 1980 Section 11 Report focuses on these concerns within the context of DOE'S Conservation and Solar Energy Program. Findings and Recommendations are based upon analysis conducted by EPA as well as upon public commentary. Through a series of five regional workshops held during June and July, and a public national hearing held on September 24 and 25, 1980, EPA received useful comments which have been given careful consideration. Attendees represented state and local governments, public interest groups, public utility commissions, environmentalists, businesses, labor, Congressional committee staff, the Department of Energy, the Office of Management and Budget, and universities.

The 1979 Section 11 Report found several aspects of DOE's planning and management systems that appeared to give inadequate attention to Conservation and Solar programs. These issues, plus several issues which relate specifically to energy conservation and renewable energy resources, formed the basis of the 1980 analysis. The 1980 Report examined DOE adequacy of attention to energy conservation from three perspectives: the resource allocation process, the implementation and management process, and evaluation information on program effectiveness.

Exploration of the resource allocation process generated the recommendation that DOE utilize several decision-making tools—including an end-use sector framework, a least-cost energy criterion, and an oil-import premium—in balancing resources among various energy supply enhancement and demand reduction technologies.

The section on implementation and management discusses specific issues on a program by program basis within DOE's Conservation and Solar Energy Programs. These include better integration of existing DOE Solar and Conservation Programs; closer coordination of current information dissemination programs, appropriate management of DOE administered state and local programs, (including the Weatherization Assistance Program, the Institutional Buildings Conservation Program, the Residential Conservation Service and others) and appropriate management of research and development activities (such as innovation programs, procurement/financial assistance, and others.)

The section on program evaluation discusses the need for increased use of evaluation within DOE and outlines the institutional and methodological barriers to its use. The need for a department-wide evaluation policy and the need for data on actual program effectiveness are both examined.

The 1981 Section 11 review process will again be directed toward energy conservation and renewable energy resources. Attention will be given to DOE's response to the findings and recommendations of EPA's 1980 Section 11 Report.

Written public comments concerning the substance of the 1980 Section 11 Report or the proposed 1981 activities are requested.

Steven R. Reznek,

Deputy Assistant Administrator, Office of Environmental Engineering and Technology.

January 6, 1981.

[FR Doc. 81-1253 Filed 1-14-81; 8:45 am]

BILLING CODE 6560-35-M

[OPTS-51200; TSH-FRL 1729-4]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the **Federal Register** certain information about each PMN within 5 working days after receipt. This Notice announces receipt of five PMN's and provides a summary of each.

DATES: Written comments by:
PMN 80-345—February 6, 1981
PMN's 80-348, 349, and 350—February 6, 1981
PMN 80-365—February 13, 1981

ADDRESS: Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, DC 20460, (202-755-8050).

FOR FURTHER INFORMATION CONTACT: Rachel Diamond, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-221, 401 M St., SW., Washington, DC 20460, (202-426-3980).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance

that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the **Federal Register** of May 15, 1979 (44 FR 28558-Initial) and July 29, 1980 (45 FR 505444-Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commerical purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the Federal Register issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the **Federal Register.**

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. IF EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. IF EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, summaries of the data taken from the PMN's are published herein.

Interested persons may, on or before the dates shown under "Dates", submit to the Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St. SW., Washington, D.C. 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51200]" and the specific PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604)

Dated: January 13, 1981.

Edward A. Klein,

Director, Chemical Control Division.

PMN 80-345

The following information is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. March 2, 1981.

Manufacturer's Identity. Phillips Petroleum Company, Seneca Building, Bartlesville, OK 74004.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Dialkyl trithiocarbonate.

Use. Claimed confidential business information.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties.

Flash point—152°C (305°F)
Pour point—C −29°C (−20°F)
Viscosity—at 0°C—6.40 CFT; at 20°C—3.70 CFT; at 40°C—2.42 CFT; at 70°C—1.51 CFT
Vapor density in air—9.17
Vapor pressure at 25°C—5 Torr (5mm)
Evaporation rate—1 compared to butyl acetate
Percent volatile by volume—1.35 percent in 24 hours

Toxicity Data.

Acute oral LD_{50} (rats)—1.583 g/kg.
Percutaneous LD_{50} (rabbits)—13.4 g/kg.
Primary skin irritation (rabbits)—Index 0.9; minimally irritating.
Eye irritation, unwashed eyes (rabbit)—Mildly irritating.
Acute inhalation saturated vapor 0.038 mg/1 (rats)—No mortality.

Exposure.

Activity	Exposure route	Maximum number exposed	Maximum duration		Concentration (ppm)	
			Hours/day	Days/year	Average	Peak
Manufacture	Skin	1/shift	8	20		
	Inhalation					

Manufacturer states that this chemical is produced in a closed system and that any exposure would be from non-routine operations.

Environmental Release/Disposal. Manufacturer states that no disposal or release of the PMN substance into the environments is expected from routine operations at the manufacturing site.

PMN 80-348.

The following information is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. March 8, 1981.

Manufacturer's Identity. Mobil Chemical Company, P.O. Box M–1, Short Hills, NJ 07078.

Specific Chemical Identity. Sunflower oil, polymer with pentaerythritol phthalic anhydride, soybean oil, and trimethylolethane.

Use. Polymer used in paint products.

Production Estimates.

	Kilogram per year	
	Minimum	Maximum
First year	110,000	120,000
Second year	115,000	125,000
Third year	120,000	130,000

Physical/Chemical Properties.

Solvent—Mineral spirits and toluene.
Percent Nonvolatile by wt.—50.0.
Percent Nonvolatile by vol.—46.0.
Specific gravity—0.91.
Specific gravity (NV)—0.99.
Viscosity at 25°C—3,500–4,500 cps.
Acid value—10 max.
Boiling point—308°F.
Vapor pressure—1.97 mm Hg at 20°C.
Vapor density—4.7.
Solubility in H_{20}—Negligible.
Flash point—103°F PMCC.
Flammability limits—1.0%–6.0%.
Appearance—Dark amber liquid with mild hydrocarbon odor.

Toxicity Data. The manufacturer states that toxicological tests indicated that the substance is practically non-toxic through oral, dermal, and inhalation routes and for skin and eye irrigation.

Exposure. The manufacturer states that there is no risk of occupational exposure.

Environmental Release/Disposal. (Two sites). The manufacturer states that less than 10 kg of the substance will be released to the air at a rate of 1 hr/da, 34 da/yr. The manufacturer estimates that between 10 and 100 kg of the substance will be released to land annually. No emissions to waterways are expected.

PMN 80–349

The following information is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. March 8, 1981.

Manufacturer's Identity. Mobil Chemical Company, P.O. Box M–1, Short Hills, NJ 07078.

Specific Chemical Identity. Sunflower oil, polymer with benzoic acid, isophthalic acid, and pentaerythritol.

Use. Polymer used in paint products.

Production Estimates.

	Minimum (kg/yr)	Maximum (kg/yr)
First year	80,000	90,000
Second year	90,000	100,000
Third year	110,000	110,000

Physical/Chemical Properties.

Solvent—Mineral spirits, toluene, cellosolve acetate.
Percent nonvolatile by wt—55.0.
Percent nonvolatile by vol—54.0.
Specific gravity—0.93.
Specific gravity (NV)—0.99.
Viscosity at 25°C (cps)—1,300–2,300.
Acid value—7–10.
Boiling point—304°F.
Vapor pressure—2.42 mm Hg at 20°C.
Vapor density—4.7.
Solubility in H_20—Negligible.
Flash point—101°F PMCC.
Flammability limits (percent)—1.0–6.7.
Appearance—Amber liquid, with mild hydrocarbon odor.

Toxicity Data. The manufacturer states that toxicological tests indicated that the product is practically non-toxic through oral, dermal, and inhalation routes and for skin and eye irritation.

Exposure. The manufacturer states that there is no risk of occupational exposure.

Environmental Release/Disposal. (Two sites). The manufacturer states that less than 10 kg of the product will be released to the air for 1 hr/da, 12 da/yr. Between 100 and 1,000 kg of the product may be deposited on land annually.

PMN 80–350.

The following information is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. March 8, 1981.

Manufacturer's Identity. Mobil Chemical Company, P.O. Box M–1, Short Hills, NJ 07078.

Specific Chemical Identity. Rosin, polymers, with glycerol, phthalic anhydride, and sunflower oil.

Use. Polymer used in paint products.

Production Estimates.

	Minimum (kg/yr)	Maximum(kg/yr)
First year	35,000	40,000
Second year	40,000	45,000
Third year	45,000	50,000

Physical/Chemical Properties.

Solvent—Xylene.
Percent nonvolatile by wt—50.0.
Percent nonvolatile by vol—46.0.
Specific gravity—1.00.
Specific gravity (NV)—1.09.
Viscosity at 25°C (cps)—3,500–4,500.
Acid value—7–10.
Boiling point—304°F.
Vapor pressure—4.94 mm Hg at 20°C.
Vapor density—3.7.
Solubility in H_20—Negligible.
Flash point—80°F PMCC.
Flammability limits (percent)—1.0–7.0.
Appearance—Amber liquid, with hydrocarbon odor.

Toxicity Data. The manufacturer states that toxicological tests indicated that the substance is practically non-toxic through oral, dermal, and inhalation routes and for skin and eye irritation.

Exposure. The manufacturer states that there is no risk of occupational exposure.

Environmental Release/Disposal. The manufacturer states that less than 10 kg of the product will be released to the air for 1 hr/da, 11 da/yr. Between 100 and 1,000 kg of the product will be deposited on land annually.

PMN 80–365.

The following information is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. March 15, 1981.

Manufacturer's Identity. Monsanto Company, 800 N. Lindbergh Blvd., St. Louis, MO 63166.

Specific Chemical Identity. Calcium sodium ethylenediamine tetrakis (methylenephosphonate).

Use. Claimed confidential business information. The manufacturer states that 30% of total production may be used as sequestrant and scale control agent.

Production Estimates. Claimed confidential business information.

Physical Properties.

Product form—Pale yellow powder.
Heat stability—Stable to > 200°C.
Aqueous solubility—1%.
pH 1% solution at 25°C—11–12.

Toxicity Data.

	Solid form	Slurry (40% solid)
Oral LD_{50} (rats, both sexes).	5,000 mg/kg	>5 ml/kg.
Dermal LD_{50} (rats, both sexes).	> 5,000 mg/kg.	> ml/kg.
Primary dermal irritation (rabbits, both sexes).	Slight irritant	Slight irritant.
Primary eye irritation (rabbits), both sexes).	Mild irritant	Severe irritant.
4-Hour acute inhalation, LC_{50}.	> 4.2 mg/1	

The manufacturer also states that test data on related substances showed to be non-toxic or slightly toxic to mammals and a variety of freshwater and marine algae, invertebrates, and fish.

Exposure.

[19] 3132

Activity	Exposure Route	Maximum number exposed	Maximum duration		Concentration (ppm)	
			Hours/day	Days/year	Average	Peak
Manufacture	Dermal	3–4	8	60–90		
Processors	Dermal	2–3	8	60–90		
	Inhalation					
Potential Users	Dermal	1–2	2	30–60		
	Inhalation					

Environmental Release/Disposal. The manufacturer states that no waste or byproducts will be generated in the manufacture or use of the PMN substance.

[FR Doc. 81–1891 Filed 1–16–81; 8:45 am]

BILLING CODE 6560–31–M

[ER–FRL–1729–7]

Agency Comments on Environmental Impact Statements and Other Actions Impacting the Environment

PURPOSE: Pursuant to the requirements of section 102(2)(c) of the National Environmental Policy Act of 1969, and section 309 of the Clean Air Act, as amended, the Environmental Protection Agency (EPA) has reviewed and commented in writing on Federal agency actions impacting the environment during the period of November 1, 1980 and November 30, 1980.

SUMMARY OF NOTICE: The information presented below describes the Federal agency responsible for the action, the type of document reviewed by EPA, the EPA review control number, and the title of the document reviewed. The classification of the nature of EPA's comments is listed for each draft EIS.

AVAILABILITY OF INFORMATION CONTAINED IN THIS NOTICE: Documents reviewed by EPA: The documents identified below are prepared by the Federal agency identified in the listing. Copies may be obtained by requesting the document from the Federal agency responsible for its preparation. EPA does not maintain copies for distribution.

EPA comments: Copies of EPA's comments identified below are available upon request from the appropriate EPA Regional Library or you may contact the Office of Environmental Review (A–104), Environmental Protection Agency, Room 2119, Waterside Mall, SW, Washington, DC 20460.

EPA's procedures for commenting: Copies for the EPA manual setting forth policies and procedures for EPA's review of agency actions may be obtained by writing the contact identified below for further information.

FOR FURTHER INFORMATION CONTACT: Ms. Kathi L. Wilson, Office of Environmental Review (A–104), U.S. Environmental Protection Agency, Washington, D.C. 20460, Telephone: (202) 245–3006.

PERIOD COVERED: November 1, 1980 and November 30, 1980.

Corps of Engineers

Control No.: D–COE–D36036–PA. EPA Rating: ER2. Copies of Comments: EPA, Philadelphia	Swatara Creek, Local Flood Protection, Pine Grove, Schuylkill County, Pennsylvania.
Control No.: D–COE–F36071–IL. EPA Rating: LO1. Copies of Comments: EPA, Chicago	Big Five Flood Control Study, Union and Alexander Counties, Illinois.
Control No.: D–COE–K24004–HI. EPA Rating: ER2. Copies of Comments: EPA, San Francisco	Permit Application for Olomana and Maunawili Sewer Projects, Kawainui Marsh, Oahu, Hawaii.
Control No.: D–COE–K30008–CA. EPA Rating: LO2. Copies of Comments: EPA, San Francosco	Oceanside Vicinity, Beach Erosion Control, San Diego County, California.
Control No.: FS–COE–A34130–TX. Copies of Comments: EPA, Dallas[1]	Big Pine Lake, Red River County, Texas.
Control No.: F–COE–E30012–SC. Copies of Comments: EPA, Atlanta	Folly Beach Erosion Control and Hurricane Protection, Charleston County, South Carolina.
Control No.: FS–COE–E32022–NC. Copies of Comments: EPA, Atlanta	Manteo Shallowbag Bay Project, Dare County, North Carolina.
Control No.: F–COE–E60001–TN. Copies of Comments: EPA, Atlanta	Cordell Hull Dam Disposal of Lands for Public Port, Jackson County, Tennessee.
Control No.: F–COE–L03003–AK. Copies of Comments: EPA, Seattle	Prudhoe Bay Oil Field Waterflood Project, Prudhoe Bay, North Slope Borough, ALaska.
Control No.: F–COE–L36068–OR. Copies of Comments: EPA, Seattle	Rehabilitation of the North and South Jetties, Nehalem Bay, Oregon.

Department of Agriculture

Control No.: D–AFS–K61051–AZ. EPA Rating: LO1. Copies of Comments: EPA, San Francisco	Verde River Wild and Scenic Study, Yavapai and Gila Counties, Arizona.
Control No.: D–AFS–L61139–WA. EPA Rating: LO2. Copies of Comments: EPA, Seattle	Alpine Lakes Area Management Plan, Washington.
Control No.: D–REA–H08005–IA. EPA Rating: ER2. Copies of Comments: EPA, Kansas City	Guthrie County Generation Station and Associated Transmission Facilities, Guthrie and Dallas Counties, Iowa (USDA–REA–(ADM) 80–9–D).
Control No.: D–SCS–B36020–MA. EPA Rating: ER3. Copies of Comments: EPA, Boston	Washington Mountain Brook Watershed, Berkshire County, Massachusetts.
Control No.: D–SCS–B36021–MA. EPA Rating: LO2. Copies of Comments: EPA, Boston	Baiting Brook Watershed, Framingham, Middlesex County, Massachusetts.
Control No.: F–AFS–L61138–OR. Copies of Comments: EPA, Seattle	Mount Howard Expansion, Wing Ridge Development, Wallowa County, Oregon.
Control No.: F–AFS–L67004–ID. Copies of Comments: EPA, Seattle	Thompson Creek Molybdenum Project, Cyprus Mines Corporation, Challis National Forest, Custer County, Idaho.
Control No.: FS–REA–A06102–SC. Copies of Comments: EPA, Atlanta	Catawba Nuclear Station Units 1, York County, South Carolina (Adopted).
Control No.: FS–AFS–A61163–MT. Copies of Comments: EPA, Denver	Flathead Wild and Scenic River Designation, Montana.
Control No.: F–AFS–A65121–OO. Copies of Comments: EPA, Washington, DC	Forest and Rangeland Renewable Resources Planning Act: 1980 Report To Congress, Recommended Renewable Resources Program—1980 Update and an Assessment of the Forest and Range Land Situation in the United States.
Control No.: F–SCS–E36029–KY. Copies of Comments: EPA, Atlanta	Big Muddy Creek Watershed, Butler and Logan Counties, Kentucky.
Control No.: F–SCS–G36060–LA. Copies of Comments: EPA, Dallas	Walnut Roundway Watershed, Madison and East Carroll Parishes, Louisiana.
Control No.: A–AFS–A36448–OO. Copies of Comments: EPA, Washington, DC	Direction For Floodplain Management and Wetland Protection, Proposed Policy (45 FR 57477).

Department of Commerce

Control No.: D–EDA–E28035–TN. EPA Rating: LO2. Copies of Comments: EPA, Atlanta	Gatlinburg Intercity Water Supply Plan, Sevier County, Tennessee.
Control No.: D–EDA–F89009–OH. EPA Rating: EPA, Chicago. Copies of Comments: EPA, Chicago 126Proposed Industrial and Commercial Area, Trumbull County, Ohio..	
Control No.: D–EDA–K28007–CA. EPA Rating: ER2. Copies of Comments: EPA, San Francisco	Eastern Industrial Trunk Sewer Project, City of Oxnard, Ventura County, California.
Control No.: D–NOA–K91004–OO. EPA Rating: LO1. Copies of Comments: EPA, San Francisco	Fishery Management Plan (FMP), For Spiny Lobster of Guam, Samoa, and Northwest Hawaiian Isles.
Control No.: D–NOA–L64015–AK. EPA Rating: LO2. Copies of Comments: EPA, Seattle	Groundfish of the Bering Sea and Aleutian Islands Area, Fishery Management Plan, (FMP) Alaska.
Control No.: RF–NOA–A90046–GA. Copies of Comments: EPA, Washington, DC	Gray's Reef Marine Sanctuary, 34.2 km (175.5 NMI) East of Sapelo Island, Georgia, South Atlantic Continental Shelf.
Control No.: RF–NOA–A90047–CA. Copies of Comments: EPA, Washington, DC	Point Reyes-Farallon Islands Marine Sanctuary, off the California Coast, Pacific Ocean.

Department of Defense

Control No.: F-USA-K11016-HI. Copies of Comments: EPA, San Francisco	Tripler Army Medical Center, Hospital Addition and Alteration, Oahu, Hawaii.

Department of Energy

Control No.: DS-DOE-B08000-OO. EPA Rating: ER2. Copies of Comments: EPA, Boston	Dickey-Lincoln School Lakes Transmission Project, Maine, New Hampshire, and Vermont.
Control No.: A-ERA-A07017-OO. Copies of Comments: EPA, Washington, DC	Notice, Docket No. ERA-R-80-32, Powerplant and Industrial Fuel Use Act of 1978, Guidelines on the Use of Alternate Fuels and Technologies (45 FR 62525).

Department of Interior

Control No.: DS-BIA-G07003-NM. EPA Rating: LO1. Copies of Comments: EPA, Dallas[1]	Four Corners Power Plant and Navajo Mine, Modifications, New Mexico.
Control No.: D-BIA-G07020-NM. EPA Rating: LO2. Copies of Comments: EPA, Dallas	Ute Mountain, Proposed Strip Coal Mine, San Juan County, New Mexico.
Control No.: D-BLM-G07019-TX. EPA Rating: ER2. Copies of Comments: EPA, Dallas	Camp Swift Reservation Leasing, Bastrop County, Texas.
Control No.: D-BLM-K65041-CA. EPA Rating: LO2. Copies of Comments: EPA, San Francisco	Ukiah District Sustained Yield Unit 13 Timber Management, California.
Control No.: D-HCR-C61002-NJ. EPA Rating: ER2. Copies of Comments: EPA, New York	Pinelands National Reserve, Proposed Managmeent Plan, New Jersey.
Control No.: D-OSM-J01034-WY. EPA Rating: LO1. Copies of Comments: EPA, Denver	Rojo Caballos Mine Reclamation, Campbell County, Wyoming.
Control No.: D-SFW.G64003-TX. EPA Rating: LO1. Copies of Comments: EPA, Dallas	Proposed Acquisition of Big Boggy Marsh, Matagorda County, Texas.
Control No.: D-SFW-K64007-AZ. EPA Rating: LO1. Copies of Comments: EPA, San Francisco	Proposal to Eliminate Cattle Grazing and Wild Burro Population from Kofa National Wildlife Refuge, Arizona.
Control No.: F-BLM-K09002-CA. Copies of Comments: EPA, San Francisco	Coso Known Geothermal Resource Area, Lease, Inyo County, California.
Control No.: F-BLM-K61038-CA. Copies of Comments: EPA, San Francisco	California Desert Conservation Area, California.
Control No.: F-BLM-K65034-OO. Copies of Comments: EPA, San Francisco	Cowhead and Massacre Planning Unit, Susanville District, Lassen and Modoc County, California and Washoe County, Nevada.
Control No.: F-NPS-G61011-OK. Copies of Comments: EPA, Dallas[1]	Chickasaw National Recreation Area, Murray County, Oklahoma.
Control No.: F-NPA-K61029-CA. Copies of Comments: EPA, San Francisco	Yosemite National Park General Management Plan, California.
Control No.: F-NPS-K61036-CA. Copies of Comments: EPA, San Francisco	Redwood National Park, General Management Plan, Del Norte and Humboldt Counties, California.
Control No.: A-BLM-A02161-OO. Copies of Comments: EPA, Washington, DC	Proposed 1983 OCS Sales 72 and 74 for Gulf of Mexico; Resource Reports and Scoping.
Control No.: A-BLM-A02164-AK. Copies of Comments: EPA, Washington, DC	Notice, Kodiak, Outer Continental Shelf (OCS), Tentative Sale No. 61, Call for Nominations of and Comments on Areas for Oil and Gas Leasing (45 FR 62909).

Department of Transportation

Control No.: DR-FAA-A51826-CT. EPA Rating: LO1. Copies of Comments: EPA, Boston	Medium Intensity Approach Light System, Sequenced Flashing Lights Runway 2, Tweed-New Haven Airport, New Haven, Connecticut.
Control No.: D-FHW-D40105-VA. EPA Rating: ER2. Copies of Comments: EPA, Philadelphia	VA-460, Upgrading and Relocation, Buchanan and Dickenson Counties, Virginia.
Control No.: D-FHW-D40106-WV. EPA Rating: ER2. Copies of Comments: EPA, Philadelphia	Charlestown Bypass, U.S. 340 and WV-9, Jefferson County, West Virginia.
Control No.: D-FHW-E40195-GA. EPA Rating: ER2. Copies of Comments: EPA, Atlanta	Torras Causeway Improvement, St. Simons Islands, Glynn County, Georgia.
Control No.: D-FHW-H40095-NB. EPA Rating: ER2. Copies of Comments: EPA, Kansas City	Northeast Diagonal, 16th at P and Q to 27th and Fair Street, Lincoln, Lancaster County, Nebraska (FHWA-NEBR-EIS-80-02-D).
Control No.: D-FHW-K40085-AZ. EPA Rating: LO2. Copies of Comments: EPA, San Francisco	Palo Verde Corridor Highway Improvements, Tucson, Pima County, Arizona.
Control No.: D-FHW-K54007-CA. EPA Rating: LO1. Copies of Comments: EPA, San Francisco	Santa Ana Transportation Terminal, Orange County, California.
Control No.: D-FHW-L40100-AK. EPA Rating: ER2. Copies of Comments: EPA, Seattle	A-C Couplet, A Street South from Sixth to Forty-Fourth Avenue, Anchorage, Alaska.
Control No.: D-FRA-B53007-CT. EPA Rating: LO2. Copies of Comments: EPA, Boston	Replacement of Shaw's Cove Bridge and Approaches, New London, New London County, Connecticut (FRA-RNC-EIS-80-02-D).
Control No.: D-UMT-D53005-MD. EPA Rating: ER2. Copies of Comments: EPA, Philadelphia	Washington Metrorail System, Green and Yellow Line (E Route, West Hyattsville Segment), Prince Georges County, Maryland.
Control No.: F-FHW-L40089-WA. Copies of Comments: EPA, Seattle	Port Orchard Bypass, WA-160 to WA-16, City of Port Orchard, Kitsap County, Washington.
Control No.: F-FHW-D40032-PA. Copies of Comments: EPA, Philadelphia	L.R. 1010, Sections A, B, and C, Mid County Expressway I-476, I-95 to I-76, Delaware and Montgomery Counties, Pennsylvania.
Control No.: F-FHW-H40088-IA. Copies of Comments: EPA, Kansas City	IA-100 to U.S. 30, U.S. 30 to I-380 at Collins Road, Collins Road, Cedar Rapids, Linn County, Iowa.
Control No.: N-FAA-F51026-WI. Copies of Comments: EPA, Chicago	Fonsi, Improvements at Eau Claire County Airport, Eau Claire County, Wisconsin.
Control No.: RR-FHW-A59003-OO. Copies of Comments: EPA, Washington, DC	23 CFR Part 777, Mitigation of Environmental Impacts to Privately Owned Wetlands (FHWA-Docket No. 80-15) (45 FR 50728).

Federal Energy Regulatory Commission

Control No.: D-FRC-K05015-CA. EPA Rating: LO2. Copies of Comments: EPA, San Francisco	South Fork American River Development, Upper Mountain Project, California (FERC No. 2761).
Control No.: F-FRC-J03001-OO. Copies of Comments: EPA, Washington, DC	Trailblazer Pipeline System, Wyoming, Colorado and Nebraska.

General Services Administration

Control No.: F-GSA-D11013-PA. Copies of Comments: EPA, Philadelphia	Disposal of Surplus Federal Real Property of Frankford Arsenal, Philadelphia, Pennsylvania.

Department of Housing and Urban Development

Control No.: Rd-HUD-A80023-OO. EPA Rating: LO1. Copies of Comments: EPA, Washington, DC	HUD MPS 4900.1 Minimum Property Standards for One- and Two-Family Dwellings.
Control No.: RD-HUD-A86174-OO. EPA Rating: LO2. Copies of Comments: EPA, Washington, DC	Pursuant to Title I of the Housing and Community Development Act of 1974 Siting of HUD-Assisted Projects Near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature.
Control No.: D-HUD-G85152-TX. EPA Rating: ER2. Copies of Comments: EPA, Dallas	Rancho Isabella Subdivision, Angleton, Brazoria County, Texas.
Control No.: D-HUD-G85153-TX. EPA Rating: LO2. Copies of Comments: EPA, Dallas	Proposed Subdivision, Barrington Place, Fort Bend County, Texas.
Control No.: D-HUD-K85032-CA. EPA Rating: ER2. Copies of Comments: EPA, San Francisco	Gilbert Lindsay Village Green Development, Los Angeles County, California.
Control No.: D-HUD-K85033-AZ. EPA Rating: ER2. Copies of Comments: EPA, San Francisco	Midvale Park Development, Pima County, Arizona.
Control No.: F-HUD-J85037-MT. Copies of Comments: EPA, Denver	Olympic Park and Harvest Housing Developments, Billings, Montana.

Control No.: F-HUD-G24008-NM. Copies of Comments: EPA, Dallas[1]	Water Sewer and Access facilities, South University Industrial Park, Albuquerque, Bernalillo County, New Mexico.
Control No.: F-HUD-G85146-TX. Copies of Comments: EPA, Dallas	Wheatstone Subdivision, Mortgage Insurance, Harris County, Texas.
Control No.: F-HUD-G85148-TX. Copies of Comments: EPA, Dallas	Creekside Village and River Hills Village Subdivision, Montgomery County, Texas.
Control No.: F-HUD-G85149-TX. Copies of Comments: EPA, Dallas	Copperfield Subdivision, Harris County, Texas.
Control No.: F-HUD-K80011-CA. Copies of Comments: EPA, San Francisco	San Buenaventura Downtown Redevelopment Plan and Mission Plaza Shopping Center, San Buenaventura, Ventura County, California.
Control No.: A-HUD-G85139-TX. Copies of Comments: EPA, Dallas	Additional Information, Imperial Oaks Subdivision, Montgomery County, Texas.

Interstate Commerce Commission

Control No.: D-ICC-C53002-NY. EPA Rating: 3. Copies of Comments: EPA, New York	Somerset Railroad, Construction and Operation, Niagara County, New York.

Missouri River Basin Commission

Control No.: D-MRB-J39012-MT. EPA Rating: ER1. Copies of Comments: EPA, Denver	Upper Missouri River Basin Level B Study, Montana.

Nuclear regulatory Commission

Control No.: D-NRC-A06140-PA. EPA Rating: ER2. Copies of Comments: EPA, Washington, DC	Related to Decontamination and Disposal of Radioactive Wastes Resulting from March 28, 1979, Accident Three Mile Island Nuclear Station, Unit 2, (NUREG-0683 Docket No. 50-320).
Control No.: F-NRC-A22077-IL. Copies of Comments: EPA, Washington, DC	Primary Cooling System Chemical Decontamination at Dresden Nuclear Power Station, Unit No. 1, Grundy County, Illinois (Docket No. 50-10).
Control No.: RR-NRC-A01055-OO. Copies of Comments: EPA, Washington, DC	10 CFR Parts, 30, 40, 70, and 150, Uranium Mill Licensing Requirements (45 FR 65521).

Ohio River Basin Commission

Control No.: F-ORB-E34016-OO. Copies of Comments: EPA, Atlanta	Kentucky and Licking River Basins, Regional Water and Land Resources Plan, Kentucky.
Control No.: F-ORB-E34017-OO. Copies of Comments: EPA, Atlanta	Big Sandy and Guyandotte River Basin, Regional Water and Land Resources Plan, Kentucky and West Virginia.

[1] These projects were omitted from the reports of March 1-31, 1980 published in September 12, 1980 FEDERAL REGISTER, and August 1-31, 1980 published in November 4, 1980 FEDERAL REGISTER, respectively.

William N. Hedeman, Jr.,
Director, Office of Environmental Review.
January 12, 1981.

[FR Doc. 81-1894-Filed 1-16-81; 8:45 am]
BILLING CODE 6560-37-M

[EN-FRL 1729-3]

Applications for Waiver of Effective Date of Carbon Monoxide Emission Standards for Light-Duty Motor Vehicles; Request for Comments and Opportunity for Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for public comments and notice of opportunity for hearing.

SUMMARY: This notice requests public comment and announces opportunity for a public hearing on new requests for reconsideration EPA has received from General Motors Corporation (GM), Volkswagen of America, Inc. (VW), and Ford Motor Company (Ford) for waiver of the carbon monoxide (CO) emission standards for one engine family each for certain model years.

DATES AND ADDRESSES: Interested parties may submit a *bona fide* written request for a public hearing by January 22, 1981. If EPA receives such a hearing request the Agency will hold a public hearing on February 2, 1981, beginning at 9:00 a.m., at Room 3908, Waterside Mall, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Otherwise, EPA will publish a notice in the **Federal Register** prior to January 28, 1981, announcing the cancellation of this public hearing. Regardless of whether a hearing is requested, EPA will consider written comments received by February 5, 1981. Requests for a hearing or comments should be sent to the Director, Manufacturers Operations Division (EN-340), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Information submitted by the petitioners, as well as any comments received from interested parties, will be available for public inspection and copying in EPA Public Docket EN-80-16, located in EPA's Central Docket Section (A-130), Gallery I, 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Alex Varela, Waivers Section, Manufacturers Operations Division (EN-340), 401 M Street, SW, Washington, D.C. 20460, telephone number, (202) 472-9421.

SUPPLEMENTARY INFORMATION: Section 202(b)(5) of the Clean Air Act, as amended (Act), 42 U.S.C. 7521(b), authorizes EPA to waive application of the 1981 and 1982 model year statutory CO emission standard applicable to light-duty motor vehicles and engines upon the request of a manufacturer for a specific vehicle model if the Administrator makes certain findings specified under section 202(b)(5)(C) of the Act.

After holding previously announced public hearings, EPA denied earlier waiver requests from GM for its 1982 model year 1.6 liter (L) engine family on July 25, 1980 (45 FR 49877); from Ford, for its 1982 model year 2.3 L/ turbocharged family on August 11, 1980 (45 FR 53400); and from VW for its 1981 model year 1.46L engine family on September 9, 1980 (45 FR 59396).

However, since EPA issued those decisions, economic circumstances under which many automobile

manufacturers are operating have deteriorated significantly. In the eleventh CO waiver decision (45 FR 1590, January 6, 1981) EPA recognized the importance of these current economic circumstances by granting waivers to GM, Ford, AMC, and Chrysler for certain 1982 model year fuel-efficient engine families which had never been marketed under the statutory CO standard.

GM, VW, and Ford each have filed requests for reconsideration of earlier waiver denials and in those requests have raised the possibility that the engine families under consideration here (the GM 1.6L, VW 1.46L, and Ford 2.3L/turbocharged) may quality for waivers under the same rationale used to grant other similar fuel efficient engine families in EPA's eleventh decision. These manufacturers have contended that the requests for reconsideration, in conjunction with information already in the public record, establish factual circumstances for these three engine families similar to those which the Administrator found to be associated with engine families considered in the eleventh decision and that applications covering these three engine families meet the statutory criteria for receiving a waiver. The concerns which these petitioners identify are the type of considerations which the Court in *International Harvester* v. *Ruckelshaus* (478 F.2d 615 (D.C. Cir. 1973)) indicated EPA should take into account in weighing the risks of erroneously denying a waiver request.

Since EPA has already held public hearings regarding these three engine families for the model years in question, I will reconsider my previous waiver denials for these engine families on the basis of written information submitted to the record in lieu of holding another public hearing,* unless EPA receives a *bona fide* written request for a public hearing by January 22, 1981. If EPA receives such a request, it will hold a hearing on February 2, 1981, at the time and place specified in the "Dates and Addresses" section of this notice. The procedures for this hearing will be the same as those which EPA has employed for previous CO waiver hearings (see, e.g., 45 FR 45956 (July 8, 1980)). If EPA does not receive a hearing request, it will publish a **Federal Register** notice cancelling the February 2 hearing.

The primary purposes of this simplified procedure are (1) to allow interested parties to submit relevant information, absent a hearing, for the public record to allow me to determine if I should grant waivers covering these engine families, in light of the rationale used in my eleventh CO waiver decision to grant waivers for other fuel-efficient engine families of manufacturers with severe economic and marketing problems and (2) to enable the Administrator to make a decision as soon as possible to provide these manufacturers with sufficient lead time to implement production plans based upon decisions on these engine families.

As a result, I am requesting public comment on the concerns that these requests have raised for the purpose of reevaluating my original waiver decisions. I recognize the need to reconsider these decisions quickly, in light of the sixty-day statutory deadline which section 202(b)(5) of the Act establishes for responding to CO waiver requests and in light of these manufacturers need to finalize plans to begin production of these vehicles. Thus, I am requiring that all comments be submitted to EPA by February 5, 1981 to ensure that the Administrator will consider them in deciding on these requests for reconsideration.

EPA will place all information which it receives by that date in public docket EN-80-16. I will rely solely on the information contained in that docket in deciding whether or not to reverse my original denial of waiver requests for these three engine families.

Dated: January 14, 1981.

Jeffrey Miller,

Acting Assistant Administrator for Enforcement.

[FR Doc. 81-1880 Filed 1-16-81; 8:45 am]

BILLING CODE 6560-33-M

*Cf., EPA Request for Public Comment, 45 FR 79116 (November 28, 1980).

[RD-FRL 1729-6]

Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Application for an Equivalent Method Determination

Notice is hereby given that on December 12, 1980, the Environmental Protection Agency received an application from the California Department of Health Services, Air and Industrial Hygiene Laboratory to determine if their atomic absorption and X-ray fluorescence spectrometry methods for the determination of lead in suspended particulate matter should be designated by the Administrator of the EPA as equivalent methods under 40 CFR Part 53 (40 FR 7044, 41 FR 11255, 44 FR 37916). If, after appropriate technical study, the Administrator determines that this method should be so designated, notice thereof will be given in a subsequent issue of the **Federal Register**.

January 12, 1981.

Richard W. Dowd,

Assistant Administrator for Research and Development.

[FR Doc. 81-1893 Filed 1-16-81; 8:45 am]

BILLING CODE 6560-35-M

[OPP-50513; PH-FRL 1730-3]

Elanco Products Co., et al.; Extension of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has issued extensions of experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-359, 401 M St. SW., Washington, D.C. 20460, (202-755-2196).

SUPPLEMENTARY INFORMATION: EPA has extended the following experimental use permits:

1471-EUP-68. Elanco Products Co., P.O. Box 1750, Indianapolis, Indiana, 46206. This experimental use permit allows the use of 1,627 pounds of each of the herbicides oryzalin and trifluralin on cotton and soybeans to evaluate control of weeds. A total of 2,814 acres are involved. The program is authorized only in the States of Alabama, Arizona, Arkansas, California, Georgia, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, and Wisconsin. The experimental use permit is effective from March 30, 1981 to March 30, 1982. Permanent tolerances for residues of the active ingredients in or on cottonseed and soybeans have been established (40 CFR 180.304 and 180.207).

400-EUP-59. Uniroyal, Inc., 74 Amity Road, Bethany, CT 06525. This experimental use permit allows the use of 903 pounds of the herbicide 2[[1-[2,5-dimethylphenyl]ethyl]sulfonyl]pyridine 1-oxide on cotton, peanuts, potatoes, soybeans, sugar beets, and sunflowers

to evaluate control of weeds. A total of 602 acres are involved. The program is authorized only in the States of Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, and Wisconsin. The experimental use permit is effective from February 1, 1981 to February 1, 1982. The permit is being issued with the limitation that all treated crops be destroyed or used for research purposes only.

Persons wishing to review the experimental use permits are referred to the Product Manager. Inquiries regarding these permits should be directed to the contact person given above. It is suggested that interested persons call before visiting the EPA Headquarters office so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

(Sec. 5, 92 Stat. 819, as amended, (7 U.S.C. 136))

Dated: January 12, 1981.

Douglas D. Campt

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-1889 Filed 1-16-81; 8:45 am]

BILLING CODE 6560-32-M

[OPP-505171; PH-FRL 1730-1]

Monsanto Co. and Rohm and Haas Co.; Extension of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA issued extensions of experimental use permits to the following applicants. Such permits are in accordance with and subject to the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: The designated product manager given in each permit at the address below: Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: EPA has extended the following experimental use permits:

524-EUP-51. Monsanto Co., 1101 17th St., NW., Washington, D.C. 20036. This experimental use permit allows the use of 1297.9 pounds of the herbicide alachlor in or on grain sorghum to evaluate control of weeds. A total of 445 acres are involved. The program is authorized only in the States of Arizona, Arkansas, California, Colorado, Florida, Illinois, Iowa, Kansas, Missouri, Nebraska, Oklahoma, South Dakota, and Texas. This experimental use permit is effective from March 4, 1981 to March 4, 1982. This experimental use permit is being extended with the limitation that all treated crops will be destroyed or used for research purposes only. (PM 25, Robert J. Taylor, Rm. E-359, 202-755-2196).

707-EUP-94. Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105. This experimental use permit allows the use of 880 pounds of the herbicide acifluorofen, sodium salt (sodium 5-[2-chloro-4-(trifluoromethyl)-phenoxy]-2-nitrobenzoate) on peanuts to evaluate control of weeds. A total of 220 acres are involved. The program is authorized only in the States of Alabama, Florida, Georgia, North Carolina, Oklahoma, South Carolina, Texas, and Virginia. The experimental use permit is effective from March 15, 1981 to March 15, 1982. Temporary tolerances have been established for the residues of the herbicide in or on peanuts and peanut hulls. (PM 23, Richard F. Mountfort, Rm. E-351, 202-755-1397).

Persons wishing to review the experimental use permits are referred to the product manager. Inquiries regarding these permits should be directed to the contact person given above. It is suggested that interested persons call before visiting the EPA headquarters office so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

(Sec. 5, 92 Stat. 819, as amended (7 U.S.C. 136))

Dated: January 12, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-1888 Filed 1-16-81; 8:45 am]

BILLING CODE 6560-32-M

[OPP-50500A; PH-FRL 1730-4]

Rohm and Haas Co., Extension of Experimental Use Permit; Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice amends experimental use permit 707-EUP-95 for use of the hybridizing agent potassium (1-(p-chloropheny)-1,4-dihydro-6-methyl-4-oxopyridazine-3-carboxylic acid on wheat to evaluate hybridizing.)

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-359, 401 M St. SW., Washington, D.C. 20460, (202-755-2196).

SUPPLEMENTARY INFORMATION: EPA issued a notice that was published in the **Federal Register** of September 11, 1980 (45 FR 60002) that Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105 had been issued an experimental use permit for use of the hybridizing agent potassium (1-(p-chlorophenyl)-1,4-dihydro-6-methyl-4-oxopyridazine-3-carboxylate) on wheat to evaluate control of hybridizing. No tolerance was established for wheat at that time. The permit specified that all treated crops must be destroyed or used for research purposes only.

This amendment to 707-EUP-95 establishes a temporary tolerance for potassium. The crop no longer has to be destroyed. A tolerance of 1 ppm on wheat (second generation; grown-out wheat of the hybrid seed) appears elsewhere in this issue of the **Federal Register.**

Interested persons wishing to review the experimental use permit are referred to the product manager. Inquiries regarding this permit should be directed to the person given above. It is suggested that interested persons call before visiting the EPA headquarters office so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

(Sec. 5, 92 Stat. 819 as amended (7 U.S.C. 136)).

Dated: January 12, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-1890 Filed 1-16-81; 8:45 am]

BILLING CODE 6560-32-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1265]

Petitions for Reconsideration of Actions in Rule Making Proceedings

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to 47 CFR 1.429(e).

Oppositions to such petitions for reconsideration must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Part 76 of the Commission's Rules and Regulations Concerning the Cable Television Channel Capacity and Access Channel Requirements of Section 76.251 (Docket No. 20508).
Filed by: Michael Botein & David M. Rice, Attorneys for The American Civil Liberties Union on 12–12–80.

Subject: Policy and Rules Concerning Rates For Competitive Common Carrier Services and Facilities Authorizations Therefore. (CC Docket No. 79–252).
Filed by:
Alan Auckenthaler, Attorney for American Satellite Company on 12–18–80.
Dennis F. Begley, Attorney for Garryowen Corporation, (KTVQ–TV, KXLF–TV, KPAX–TV & KRTV) on 12–22–80.
Carl J. Cangelosi, Attorney for RCA American Communications, Inc. on 12–23–80.
Arthur H. Simms, Attorney for The Western Union Telegraph Company on 12–24–80.
Henry Geller, Assistant Secretary for Communications and Information & Gregg P. Skall, Attorney for National Telecommunications and Information Administration on 12–24–80.
Robert L. James, Attorney for Transponder Corporation of Denver on 12–29–80.
Robert L. James, Attorney for Andrews Tower Rental, Inc., East Texas Transmission Company, Hi-Desert Microwave, Inc. & Pilot Butte Transmission Company, Inc. on 12–29–80.
Robert L. James, Attorney for United Video, Inc. on 12–29–80.
Thomas J. O'Reilly, Attorney for The United States Independent Telephone Association on 12–29–80.
Leo I. George, Donald J. Evans & John A. Borsari, Attorneys for U.S. Telephone Communications, Inc. on 12–29–80.
Rosel H. Hyde, Herbert E. Marks & Laurel R. Bergold, Attorneys for The State of Hawaii on 12–29–80.
Burton K. Katkin & Alfred Winchell Whittaker, Attorneys for American Telephone and Telegraph Company on 12–29–80.
Robert F. Corazzini, Attorney for Southern Satellite Systems, Inc. on 12–29–80.
Richard M. Cahill & Richard McKenna, Attorneys for GTE Service Corporation on 12–29–80.
Richard H. Strodel, Attorneys for Western Tele-Communications, Inc. on 12–29–80.
William D. English, F. Thomas Tuttle, Donald J. Elardo, Robert N. Beury, W. Theodore Pierson, Jr., William S. D'Amico, Benjamin J. Griffin & Trudy J. White, Attorneys for Satellite Business Systems on 12–29–80.
Norman P. Leventhal & James H. DeGraffenreidt, Jr., Attorneys for ISA Communications Services, Inc. on 12–29–80.
Robert W. Healy, Attorney for Certain Video Relay Common Carrier Clients ("MCC's") on 12–29–80.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 81–1907 Filed 1–16–81; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL HOME LOAN MORTGAGE CORPORATION

[No. MC 80–31]

Privacy Act of 1974; Systems of Records, Annual Publication

AGENCY: Federal Home Loan Mortgage Corporation.

ACTION: System of records—republication.

SUMMARY: This notice complies with the Privacy Act of 1974 (5 U.S.C. 552a).

EFFECTIVE DATE: January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Garrett C. Burke, Counsel, Federal Home Loan Mortgage Corporation, 1776 "G" Street, P.O. Box 57248, Washington, D.C. 20013, (202) 789–4542.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 (5 U.S.C. 552a(e)(4)) requires agencies to publish annually in the **Federal Register** a notice of the existence and character of their systems of records. The Federal Home Loan Mortgage Corporation (the "Corporation") last published the full text of its systems of records at 44 FR 218 (November 8, 1979). Except as modified, the previous publication remains effective and is incorporated by reference herein.

One record system, FHLMC–V, Net Yield Debt System, has been changed by the addition of a sentence to its "Routine Uses" section. That sentence indicates that an additional routine use of the system is the release of the names and addresses of previous owners of a mortgage Participation Certificate to subsequent holders, in order to assure the proper allocation of principal and interest payments among subsequent and previous owners.

FHLMC–VII, Discrimination Complaint Files, has been transferred from the General Counsel to the Director, Equal Employment Opportunity.

In addition, certain technical amendments to all other systems of records involving address corrections have been made. The address of the principal office of the Federal Home Loan Mortgage Corporation is now 1776 G Street NW., P.O. Box 37248, Washington, D.C. 20013. The system FHLMC–I, Corporate Employee Files, also contains an amendment with respect to the address of the Newport Beach Underwriting Office, which is now located at 4000 MacArthur Boulevard, Suite 4700, Newport Beach, California 92660. Those elements of the systems that are changed are printed below.

The correction of an error has been made with respect to the System Manager of Record System IV, Corporate Employee Conflict of Interest Files.

The full text of the Federal Home Loan Mortgage Corporation systems of records also appears in Privacy Act Issuances, 1979 Compilation, Volume IV, page 2740. This volume may be ordered through the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The price of this volume is $10.

Comments

Public Comment on the changes and additions to the systems of records will be accepted on or before February 18, 1981. The changes and additions will become effective on February 18, 1981, unless the Corporation publishes notice to the contrary. Comments should be addressed to: Garrett C. Burke, Counsel, Federal Home Loan Mortgage Corporation, 1776 "G" Street NW., P.O. Box 37248, Washington, D.C. 20013.

FHLMC–I

SYSTEM NAME:

Corporate Employee Files.

SYSTEM LOCATION:

Department of Human Resources, Federal Home Loan Mortgage Corporation, 1776 "G" Street NW., P.O. Box 37248, Washington, D.C. 20013; Office of Regional Vice President-Administration, Northeast Regional Office, 2001 Jefferson Davis Highway, Arlington, Virginia 22202; Office of Regional Vice President-Administration, Atlanta Regional Office, Peachtree Center-Cain Tower Building, 229 Peachtree Street NE., Suite 2600, Atlanta, Georgia 30303; Office of Regional Vice President-Administration, Chicago Regional Office, 111 East Wacker Drive, Suite 1515, Chicago, Illinois 60601; Office of Regional Vice President-Administration, Dallas Regional Office, 12700 Park Central Place, Suite 1800, Dallas, Texas 75251; Office of Regional Vice President-Administration, Los Angeles Regional Office, 3435 Wilshire Blvd., Suite 1000, Los Angeles, California 90010; Office of Underwriting Office Manager, Denver Underwriting Office, 8000 East Prentice, Creek Side Office Complex, Building B–7, Englewood, Colorado 80111; Office of Underwriting Office Manager, Seattle

Underwriting Office, 600 Stewart Street, Suite 1315, Seattle, Washington 98101; Office of Underwriting Office Manager, San Francisco Underwriting Office, 600 California Street, San Francisco, California 94108; Office of Underwriting Office Manager, Newport Beach Underwriting Office, 4000 MacArthur Blvd., Suite 4700, Newport Beach, California 92660.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel Administration, Federal Home Loan Mortgage Corporation, 1776 "G" Street NW., P.O. Box 37248, Washington, D.C., 20013; Office of the Regional Vice President-Administration in each Regional Office (see address above); Office of the Underwriting Office Manager in each Underwriting Office (see address above).

* * * * *

FHLMC-II

SYSTEM NAME:

Corporate Employee Current Salary Cards.

SYSTEM LOCATION:

Finance Department, Federal Home Loan Mortgage Corporation, 1776 "G" Street NW., P.O. Box 37248, Washington, D.C. 20013.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Supervisor of Accounts Payable, Federal Home Loan Mortgage Corporation, 1776 "G" Street NW., P.O. Box 37248, Washington, D.C. 20013.

* * * * *

FHLMC-III

SYSTEM NAME:

Potential Candidates for Employment.

SYSTEM LOCATION:

Department of Human Resources, Federal Home Loan Mortgage Corporation, 1776 "G" Street NW., P.O. Box 37248, Washington, D.C. 20013. Office of Regional Vice President-Administration in each Regional Office (see addresses above): Office of Underwriting Office Manager in each Underwriting Office (see addresses above).

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel Administration, Federal Home Loan Mortgage Corporation, 1776 "G" Street NW., P.O. Box 37248, Washington, D.C. 20013; Office of Regional Vice President-Administration in each Regional Office (see address above); Office of Underwriting Office Manager in each Underwriting Office (see address above).

* * * * *

CONTESTING RECORD PROCEDURES:

To contest the content of a record, notify the Legal Department in writing that a record is being contested, and identify the record system, include the name, address and social security number and the office of employment, of the individual contesting the records and specify the information which is contested and the reason for the contest.

* * * * *

FHLMC-IV

SYSTEM NAME:

Corporate Employee Conflict-of-Interest Files.

SYSTEM LOCATION:

Legal Department, Federal Home Loan Mortgage Corporation, 1776 "G" Street NW., P.O. Box 37248, Washington, D.C. 20013.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Federal Home Loan Mortgage Corporation, 1776 "G" Street NW., P.O. Box 37248, Washington, D.C. 20013.

* * * * *

FHLMC-V

SYSTEM NAME:

Net Yield Debt System.

SYSTEM LOCATION:

Department of Marketing, Department of Accounting, and Department of Systems, Federal Home Loan Mortgage Corporation, 1776 "G" Street NW., P.O. Box 37248, Washington, D.C. 20013.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All present and former holders of Federal Home Loan Mortgage Corporation Participation Certificates.

CATEGORIES OF RECORDS IN THE SYSTEM:

The list of registered holders of Participation Certificates, the monthly payment record, and copies of remittance checks.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. section 1452(b).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used to make monthly remittances to investors, to make reports to the Internal Revenue Service, and to derive a Registered Holder Profile, which is used for statistical purposes by the Marketing Department and which has, in the past, been provided to the Federal Reserve. (While the list of holders is used to derive the Registered Holder Profile, the profile itself identifies holders by category only, and not by name, and therefore does not constitute a part of a record system.) A copy of the list of holders is provided each month to Loan Accounting, which is responsible for determining the dollar amounts of the checks to the holders, and to Accounts Payable, which is responsible for mailing the checks. Users are the Marketing, Accounting, and Systems Departments. These records may also be revised by the Internal Auditor and his staff. Upon request of a subsequent holder of Mortgage Participation Certificate, the Corporation may release the names and addresses of previous owners of that security in order to assure the proper allocation of principal and interest payments among holders.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Investor lists and monthly payment records are hard copy. Copies of remittance checks are on microfilm.

RETRIEVABILITY:

By investor name.

SAFEGUARDS:

Only members of the Loan Accounting and Accounts Payable Departments and those members of the Marketing Department who work in processing have access to the investor lists and monthly payment records. Access to remittance checks records may be obtained only through a request to the Director of Processing, Marketing Division.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Processing, Director of Sales Accounting, Supervisor of Accounts Payable, and Director of Systems Department, Federal Home Loan Mortgage Corporation, 1776 "G" Street NW., P.O. Box 37248, Washington, D.C. 20013.

NOTIFICATION PROCEDURE:

Inquiries whether a system of records contains a record pertaining to an individual shall be addressed to the system manager, in writing, and must include the name, address, and social security number of the individual

making the inquiry, and the name of the record system.

RECORD ACCESS PROCEDURES:

Requests for access to records shall be directed to the system manager, in writing and must include the name, address, and social security number of the individual requesting access and the name of the record system. The request should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

To contest the content of a record, notify the system manager in writing that a record is being contested, and identify the record system. Include the name, address, and social security number of the individual contesting the records, and specify the information that is contested and the reason for the contest.

RECORD SOURCE CATEGORIES:

The individual from whom the information is obtained.

FHLMC-VI

SYSTEM NAME:

Corporate Employee Garnishments.

SYSTEM LOCATION:

Legal Department and Department of Accounting, Federal Home Loan Mortgage Corporation, 1776 "G" Street NW., P.O. Box 37248, Washington, D.C. 20013.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel and Supervisor of Accounts Payable, Federal Home Loan Mortgage Corporation, 1776 "G" Street NW., P.O. Box 37248, Washington, D.C. 20013.

* * * * *

FHLMC-VII

SYSTEM NAME:

Discrimination Complaint Files.

System location:

Legal Department, Federal Home Loan Mortgage Corporation, 1776 "G" Street NW., P.O. Box 37248, Washington, D.C. 20013.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, Equal Employment Opportunity, Federal Home Loan Mortgage Corporation, 1776 "G" Street NW., P.O. Box 37248, Washington, D.C. 20013.

* * * * *

By The Board of Directors.

Robert D. Linder,

Acting Secretary.

[FR Doc. 81-1847 Filed 1-16-81; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Proposed "De Novo" Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and, except as noted, received by the appropriate Federal Reserve Bank not later than February 12, 1981.

A. *Federal Reserve Bank of New York* (A. Marshall Puckett, Vice President), 33 Liberty Street, New York, New York 10045:

Chemical New York Corporation, New York, New York (real and personal property leasing, finance company, and factoring activities; New York, New Jersey, and Connecticut): to engage through a *de novo* office of its subsidiary Chemical Business Credit Corp., in leasing real and personal property and equipment on a nonoperating, full pay-out basis, and acting as agent, broker and advisor with respect to such leases; financing real and personal property and equipment such as would be done by a commercial finance company; and purchasing and financing of accounts receivable, loans and extensions of credit (including guaranteeing letters of credit and accepting drafts) such as would be done by a factoring company. These activities will be conducted from an office in New York, New York, serving the metropolitan New York City area, including New York City, Long Island, and Westchester County; Northern New Jersey, including Bergen, Hunterdon, Mercer, Passaic, Essex, Sussex, and Middlesex Counties; and Southwestern Connecticut, including Fairfield County.

B. *Federal Reserve Bank of Atlanta* (Robert E. Heck, Vice President), 104 Marietta Street, N.W., Atlanta, Georgia 30303:

Southern Banks of Florida, Inc., High Springs, Florida (insurance activities; Florida): to act as agent or broker for the sale of life, accident, and health insurance directly related to extensions of credit by its subsidiary banks, and acting as agent or broker in the sale of any insurance for its banks. These activities would be conducted from the offices of Applicant's subsidiary bank in High Springs, Gainesville, and Archer, Florida, serving all of Alachua County, Florida. Comments on this application must be received by February 11, 1981.

C. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, January 13, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-1812 Filed 1-16-81; 8:45 am]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposals (NRC)

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on January 8, 1981. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the **Federal Register** is to inform the public of such receipts.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed NRC requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before February 6, 1981, and should be addressed to Mr. John M. Lovelady, Senior Group Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street NW., Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Nuclear Regulatory Commission

The NRC requests clearance for reporting requirements deemed necessary to enable the staff to determine compliance with a new U.S. Environmental Protection Agency standard—40 CFR 190, which the Commission is adopting. It became effective for uranium milling facilities on December 1, 1980. Fourteen licensees will be affected by this requirement. Each will be required to submit four quarterly reports of the sampling and analysis results of their environmental monitoring program. NRC estimates that each of these reports will take an average of 20 hours for a total of 80 hours per respondent annually. In addition, a single report detailing their Quality Assurance Program and other pertinent information will be required which NRC estimates will take 80 hours per respondent to complete. The Commission claims that these new reporting requirements are necessary to obtain the most recent environmental monitoring data in order to determine compliance for this new EPA radiation protection standard. After this initial one-year period for which the four quarterly reports are required, the existing semiannual reporting requirements of 10 CFR 40.65 will be sufficient to show compliance to appropriate radiation protection standards.

The NRC requests clearance of a letter containing reporting requirements for one unresolved safety issue—Failure of BWR Control Rods to Fully Insert on Scram. This failure has occurred at several plants and NRC is in the process of investigating the extent of this problem and its potential safety significance. The letter will be sent to approximately 15 licensees (25 plants) and will request that the respondents report within 30 days of receipt of the letter that either no such events occurred at the facility(s) during calendar year 1980 or that within 90 days of receipt of the letter respondents will provide a summary tabulation of the events. For each such event, respondents will be asked to identify the number of rods not fully inserted, the position of the rods, the cause for failure to fully insert and any related maintenance activities. References to reports that already describe such events will be acceptable. NRC is also requesting clearance of recordkeeping requirements which will be for respondents to the letter to keep an ongoing tabulation of any additional such events that may occur during the calendar year 1981. NRC estimates respondents will be 15 licensees and that reporting burden will average 16 hours per plant and recordkeeping burden will average 4 hours per plant.

Norman F. Heyl,

Regulatory Reports Review Officer.

[FR Doc. 81-1808 Filed 1-16-81; 8:45 am]

BILLING CODE 1610-01-M

Regulatory Reports Review; Violation of Federal Reports Act

Notice is hereby given that the Interstate Commerce Commission has promulgated the following revised information collection requirement without first obtaining a clearance from the General Accounting Office as required by the Federal Reports Act, 44 U.S.C. 3512 (1976):

ICC distributed a new, voluntary Small Community Service Study Questionnaire. The questionnaire is not the one that was approved by the Comptroller General on January 8, 1981, B-180230 (R0700). ICC added question 6, Service Choices, to the questionnaire after approval was granted. This addition constitutes a revision of the questionnaire which requires another clearance under 44 U.S.C. 3512.

Section 3512(c) of title 44, United States Code, provides in part:

* * * an independent regulatory agency shall not conduct or sponsor the collection of information upon an identical item from ten or more persons, other than Federal employees, unless, in advance of adoption or revision of any plans or forms to be used in the collection—

(1) the agency submitted to the Comptroller General the plans or forms, together with the copies of pertinent regulations and of other related materials as the Comptroller General has specified, and

(2) the Comptroller General has advised that the information is not presently available to the independent agency from another source within the Federal Government and has determined that the proposed plans or forms are consistent with the provision of this section. * * *

The clearance granted by GAO on January 8, 1981, is hereby null and void. Accordingly, the Commission has no effective clearance of the Small Community Service Study Questionnaire distributed as required by the Federal Reports Act.

Norman F. Heyl,

Regulatory Reports Review Officer.

[FR Doc. 81-1807 Filed 1-16-81; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Meetings

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following national advisory bodies scheduled to assemble during the month of Febrary 1981.

Alcohol Human Resource Development Review Committee: February 12–13; 9:00 a.m., Conference Room J. Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Open—February 12; 9:00 to 10:30 a.m. Closed—Otherwise. Contact: Doris L. Banks, Room 14C–17, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4640.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute on Alcohol Abuse and Alcoholism (NIAAA), Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), relating to manpower and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Agenda: From 9:00 to 10:30 a.m. on February 12, the meeting will be open for discussion of administrative announcements, and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Community Processes and Social Policy Review Committee: February 12–14; 9:00 a.m., Westview Room 209, Gramercy Inn, 1616 Rhode Island Avenue, N.W., Washington, D.C. 20036. Open—February 12; 9:00 to 10:00 a.m. Closed—Otherwise. Contact: Rachel Driver, Room 9C–08, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1177.

Purpose: The Committee is charged with the initial review, based on the scientifc and technical merit of applications submitted to the National Institute of Mental Health (NIMH) for Federal assistance of activities

in the field of institutional and organizational environments, and community social relationships and processes, as these relate to social problems, social policy, individual and family mental health, and work in mental health, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00 to 10:00 a.m. on February 12, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Psychiatric Nursing Educaion Review Committee: February 17-19; 9:00 a.m., Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Open—February 17; 9:00 to 10:00 a.m. Closed—Otherwise. Contact: Emilie A Embrey, Room 9-105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1737.

Purpose: The Committee is charged with the initial review, based on the scientifc and technical merit of applications submitted to the NIMH for Federal assistance of activities charcteristically innovative in educational design methodology, to increase the number of Master prepared nurses for practice in public mental health facilities, i.e., State mental health hospitals, community mental health/health centers, State mental health departments, long-term care facilities, located in underserved or unserved geographic areas, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00 to 10:00 a.m. on February 17, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Social Work Education Review Committee: February 17-20; 9:00 a.m., Washington Hotel, 15th & Pennsylvania Avenue, N.W., Washington, D.C. 20004. Open—February 17; 9:00 to 10:00 a.m. Closed—Otherwise. Contact: Judith Ann Lynch, Room 9C-15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1220.

Purpose: The Committee is charged with the initial review, based on the scientific and technical merit of applications submitted to the NIMH for Federal assistance of activities for education and manpower development support in the field of social work, including those which strongly reflect the recommendations of the President's Commission on Mental Health, and in accord to the degree to which these address one or more of the NIMH priority areas on behalf of social work education, i.e., categories of basic mental health education, continuing education, short-term mental health training, and special projects, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00 to 10:00 a.m. on February 17, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Criminal and Violent Behavior Review Committee: February 18-20; 9:15 a.m., Gramercy Inn, 1616 Rhode Island Avenue, N.W., Washington, D.C. 20036. Open—February 18; 9:15 tc 10:30 a.m. Closed—Otherwise. Contact: Phyllis Pinzow, Room 9C-14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4868.

Purpose: The Committee is charged with the initial review, based on the scientific and technical merit of applications submitted to the NIMH for Federal assistance of activities in the fields of crime and delinquency, related law and mental health interactions, individual violent behavior, and sexual assault, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:15 to 10:30 a.m. on February 18, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Psychology Education Review Committee: February 18-21; 9:00 a.m., Silver North Room, Holiday Inn, 8777 Georgia Avenue, Silver Spring, Maryland 20910. Open—February 18; 9:00 to 10:00 a.m. Closed—Otherwise. Contact: Joanna L. Kieffer, Room 9C-08, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1220.

Purpose: The Committee is charged with the initial review, based on the scientific and technical merit of applications submitted to the NIMH for Federal assistance of activities for psychology education/training personnel to provide mental health services to unserved or underserved geographic areas, populations, and/or public mental health facilities; for increasing the supply of minority mental health manpower; for developing strategies of primary prevention; and for increasing mental health skills and knowledge of general health care personnel, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00 to 10:00 a.m. on February 18, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Community Alcoholism Services Review Committee: February 18-23; 7:00 p.m., Bethesda Marriott Hotel, 2 Pooks Hill Road, Bethesda, Maryland 20014. Open—February 18; 7:00 to 9:30 p.m. Closed—Otherwise. Contact: Phillip Dawes, Room 16C-26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-2473.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the NIAAA relating to alcoholism service activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Agenda: From 7:00 to 9:30 p.m. on February 18, the meeting will be open for reports on and discussion of administrative and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Paraprofessional Education Review Committee: February 19-21; 9:00 a.m., Spring East Room, Holiday Inn, 8777 Georgia Avenue, Silver Spring, Maryland 20910. Open—February 19; 9:00 to 10:00 a.m. Closed—Otherwise. Contact: Carolyn N. Snowden, Room 9C-15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1737.

Purpose: The Committee is charged with the initial review, based on the scientific and technical merit of applications submitted to the NIMH for Federal assistance of activities for paraprofessional education, the primary focus of which is on the development, production, and integration of paraprofessional mental health workers into service systems to meet NIMH service priorities such as providing services to unserved and underserved populations, increasing the supply of trained minority mental health service manpower, and providing mental illness prevention services, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00 to 10:00 a.m. on February 19, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Alcohol Abuse Prevention Review Committee: February 23–24; 9:00 a.m., Bethesda Marriott Hotel, 2 Pooks Hill Road, Bethesda, Maryland 20014. Open—February 24; 9:00 a.m. to Adjournment. Closed—February 23; 9:00 a.m. to 5:00 p.m. Contract: Robert E. Davis, Room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2860.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the NIAAA, relating to prevention activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Agenda: From 9:00 a.m. to 5:00 p.m. on February 23, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I). From 9:00 a.m. to adjournment on February 24, the meeting will be open for discussion of administrative reports, announcements, and program developments.

Drug Abuse Biomedical Research Review Committee: February 23–27; 9:00 a.m., Club Room B, The Shoreham Americana Hotel, 2500 Calvert Street, N.W., Washington, D.C. 20008. Open—February 23, 9:00 to 10:00 a.m. Closed—Otherwise. Contact: Alan Schreier, PH.D., Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2620.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute on Drug Abuse (NIDA) relating to research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 9:00 to 10:00 a.m. on February 23, the meeting will be open for discussion of general research topics, administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public, in accordance with the determination by the Acting Administrator, ADAMHA pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Drug Abuse Clincial, Behavioral, and Psychosocial Research Review Committee: February 23–27; 9:00 a.m., Conference Rooms K and L, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Open—February 23; 9:00 to 10:00 a.m. Closed—Otherwise. Contact: Daniel L. Mintz, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockvill, Maryland 20657, (301) 443–2620.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the NIDA relating to research and research training activities and make recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 9:00 to 10:00 a.m. on February 23, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public, in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Drug Abuse Resource Development Review Committee: February 23–27; 9:00 a.m., Conference Room 17–09B, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Open—February 23; 9:00 to 10:00 a.m. Closed—Otherwise. Contact: Mary C. Knipmeyer, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6664.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the NIDA relating to research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 9:00 to 10:00 a.m. on February 23, the meeting will be open for discussion of administrative announcements and program developments. Other-wise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public, in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Alcohol Biomedical Research Review Committee: February 25–17; 9:00 a.m., Gramercy Inn, 1616 Rhode Island Avenue, N.W., Washington, D.C. 20036. Open—February 25; 9:00 to 11:00 a.m. Closed—Otherwise. Contact: Harvey P. Stein, Ph.D., Room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6106.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the NIAAA, ADAMHA, relating to research activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Agenda: From 9:00 to 11:00 a.m. on February 25, the meeting will be open for discussion of administrative reports, announcements, and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Alcohol Biomedical Research Review Committee: February 25–27, 9:00 a.m., Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20014. Open—February 25; 9:00 to 11:00 a.m. Closed—Otherwise. Contact: James C. Teegarden, Ph.D., Room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6106.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the NIAAA, ADAMHA, relating to research activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Agenda: From 9:00 to 11:00 a.m. on February 25, the meeting will be open for discussion of administrative reports, announcements, and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Minority Group Mental Health Review Committee: February 25–27; 9:00 a.m., The Shoreham Americana Hotel, 2500 Calvert Street, N.W., Washington, D.C. 20008. Open—February 25; 9:00 to 10:30 a.m. Closed—Otherwise. Contact: Edna M. Hardy Hill, Room 9C–08, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1177.

Purpose: The Committee is charged with the initial review, based on the scientific and technical merit of applications submitted to the NIMH for Federal assistance of activities in the fields of minority mental health, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00 to 10:30 a.m. on February 25, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Basic Psychopharmacology and Neuropsychology Research Review Committee: February 26–27; 9:00 a.m., Bethesda Marriott Hotel, 2 Pooks Hill Road, Bethesda, Maryland 20014. Open—February 26; 9:00 to 10:00 a.m. Closed—Otherwise. Contact: Jean Pierce, Room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3936.

Purpose:The Committee is charged with the initial review, based on the scientific and technical merit of applications submitted to the NIMH for Federal assistance of activities in the fields of basic psychopharmacology and neuropsychology, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00 to 10:00 a.m. on February 26, the meeting will be open for discussion of administrative announcements and

program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Basic Sociocultural Research Review Committee: February 26-28; 9:00 a.m., Dupont-Plaza Hotel, Connecticut & Massachusetts Avenues NW., Washington, D.C. 20036. Open—February 26; 9:00 to 9:30 a.m. Closed—Otherwise. Contact: Marilyn Andersen, Room 9C-26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-3936.

Purpose: The Committee is charged with the initial review, based on the scientific and technical merit of applications submitted to the NIMH for Federal assistance of activities in the fields of social psychology, sociology, anthropology, and other social sciences focusing on social and cultural behaviors, processes, and institutions, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00 to 9:30 a.m. on February 26, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Life Course Review Committee: February 26-28; 9:00 a.m., Capital and Executive Rooms, Dupont-Plaza Hotel, Connecticut & Massachusetts Avenues NW., Washington, D.C. 20036. Open—February 26; 9:00 to 10:00 a.m. Closed—Otherwise. Contact: Dee Herman, Room 9C-18, Parklawn Building, 5600 Fishers Land, Rockville, Maryland 20857, (301) 443-1367.

Purpose: The Committee is charged with the initial review, based on the scientific and technical merit of applications submitted to the NIMH for Federal assistance of activities in the fields of child, family, and aging, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00 to 10:00 a.m. on February 26, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Mental Health Services Manpower Development Review Committee: February 26-28; 8:30 a.m., Conference Rooms B and C, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Open—February 27; 8:30 to 9:30 a.m. Closed—Otherwise. Contact: Barbara McCracken, Room 9C-02, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1220.

Purpose: The Committee is charged with the initial review, based on the scientific and technical merit of applications submitted to the NIMH for Federal assistance of activities for State mental health manpower development projects, and research and demonstration projects concerning mental health services manpower, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 8:30 to 9:30 a.m. on February 27, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Psychopathology and Clinical Biology Research Review Committee: February 26-29; 9:00 a.m., Silver Spring Convention Center, Holiday Inn, 8777 Georgia Avenue, Silver Spring, Maryland 20910. Open—February 26; 9:00 to 10:00 a.m. Closed—Otherwise. Contact: Mary M. Martin, Room 9C-24, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-6470.

Purpose: The Committee is charged with the initial review, based on the scientific and technical merit of applications submitted to the NIMH for Federal assistance of activities in the fields of clinical psychopathology and clinical biology, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00 to 10:00 a.m. on February 26, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Basic Behavioral Processes Research Review Committee: February 27-28; 9:00 a.m., The Shoreham Americana Hotel, 2500 Calvert Street NW., Washington, D.C. 20008. Open—February 27; 9:00 to 10:00 a.m. Closed—Otherwise. Contact: Anita Lipkin, Room 9C-26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-3936.

Purpose: The Committee is charged with the initial review, based on the scientific and technical merit of applications submitted to the NIMH for Federal assistance of activities in the fields of experimental and physiological psychology and comparative behavior, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00 to 10:00 a.m. on February 27, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of committee members for NIMH will be furnished by the Committee Management Office, Room 9-95, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: (301) 443-4333. For NIAAA: Ms. Helen Garrett, Committee Management Officer, Room 16C-21, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: (301) 443-2860. For NIDA: Ms. Mary Carol Kelly, Program Information Officer for Drug Abuse, Room 10A-56, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: (301) 443-2620.

Dated: January 13, 1981.

Elizabeth A. Connolly,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 81-1760 Filed 1-16-81; 8:45 am]

BILLING CODE 4110-88-M

Office of Human Development Services

[Program Announcement No. 13638-811]

Multidisciplinary Centers of Gerontology Program: Long Term Care Gerontology Centers

AGENCY: Office of Human Development Services, DHSS.

SUBJECT: Announcement of Availability of Financial Assistance for the Long Term Care Gerontology Centers Program.

SUMMARY: The Administration on Aging (AoA) announces that applications are being accepted for the Multidisciplinary Centers of Gerontology Program authorized by Title IV, Part E of the Older Americans Act of 1965, as amended (42 U.S.C., sec. 3036) to support Stage II, Operational Long Term Care Gerontology Centers only. Eligibility for these awards is limited to institutions which have received a planning award from the Administration on Aging for the development of Long Term Care Gerontology Centers.

DATES: Closing dates for receipt of applications are June 30, 1981 for applicants who received a Stage I, 01 planning award on September 30, 1979, and December 30, 1981 for applicants who received a Stage I, 01 new planning award on September 30, 1980.

Scope of This Announcement

This program announcement describes the purpose and overall goals and objectives of the Long Term Care Gerontology Centers Program announced in this issue of the **Federal Register**. Information describing specific project activities and application requirements for Stage II Operational Grants which are covered by this announcement and other special requirements of the program are contained in *Guidelines for Preparation of Grant Applications-Long Term Care Gerontology Centers Title IV-E of the Older Americans Act—Fiscal Years 1981 and 1982.*

Program Purpose

The purpose of the Long Term Care Gerontology Centers Program is to provide core support for multidisciplinary gerontology centers oriented around the continuum of community-based health and social services to the chronically ill and functionally impaired aging person.

Program Goal and Objectives

The goal of the Administration on Aging's Long Term Care Gerontology Centers program is to foster the capability to develop the knowledge base and methods required for improving the health care and social services needed by functionally impaired older people. The objectives of these centers will be to promote an interdisciplinary approach to career and continuing education and training, the development of models of service delivery oriented around the health and social services needs of the functionally impaired elderly, and research. An essential condition for achieving these program objectives is the development of a viable organizational center structure. The program objectives will be achieved through a collaborative effort to join the interests of the Federal government and educational institutions to assist states and communities to improve planning, management, and service priorities for the functionally impaired elderly. Such an effort is expected to produce knowledge about the long term care needs of older people and develop a cadre of professionals from a multiplicity of disciplines who can meet these needs. Centers will have applied settings and carry out their mission through colloboration with health, social service, and aging agencies.

Long term Care Gerontology Centers will combine the functions of a university based or affiliated medical school, other health and social services professional schools, and, if appropriate, a public or private non-profit health or social service organization to achieve the goals and objectives of the program. Centers will accomplish the following programmatic objectives:

- Develop the health and social services personnel required to meet the needs of functionally impaired older persons through interdisciplinary career and continuing education and training
- Develop and evaluate models of health care and social services provided through interdisciplinary teams on a continum of care in order to enable functionally impaired older persons to remain in the least restrictive settings consonant with their needs
- Develop a knowledge base for long term care through the conduct of interdisciplinary clinical, applied, and policy research
- Provide technical assistance to public and voluntary health care and social service agencies, academic institutions, and professional organizations; and
- Disseminate information concerning long term care to policy makers and program managers, service providers and consumers, educators and researchers.

It is expected that centers have established the appropriate governance and structure in order to develop the organizational capability required to achieve the programmatic objectives. Therefore, Long Term Care Gerontology Centers will have accomplished the following objectives.

- Have institutional support and commitment to the center at the highest levels of the larger organization and hold a relatively high position in the institutional hierarchy
- Have their own charter, goals and objectives, and responsibility for a range of administrative functions including budgetary control, faculty appointment, and space allocation
- Have their own center director, core faculty, and facilities in order to carry out center programmatic, administrative, and data collection activities
- Have the ability to generate their own funding, keep such funds to utilize within the center, especially for various discretionary programmatic activities
- Utilize in a full participatory way their own advisory or steering committee and develop and use its own internal peer review system for the allocation of discretionary funds.

There are three (3) stages of center development, these are:

- Stage I—Planning.
- Stage II—Operational.
- Stage III—Comprehensive.

1. Planning Stage of Center Development. At the planning stage grantees specify their programmatic and organizational goals and objectives, organize their resources, establish university commitments, and create and or expand community linkages. The Administration on Aging provides centers from one to two years of support for planning. Such centers have the potential, through the competitive process, to obtain multiyear awards for the operational stage.

2. Operational Stage of Center Development. At the operational stage centers will be implementing activities relative to their organizational structure and in the program areas of education, development of service and practice models, and research. The Administration on Aging will give operational stage centers up to five years of core support.

3. Comprehensive Stage of Center Development. It is the Administration on Aging's intent to eventually designate a select number of Comprehensive Centers. Comprehensive designation will be a recognition that these select centers have achieved programmatic excellence and strong organizational development within the institution.

A center may apply for comprehensive designation at the end of any budget period in the operational stage at which time a full review will be held to determine the center's readiness for comprehensive status. A complete review will take place at the end of the fifth operational year to determine if a center can be designated as comprehensive.

Coordination With Appropriate Office on Aging

Activities conducted under Title IV-E Long Term Care Gerontology Center grants are expected to be coordinated with the appropriate DHHS Regional Office and with State and Area Agencies on Aging. This coordination will facilitate information exchange on policy and program developments in long term care, provide a basis for informed transfer and dissemination of findings from research and model demonstrations, and facilitate program and policy technical assistance to State and local governmental officials.

Coordination will facilitate educational placement opportunities for students, explore opportunities for

collaborative training, research and demonstrations in social services, mental health, rehabilitation and health services as related to the purposes and programs of the Centers. Centers will regularly provide information to the appropriate offices on aging and collaborate with the agencies regarding education and training, research, and service activities and seek advice and counsel with respect to these activities.

Eligible Applicants

Only public or non-profit organizations or institutions are eligible under the provisions of Title IV–E, Multidisciplinary Centers of Gerontology.

Eligible applicants for State II, Operational Multiyear Awards to be funded as of September 30, 1981 are limited to those applicants who received on September 30, 1979 a one year planning grant for Long Term Care Gerontology Centers funded by the Administration on Aging. Only grantees who received New Planning Awards (Stage I, 01) on September 30, 1980 are eligible to apply for State II, Operational Multiyear awards to be funded as of March 30, 1982.

Available Funds

It is anticipated that the Administration on Aging will award $2.125 million dollars for core support of up to five (5) new operational centers in Fiscal Year 1981 and $850,000 dollars for core support of up to two (2) new operational centers in Fiscal Year 1982 for this program pursuant to this announcement. All awards will be made on a competitive basis.

The project period for operational awards is one to five years. The amounts of the grant on an *annual* basis, including indirect costs, can range from $200,000 to $300,000 for the first year and $300,000 to $400,000 for the second year.

The initial grant sustains the Federal share of the budget for the first budget period of the project. Support for any additional time remaining in the project period depends upon the availability of funds, and the grantee's satisfactory performance of the scope of work for which the grant was awarded.

Grantee Share of the Project

Cost sharing is considered to be an important means of demonstrating an applicant's commitment to the objectives of this program. Grantees are expected to provide at least five (5) percent of the total allowable project costs. The grantee share may be cash or in-kind, and must be project related and allowable under the Department's applicable regulations published in 45 CFR Part 74, subparts G and Q (see 43 FR 34076, August 2, 1978).

The Application Process

Availability of Forms

Application for a grant under the Long Term Care Gerontology Centers Program must be submitted on Standard Form 424, Application for Federal Assistance, and other forms provided for this purpose. Application kits and appropriate instructions are included in *Guidelines for Preparation of Grant Applications-Long Term Care Gerontology Centers, Title IV–E of the Older Americans Act, Fiscal Years 1981 and 1982.* Copies may be obtained by writing to: Long Term Care Unit, Administration on Aging, Room 4740, DHHS North Building, 330 Independence Avenue SW., Washington, D.C. 20201. Telephone: (202) 426–8403.

Application Submission

One (1) signed original and four (4) copies of the grant application, including all attachments, must be prepared. The original and two (2) copies must be submitted to:
Department of Health and Human Services, Office of Human Development Services, Grants and Contracts Management Division, Room 1740, HHS North Building, 330 Independence Avenue SW., Washington, D.C. 20201.

One (1) copy is to be submitted to the appropriate State Agency on Aging and one (1) copy is to be submitted to the Regional Program Director of the DHHS Regional Office of Aging. Addresses for State Agencies on Aging and DHHS Regional Offices of Aging are included in the application instructions.

A–95 Notification Process

Applications for Long Term Care Gerontology Centers must follow the provisions of OMB Circular A–95. Applicants for grants must, prior to the submission of an application, notify *both* the State and Areawide A–95 Clearinghouse of their interest to apply for Federal assistance for this program. Applicants should contact the appropriate State Clearinghouse (listed in 42 FR 2210, January 10, 1977), or DHHS Regional Offices of Aging for information on how they can meet the A–95 requirements. Addresses of the DHHS Regional Offices of Aging are included in the application instructions.

Application Consideration

The Commissioner on Aging will make the final decision on each grant application under this announcement. Applications which are complete and conform to the requirements of the program guidelines will be subjected to a competitive review and evalution by qualified persons outside the Administration on Aging. Applications considered as approved by the review committees will be reviewed by AoA staff for consistency with AoA policy and priorities and appropriateness of the funding which is requested. Subject to the availability of funds, site visits will be made to selected applicants in order to develop informed recommendations concerning funding. In making a decision on awards the Commissioner on Aging will consider results of the review, AoA staff recommendations, and comments by the appropriate State Agency on Aging. Successful applicants will be notified through the issuance of Notice of Financial Assistance Awarded. This notice sets forth the amount of funds awarded, the terms and conditions of the grant, the budget period for which support is given, the total grantee share expected, and the total period for which project support is intended.

Special Consideration for Funding

In determining the order of funding of applications which have been recommended for approval, priority will be given to applications which:

1. Propose to establish a center where currently an AoA award has not been made to establish a Long Term Care Gerontology Center.

2. Propose to establish a center responsive to the special needs of underserved populations including minority and rural elderly.

Criteria for Review and Evaluation of Applications

Each application will be generally reviewed to determine that it meets the objectives of the program; elements for a complete review are included; and all applicable Federal statutes and regulations are met.

Review Criteria for Stage II,01 Operational Grants:

Criterion 1. The application proposes a project consistent with the programmatic and organizational objectives for a Long Term Care Gerontology Center as set forth in the guidelines. 10 points

Criterion 2. The proposal documents the extent to which objectives of the planning period have been satisfactorily accomplished. Specifically:

a. The extent to which the programmatic goals and objectives of the planning period were approximately achieved. 15 points

b. The extent to which organizational goals and objectives of the planning

period were appropriately achieved. 15 points

Criterion 3. The implementation plan is capable, if properly executed, of assuring the accomplishment of the proposed project's programmatic and organizational objectives. Specifically:

a. The proposal appropriately identifies the tasks to be accomplished over the proposed project period in the following areas:

(1) The programmatic objectives.

(2) The organizational objectives. 10 points

b. The proposal presents an appropriate and feasible method of approach to task accomplishment over the proposed project period in the following areas:

(1) The programmatic objectives.

(2) The organizational objectives. 10 points

c. The proposal documents the extent to which the necessary commitments from within and outside the applicant institution have been secured to assure task accomplishment relative to:

(1) The programmatic objectives.

(2) The organizational objectives. 10 points

d. The proposal provides time-lines for task accomplishment over the proposed project period that are appropriate and reasonable relative to:

(1) The programmatic objectives.

(2) The organizational objectives. 5 points

e. The proposal indicates staff loadings by tasks that are appropriate and reasonable relative to:

(1) The programmatic objectives.

(2) The organizational objectives. 5 points

f. The proposal specifies how task accomplishment will be evaluated relative to:

(1) The programmatic objectives.

(2) The organizational objectives. 5 points

Criterion 4. The proposed resources are appropriate and sufficient to assure the accomplishment of both of the project's programmatic and organizational goals. Specifically:

a. The proposed project staff are well qualified and sufficient time of senior staff is allocated to assure adequate and appropriate management of the project tasks relative to:

(1) The programmatic objectives.

(2) The organizational objectives. 5 points

b. Other facilities and resources are appropriate and adequate to assure task accomplishment relative to:

(1) The programmatic objectives.

(2) The operational objectives. 5 points

Criterion 5. The proposed budget is appropriate, justifiable, and reasonable in relation to support needed for project activities. 5 points

Closing Dates for Receipt of Applications

The closing dates for receipt of applications under this program announcement are June 30, 1981 for applicants eligible for funding as of September 30, 1981 and December 30, 1981 for applicants eligible for funding as of March 30, 1982. All applications must be received by no later than 5:30 p.m. on the applicable closing date. Applications sent by mail will be considered to be received on time if:

- The application was sent by registered or certified mail and mailed no later than June 27, 1981 for the June 30, 1981 closing date and December 26, 1981 for the December 30, 1981 closing date as evidenced by the U.S. Postal Service postmark on the wrapper or the original receipt from the U.S. Postal Service, unless the application arrives too late to be considered by the review panal;
- The application is received on or before close of business on June 30, 1981; and December 30, 1981 (whichever is the applicable closing date for the application) in the DHHS mailroom in Washington, D.C.; or
- The application is hand-delivered to the address included under "application submission" in this announcement by close of business June 30, 1981; and December 30, 1981 (whichever is the applicable closing date for that application).

Hand-delivered applications will be accepted daily from 9 a.m. to 5:30 p.m. except Saturdays, Sundays and Federal holidays. In establishing the date of receipt, consideration will be given to the time date stamps of the mailroom or other documentary evidence of receipt maintained by the Department of Health and Human Services.

Applications received after the deadline because they were postmarked or hand-delivered too late or addressed incorrectly will not be accepted and will be returned to the applicant without consideration.

(Catalog of Federal Domestic Assistance Program Number 13.638, Muldisciplinary Centers of Gerontology Program)

Dated: January 7, 1981.

Robert Benedict,

Commissioner on Aging.

Approved: January 13, 1981.

Cesar A. Perales,

Assistant Secretary for Human Development Services.

[FR Doc. 81-1639 Filed 1-16-81; 8:45 am]

BILLING CODE 4110-92-M

Office of Human Development Services

[Program Announcement No. 13628-812]

Child Abuse and Neglect Program; Demonstration and Service Improvement Projects

AGENCY: Office of Human Development Services, Department of Health and Human Services.

SUBJECT: Announcement of Availability of Grant Funds for Demonstration and Service Improvement Projects for the Child Abuse and Neglect Program.

SUMMARY: The Administration for Children, Youth and Families (ACYF) announces that applications are being accepted for demonstration and service improvement grants for Fiscal Year 1981 under The Child Abuse Prevention and Treatment Act of 1974, as amended. Regulations governing this program are published in the *Code of Federal Regulations* in 45 CFR Part 1340.

DATES: Closing date for receipt of applications is April 9, 1981.

Scope of This Announcement

This Program Announcement is one of two for the Child Abuse and Neglect Research, Demonstration and Service Improvement Grants Program in Fiscal Year 1981. It relates specifically to *demonstration and service improvement projects* authorized under Section 4(b)(1) of the Child Abuse Prevention and Treatment Act of 1974, as amended, which provides for research, demonstration and service projects related to the prevention and treatment of child abuse and neglect. A separate Program Announcement addresses the availability of funds for research projects. (See Program Announcment No. 13628-811.) A description of this program was published for public comment in the **Federal Register** on October 7, 1980, and this Program Announcement reflects changes resulting from comments received.

Program Purpose

The purpose of this demonstration and service improvement program is to support States and communities in their efforts to substantially improve the delivery of services to families

endangered by child abuse and neglect through: (1) Upgrading the quality of child protective services in public agencies; (2) providing services for children in shelters for battered women; (3) diagnosis and referral of developmentally disabled abused and neglected children; (4) screening and tracking for abused and neglected children taken into protective custody; (5) improvement of child protective services through cultural and ethnic group involvement. (6) improvement of child protective services through provision of guardians *ad litem* in child protective cases; (7) improvement of health-based services to prevent child abuse and neglect; and (8) improvement of mental health services for the diagnosis and treatment of abused and neglected children and adolescents.

Program Objectives

OHDS solicits applications for projects which reflect the following program objectives:

For Demonstrations on Upgrading the Quality of Child Protective Services in Public Agencies

1. To demonstrate methods of increasing the level of knowledge and skills of child protective services workers in intevention, decision-making and treatment of abused and neglected children and their families.

2. To demonstrate methods of assisting supervisors to conduct inservice training programs and evaluate case management function of line staff in child protective services agencies.

3. To demonstrate, through improved staff career development, inservice training and case management techniques, that staff turn-over and worker burnout can be reduced.

4. To demonstrate that such improved services can reduce the treatment period of child abuse and neglect cases and that there can be a reduction in the rate of recidivism.

For Demonstrations of Services for Children in Shelters for Battered Women

1. To demonstrate ways of remediating the effects of violence on children by developing specialized services for children of battered women who come to shelters for assistance.

2. To identify existing community services which are or could be available to children from violent homes, and to provide referral and advocacy on their behalf for obtaining those services.

3. To generate additional knowledge about the children of battered women, including their physical and psychological needs, the effects of violence received or observed and the treatment services necessary to remediate those effects.

4. To develop techniques whereby the parents of children from violent homes can improve parental skills, provide nurture and support for the specialized needs of their children, and be involved in the provision of any therapeutic services aimed at helping their children.

5. To demonstrate ways in which shelters for battered women in public child protective services agencies can work cooperatively to meet the requirements of child abuse and neglect reporting laws, to further protect children at risk and to coordinate services that each has to offer.

For Demonstration of Diagnosis and referral of Developmentally Disabled Abused and Neglected Children

1. To develop new or refine existing service techniques for dealing with the unique needs of abused or neglected children suffering from apparent or chronic developmental disabilities.

2. To meet the needs of abused or neglected children who have physical problems or emotional disturbances or both for detection and remedial services.

3. To identify resource needs associated with the detection of developmental disabilities of abused and neglected children and their referral for necessary remedial services.

For Demonstration of Screening and Tracking for Abused and Neglected Children Taken into Protective Custody

1. To prevent harm or threatened harm to abused and neglected children by developing and implementing written guidelines for use by all who have authority to remove children from their parents or guardians because of imminent danger to their health or safety.

2. To protect children's rights, reduce the trauma of separation, and facilitate permanent planning by developing and implementing a tracking system that fosters more expeditious handling and processing of abused and neglected children from the moment they are taken into protective custody until a court disposition is made.

For Improvement of Child Protective Services Through Cultural and Ethnic Minority Group Involvement

1. To strengthen helping networks through the improvement of information and referral sources in minority communities.

2. To facilitate coordination on individual child abuse and neglect cases involved with child protective service agencies.

3. To increase public awareness and understanding of the role of child protective services among minorities.

4. To provide "ombudsman" services for minority clients in terms of accessing, using and coping with public child protective services.

For Improvement of Child Protective Services Through Provision of Guardians Ad Litem in Child Protective Cases

1. To improve the methods of providing guardians *ad litem* for abused and neglected children in child protective proceedings.

2. To provide for the early appointment of guardians *ad litem* for abused and neglected children entering the justice system.

3. To facilitate the movement of children through the judicial system by the use of guardians *ad litem* in all stages of the court process.

For Improvement of Health-Based Services to Prevent Child Abuse and Neglect

1. To improve preventive services to families at-risk of child abuse and neglect and families in the community at-large, through the development of improved and expanded prenatal and perinatal programs and program components.

2. To improve the delivery of health-related child abuse and neglect preventive services by increasing and supporting information and referral and coordinating efforts among health-related agencies and other organizations which provide family supportive services.

3. To reduce the need for long-term, intensive medical, social and legal involvement with ameliorative child abuse and neglect services by facilitating infant-family bonding and by increasing the self-sufficiency resulting from improved infant and maternal health.

4. To increase knowledge and understanding about cost-effective methods which health-related child abuse and neglect prevention programs can employ to develop service capabilities which improve the quality of services to at-risk families and the community-at-large.

5. To enhance the overall child protection system through providing supports which augment families' self-sufficiency in adequately caring for their children.

For Improvement of Mental Health Services for the Diagnosis and Treatment of Abused and Neglected Children and Adolescents

1. To provide mental health services for purposes of diagnosis/evaluation and treatment for children and adolescents who have been identified by child protective service agencies as being abused or neglected.
2. To develop and implement effective means of linking these mental health services with child protective services.
3. To teach mental health principles to child protective services workers and child welfare principles to mental health services workers.
4. To increase the level of involvement of mental health professionals in the case management of child abuse and neglect cases.

Eligible Applicants

For Demonstrations on upgrading the Quality of Child Protective Services in Public Agencies, eligible applicants are public child protective service agencies at State, regional and local levels.

For Demonstration of Services for Children in Shelters for Battered Women, eligible applicants are public and private nonprofit organizations which currently sponsor and/or provide shelters for battered women and their children.

For Demonstration of Diagnosis and Referral of Developmentally Disabled Abused and Neglected Children, eligible applicants are public child protective service agencies and University Affiliated Programs for the Developmentally Disabled which have the capability to carry out the proposed demonstration.

For Demonstration of Screening and Tracking for Abused and Neglected Children Taken into Protective Custody, eligible applicants are public child protective service agencies and courts with jurisdiction over child protective proceedings.

For Improvement of Child Protective Services Through Cultural and Ethnic Minority Group Involvement, eligible applicants are public or private nonprofit minority organizations (defined to include organizations with at least 50 percent representation of Blacks, Hispanics, Indians and other Native Americans, migrant farmworkers or Asians on Boards of Directors and staffs) with the capability of carrying out the proposed service improvement project.

For Improvement of Child Protective Services Through Provision of Guardians Ad Litem in Child Protective Cases, eligible applicants are public or private nonprofit agencies and courts with jurisdiction over child protective proceedings, with the capability of carrying out the proposed service improvement project.

For Improvement of Health-Based Services to Prevent Child Abuse and Neglect, eligible applicants are public or private nonprofit organizations whose principal purpose is provision of health services *or* public or private nonprofit interagency or interdisciplinary organizations whose principal purpose is the prevention and treatment of child abuse and neglect and which are capable of carrying out the objectives of the proposed project.

For Improvement of Mental Health Services for Diagnosis and Treatment of Abused and Neglected Children and Adolescents, eligible applicants are public and private nonprofit organizations whose purpose is the provision of mental health services, which have an identifiable children's program and which meet the minimal guidelines for specialized children's services set forth for Community Mental Health Centers under the Mental Health Systems Act, Pub. L. 96–398, Section 301.

Available Funds

The Administration for Children, Youth and Families expects to award approximately $3,350,000 in Fiscal Year 1981 (of the $22,928,000 appropriated by Congress) for new grants in this demonstration and service improvement program.

Approximately eight grants will be awarded for *Demonstration of Upgrading the Quality of Child Protective Services in Public Agencies* for amounts of approximately $75,000 each for the initial year. These projects will be supported for three years, depending upon the availability of funds.

Approximately five grants will be awarded for *Demonstration of Services for Children in Shelters for Battered Women* for amounts of approximately $60,000 each for the initial year. In addition, one additional grant will be awarded for a project which will implement the demonstration and also provide assistance to the other projects in handling program start-up and evaluation problems. This additional grant will be in the amount of approximately $75,000 for the initial year. All of these grants will be supported for three years, depending upon the availability of funds.

Approximately two grants will be awarded for *Demonstration of Diagnosis and Referral of Developmentally Disabled Abused and Neglected Children* for amounts of approximately $75,000 each for the initial year. These projects will be supported for three years, depending upon the availability of funds.

Approximately three grants will be awarded for *Demonstration of Screening and Tracking for Abused and Neglected Children Taken into Protective Custody* for amounts of approximately $80,000 each for the initial year. These projects will be supported for three years, depending upon the availability of funds.

Approximately seven grants will be awarded for *Improvement of Child Protective Services Through Cultural and Ethnic Minority Group Involvement* for amounts of approximately $80,000 each for the initial year. These grants will be supported for three years, depending upon the availability of funds.

Approximately six grants will be awarded for *Improvement of Child Protective Services Through Provision of Guardians Ad Litem in Child Protective Cases* for amounts of approximately $80,000 each for the initial year. These grants will be supported for three years, depending upon the availability of funds.

Approximately six grants will be awarded for *Improvement of Health-Based Services to Prevent Child Abuse and Neglect* for amounts of approximately $80,000 each for the initial year. These projects will be supported for three years, depending upon the availability of funds.

Approximately six grants will be awarded for *Improvement of Mental Health Services for the Diagnosis and Treatment of Abused and Neglected Children and Adolescents* for amounts of approximately $80,000 each for the initial year. These grants will be supported for three years, depending upon the availability of funds.

In all of these grants, the initial grant sustains the Federal share of the budget for the first 12 months of the project. Support for the additional 12-month budget periods depends upon the availability of funds and the grantees' satisfactory performance of the projects for which the grants were awarded.

Grantee Share of the Project

Grantees are not required to provide a share of the budget for these grants programs.

The Application Process

Availability of Forms

Applications for grants under the Demonstration and Service Improvement Projects for Child Abuse

and Neglect Program must be submitted on standard forms provided for this purpose. Application kits which include the forms and specific Program Guidance materials for use in preparing the program narrative sections of applications may be obtained by writing to: National Center on Child Abuse and Neglect, Attn: Grants Administration Specialist, Children's Bureau/ACYF, P.O. Box 1182, Washington, D.C. 20013, Telephone: (202) 755-0587.

Application Submission

One signed and two copies of the grant application, including all attachments, must be submitted to the address provided below under the section, "Closing Dates for Receipt of Applications."

A-95 Notification Process

The Demonstration and Service Improvement Projects for Child Abuse and Neglect Program is covered under the provisions of OMB Circular A-95. Applicants for grants must, prior to submission of applications, notify the appropriate State A-95 Clearinghouse of their intent to apply for Federal assistance for this program. Applicants should contact the appropriate State Clearinghouse (listed in 42 FR 2210, January 10, 1977) for information on how they can meet the A-95 requirements.

Application Consideration

The Commissioner for Children, Youth and Families determines the final action to be taken with respect to each grant application for this program. Applications which are complete and conform to the requirements of this Program Announcement are subjected to a competitive review and evaluation by qualified persons independent of the Administration for Children, Youth and Families.

The results of the review assist the Commissioner in considering competing applications. The Commissioner's consideration may also take into account comments from HHS Regional and Headquarters program office staff. Comments also may be required from appropriate specialists and constituents inside and outside the Federal government. To the extent possible, the Commissioner's final decisions reflect the mandate of the Child Abuse Prevention and Treatment Act of 1974, as amended, "to achieve equitable distribution of assistance * * * among the States, among geographical areas of the Nation, and among rural and urban areas" (Section 4(d)).

Criteria for Review and Evaluation of Applications

Competing grant research applications under this program will be reviewed and evaluated against the following criteria:

1. The applicant organization is capable of carrying out the proposed project in terms of availability of adequate resources and facilities and previous knowledge and/or experience in this or a related program area. (10 points)

2. The applicant's presentation of the project's objectives and results or benefits expected demonstrate a clear understanding of the purpose and objectives of the demonstration or service improvement program. (10 points)

3. The applicant demonstrates the need for the proposed project, with appropriate descriptions of recipients of proposed project services and community factors which relate to the need for the project. (20 points)

4. The applicant's program narrative describes a work plan which is clear, comprehensive and feasible and has the potential for attaining the project's objectives. (This criterion relates to the application's work plan, scheduling or activities and dissemination and utilization plan.) (25 points)

5. The applicant's proposed staff have or will have the knowledge, expertise and experience in work related to the proposed project and are well qualified to carry out the proposed work plan. (20 points)

6. The applicant's proposed budget contains estimated costs to the Government which are reasonable considering the anticipated benefits and scope of the project. (15 points).

Conditions for Funding

The following conditions *must* be met in order for an application to be approved for funding:

1. The applicant organization has included a letter of support from the public child protective services agency within its community which has responsibility for receiving and investigating reports of child abuse and neglect. (This criterion is not applicable to applicants which are the public child protective service agency.)

2. The applicant has included in its budget provisions for one two-day meeting to be held in Washington, D.C., for the purposes of planning, review and collaboration with other projects.

3. The applicant has certified that it will cooperate with the National Center on Child Abuse and Neglect for purposes of program monitoring, evaluation and information sharing.

4. The applicant has agreed to provide quarterly reports on a schedule to be established after grant award.

Closing Date for Receipt of Applications

The closing date for receipt of applications under this Program Announcement is April 9, 1981.

Applications may be mailed or hand-delivered. OHDS will accept hand-delivered applications during regular working hours of 9:00 a.m. to 5:00 p.m., Monday through Fridays, except Federal holidays. Hand-delivered applications must be taken to Room 1740, HHS Building, 330 Independence Avenue, S.W., Washington, D.C.

Mailed applications will be considered to be received on time if: (1) the application is *received on or before the closing date* by the DHHS mail room in Washington, D.C., or (2) the application is *mailed by registered or certified mail not later than five days before the closing date,* as evidenced by the U.S. Postal Service postmark on the wrapper or envelope or on the original receipt from the U.S. Postal Service, unless the mailed application arrives too late to be considered by the independent review panel. Mailed applications must be addressed to: Department of Health and Human Services, Office of Human Development Services, Grants Management Branch/HHS Building, Room 1740, 330 Independence Avenue, S.W., Washington, D.C. 20201 Attn: 13628-812.

Applications may be submitted at any time prior to the closing date, and applications received after the closing date will be returned to the senders without being reviewed.

(Catalog of Federal Domestic Assistance Program Number: 13.628, Child Development—Child Abuse and Neglect Prevention and Treatment)

Dated: January 2, 1981.

Joyce Strom,

Acting Commissioner for Children, Youth Families.

Approved: January 14, 1981.

Kathryn Morrison,

Acting Assistant Secretary for Human Development Services.

[FR Doc. 81-1929 Filed 1-16-81; 8:45 am]

BILLING CODE 4110-92-M

[Program Announcement No. 13628-811]

Child Abuse and Neglect Program; Research Projects

AGENCY: Office of Human Development Services, Department of Health and Human Services.

SUBJECT: Announcement of Availability of Grant Funds for Research Projects for the Child Abuse and Neglect Program.

SUMMARY: The Administration for Children, Youth and Families (ACYF) announces that applications are being accepted for research grants for Fiscal Year 1981 under The Child Abuse Prevention and Treatment Act of 1974, as amended. Regulations governing this program are published in the *Code of Federal Regulations* in 45 CFR Part 1340.

DATES: Closing date for receipt of applications is March 25, 1981.

Scope of This Announcement

This Program Announcement is one of two for the Child Abuse and Neglect Research, Demonstration and Service Improvement Grants Program in Fiscal Year 1981. It relates specifically to *research* authorized under Section 4(b)(1) of The Child Abuse Prevention and Treatment Act of 1974, as amended, which provides for research, demonstration and service projects related to the prevention and treatment of child abuse and neglect. A separate Program Announcement addresses the availability of funds for demonstration and service improvement projects. (See Program Announcement No. 13628–812.) A description of this program was published for public comment in the **Federal Register** on October 7, 1980, and this Program Announcement reflects changes resulting from comments received.

Program Purpose

The purpose of this research program is to support social scientists working in the field of the prevention and treatment of child abuse and neglect in undertaking studies which address: (1) child neglect; (2) adolescent maltreatment; and (3) secondary analysis of data collected in the National Study of the Incidence and Severity of Child Abuse and Neglect.

Program Objectives

OHDS solicits applications for projects which reflect the following program objectives:

For Field-Initiated Research on Child Neglect—

1. To examine various aspects of child neglect, such as definitions, identification, case assessment, treatment and prevention.

2. To generate additional knowledge about child neglect that will advance understanding of this form of maltreatment and, ultimately, improve the field's capability to prevent and treat child neglect.

For Field-Initiated Research on Adolescent Maltreatment—

1. To examine various aspects of adolescent maltreatment, such as definitions, identification, case assessment, treatment and prevention.

2. To generate additional knowledge about adolescent maltreatment that will advance understanding of this special category of child abuse and neglect and, ultimately, improve the field's capability to prevent and treat adolescent maltreatment.

For Secondary Analysis of Data Collected in the National Study of the Incidence and Severity of Child Abuse and Neglect—to use the data collected in the study as a resource for exploring research, practice and program issues in the field of child abuse and neglect.

Eligible Applicants

Eligible applicants for these research projects are public and private nonprofit organizations with the capability of carrying out the proposed research projects.

Available Funds

The Administration for Children, Youth and Families (in OHDS) expects to award approximately $550,000 in Fiscal Year 1981 (of the $22,928,000 appropriated by the Congress) for new grants in this research program.

Two or more grants will be awarded for *Field-Initiated Research on Child Neglect* in amounts not to exceed $100,000 each and with the total amount for this category not to exceed $200,000 for the initial year. Each project will be supported for a period of up to three years. The initial grant sustains the Federal share of the budget for the first 12 months of the project. Support for the additional 12-month budget periods in amounts equal to the first award depends upon the availability of funds and the grantee's satisfactory performance of the project for which the grant was awarded.

Two or more grants will be awarded for *Field-Initiated Research on Adolescent Maltreatment* in amounts not to exceed $100,000 each and with the total amount for this category not to exceed $200,000 for the initial year. Each project will be supported for a period of up to three years. The initial grant sustains the Federal share of the budget for the first 12 months of the project. Support for the additional 12-month budget periods in amounts equal to the first award depends upon the availability of funds and the grantee's satisfactory performance of the project for which the grant was awarded.

Five or more grants will be awarded for *Secondary Analysis of Data Collected in the National Study of the Incidence and Severity of Child Abuse and Neglect* in amounts not to exceed $30,000 each and with the total amount for this category not to exceed $150,000 for the total project period. Each project will be supported for a period of 17 months. The grant sustains the Federal share of the budget for the 17-month project period.

Grantee Share of the Project

Each grantee is required to provide a share of the budget for this grants program. The grantee's share must be at least five percent of the total cost of the proposed project. Grantee incurred cost or third-party in-kind contributions may be used as the grantee's share of the cost of the project.

The Application Process

Availability of Forms

Applications for grants under the Research Projects for Child Abuse and Neglect Program must be submitted on standard forms provided for this purpose. Application kits which include the forms and specific Program Guidance materials for use in preparing the program narrative sections of applications may be obtained by writing to: National Center on Child Abuse and Neglect, Attn: Grants Administration Specialist, Children's Bureau/ACYF, P.O. Box 1182, Washington, D.C. 20013, Telephone (202) 755–0587.

Application Submission

One signed and two copies of the grant application, including all attachments, must be submitted to the address provided below under the section, "Closing Dates for Receipt of Applications."

Application Consideration

The Commissioner for Children, Youth and Families determines the final action to be taken with respect to each grant application for this program. Applications which are complete and conform to the requirements of this Program Announcement are subjected to a competitive review and evaluation by qualified persons independent of the Administration for Children, Youth and Families.

The results of the review assist the Commissioner in considering competing applications. The Commissioner's consideration may also take into account comments from HHS Regional and Headquarters program office staff. Comments also may be requested from appropriate specialists and constituents

inside and outside the Federal government. To the extent possible, the Commissioner's final decisions reflect the mandate of the Child Abuse Prevention and Treatment Act of 1974, as amended, "to achieve equitable distribution of assistance * * * among the States, among geographical areas of the Nation, and among rural and urban areas" (Section 4(d)).

Criteria for Review and Evaluation of Applications

Competing grant research applications under this program will be reviewed and evaluated against the following criteria:

For Field-Initiated Research on Child Neglect and Field-Initiated Research on Adolescent Maltreatment—

1. The applicant organization is capable of carrying out the proposed project, including provision of adequate resources and facilities. (5 points)

2. The applicant has defined one or two important issues for study, which, if the proposed project is implemented well, will make an important contribution to the understanding of child neglect or adolescent maltreatment. (30 points)

3. The applicant's general methodological approach is appropriate for addressing the issues defined, is feasible within the available resources and capable of achieving the program objectives. (30 points)

4. The applicant's detailed approach and methodology for carrying out the proposed project are logical and scientifically sound. This criterion is indicated by such elements of the work plan as testable hypotheses, a sound data collection plan and a sound data analysis plan. (10 points)

5. The applicant's proposed staff has sufficient knowledge and expertise in (a) the conduct of similar research projects and (b) the field of child abuse and neglect to enable it to carry out the proposed research project. (20 points)

6. The applicant's proposed budget contains estimated costs to the Government which are reasonable considering the anticipated benefits and scope of the project. (5 points)

For Secondary Analysis of Data Collected the National Study of the Incidence and Severity of Child Abuse and Neglect—

1. The applicant organization is capable of carrying out the proposed project, including provision of adequate resources and facilities. (5 points)

2. The applicant has defined one or more issues to be examined which, if the proposed project is implemented well, will make an important contribution to the field of child abuse and neglect. (30 points)

3. The applicant's general methodological approach is appropriate for addressing the issues defined, is feasible within the available resources and capable of achieving the program objectives. (25 points)

4. The applicant's detailed approach and methodology for carrying out the proposed project are logical and scientifically sound. This criterion is indicated by such elements of the work plan as a sound data analysis plan and a sound output interpretation process. (15 points)

5. The applicant's proposed staff has sufficient knowledge and expertise in the conduct of similar research projects to enable it to carry out the proposed research project. (20 points)

6. The applicant's proposed budget contains estimated costs to the Government which are reasonable considering the anticipated benefits and scope of the project. (5 points)

Conditions for Funding

For all research projects under this program announcement, the following conditions must be met before an application can be approved for funding:

1. A clear statement assures that the project director (or principal investigator) has written the program narrative portion of the application.

2. The application, if it depends upon the accessibility of certain data sources (other than data from the National Incidence Study) for its implementation, includes letters of agreement from any organizations providing such data; such letters must assure necessary access to the data under conditions which safeguard individual rights of privacy and confidentiality.

3. The applicant has certified that it will collaborate/cooperate with the National Center on Child Abuse and Neglect/Children's Bureau/ Administration for Children, Youth and Families for purposes of monitoring and information sharing.

4. The applicant has agreed to provide regular quarterly reports on a schedule to be established after grant award.

For Field-Initiated Research on Child Neglect and Adolescent Maltreatment

5. The applicant has proposed to conduct an in-depth examination of only one or two key issues and will examine the broad populations of neglected children or maltreated adolescents.

For Secondary Analysis of Data Collected in the National Study of the Incidence and Severity of Child Abuse and Neglect

6. The applicant plans either to use only the National Study's data base or, if a second data base is to be used, the National Study's data base will clearly be equal to or of greater importance than the second data base in the conduct of the research.

Closing Date for Receipt of Applications

The closing date for receipt of applications under this Program Announcement is March 25, 1981.

Applications may be mailed or hand-delivered. OHDS will accept hand-delivered applications during regular working hours of 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays. Hand-delivered applications must be taken to Room 1740, HHS Building, 330 Independence Avenue, S.W., Washington, D.C.

Mailed applications will be considered to be received on time if: (1) the application is *received on or before the closing date* by the DHHS mail room in Washington, D.C., or (2) the application is *mailed by registered or certified mail not later than five days before the closing date,* as evidenced by the U.S. Postal Service postmark on the wrapper or envelope or on the original receipt from the U.S. Postal Service, unless the mailed application arrives too late to be considered by the independent review panel. Mailed applications must be addressed to: Department of Health and Human Services, Office of Human Development Services, Grants Management Branch/HHS Building, Room 1740, 330 Independence Avenue, S.W., Washington, D.C. 20201, 13628–811.

Applications may be submitted at any time prior to the closing date, and applications received after the closing date will be returned to the senders without being reviewed.

(Catalog of Federal Domestic Assistance Program Number: 13.628, Child Development—Child Abuse and Neglect Prevention and Treatment)

Dated: January 2, 1981.

Joyce Strom,

Acting Commissioner for Children, Youth Families.

Approved: January 14, 1981.

Kathryn Morrison,

Acting Assistant Secretary for Human Development Services.

[FR Doc. 81–1930 Filed 1–16–81; 8:45 am]

BILLING CODE 4110–92–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection

[Docket No. D-80-633]

Delegations of Authority; Revision and Update

AGENCY: Department of Housing and Urban Development (HUD), Office of the Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection.

ACTION: Notice of consolidated delegation of authority.

SUMMARY: HUD is consolidating certain delegations of authority issued at various times to the Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection and the General Deputy to the Assistant Secretary. The consolidated delegation of authority will remove certain ambiguities and correct certain technical errors and omissions in the delegations to be superseded by this instrument.

EFFECTIVE DATE: January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Robert M. Ratcliffe, Jr., Director, Office of Management and Field Support, Office of Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection, Department of Housing and Urban Development, Washington, D.C. 20410, (202) 755-6207. [This is not a toll-free number].

SUPPLEMENTARY INFORMATION: The currently effective delegations of authority from the HUD Secretary to the HUD Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection and the General Deputy to the Assistant Secretary are set forth in a number of documents issued over a period of four years. In addition to being difficult to work with, the current delegations contain a number of outdated position titles, refer to some functions which are no longer assigned to the Office of the Assistant Secretary and are particularly confusing in regard to the rulemaking authority of the General Deputy to the Assistant Secretary. This document will eliminate the deficiencies of, and supersede, the existing delegations of authority.

Accordingly, a delegation of authority to the Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection and to the General Deputy to the Assistant Secretary, is issued as follows:

Section A. Authority Delegated. The Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection and the General Deputy to the Assistant Secretary are authorized, individually, to exercise the power and authority of the Secretary of Housing and Urban Development with respect to the programs and matters listed below, except as indicated in Section B.

1. Consumer matters within the Department of Housing and Urban Development including responsibility for reviewing and commenting upon all currently effective and proposed Departmental regulations to identify and represent the consumer interest involved, acting as liaison between the Department and public and private organizations concerned with consumer matters, developing an effective means by which consumers can gain access to the Department and communicate their concerns, assure that the interests of consumers are adequately considered in the decision-making processes of the Department, developing effective remedies for consumers with respect to the programs of the Department, and developing long term policy initiatives with respect to consumer matters.

2. The Interstate Land Sales Full Disclosure Act, Title XIV of the Housing and Urban Development Act of 1968, Pub. L. 90-448, as amended.

3. The National Manufactured Home Construction and Safety Standards Act of 1974, Title VI of the Housing and Community Development Act of 1974, Pub. L. 93-383, as amended.

4. The Real Estate Settlement Procedures Act of 1974, Pub. L. 93-533, as amended by the Real Estate Settlement Procedures Act Amendments of 1975, Pub. L. 94-205.

5. The Lead Based Paint Poisoning Prevention Act, as amended, 42 U.S.C. 4801 et seq.

6. The Neighborhood Self-Help Development Act under Title VII of the Housing and Community Development Amendments of 1978, Pub. L. 95-557.

7. The Livable Cities Act under Title VIII of the Housing and Community Development Amendments of 1978, Pub. L. 95-557.

8. Primary coordination for activities within the Department affecting the elderly or handicapped, representing the Department in meetings with other public or private organizations concerning the elderly or handicapped, determining what types of reports are necessary to evaluate Departmental actions with respect to the elderly and handicapped, and otherise assuring that the interests of the elderly and handicapped are represented in the decision-making processes of the Department.

9. Implementation and administration of a program of performance standards for new residential and commercial buildings under Title III of the Energy Conservation and Production Act of 1976, 42 U.S.C. 6831, et seq.

10. The power and authority of the Secretary of Housing and Urban Development under Sections 101(e) and 106(a) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701w and 1701x(a)) and Section 237(e) of the National Housing Act (12 U.S.C. 1715z-2(e)), with respect to the provision of counseling and advice to tenants and homeowners in reference to property maintenance, financial management, and such other matters as may be appropriate to assist them in improving their housing conditions and meeting the responsibilities of tenancy and homeownership.

Section B. Authority Excepted. There is excepted from the authority delegated under Section A the power:

1. To sue or be sued.

2. Under the Interstate Land Sales Full Disclosure Act:

a. To conduct hearings in accordance with 5 U.S.C. 556 and 557.

b. To issue orders of determinations after such hearings.

c. To issue rules and regulations under Section 1416(a) of the Interstate Land Sales Full Disclosure Act, prescribing rights of appeal from the decisions of hearing examiners, and

d. To transmit evidence of apparent violations of the Act to the Attorney General of the United States for the institution of any appropriate criminal proceedings under Section 1415(a) of the Interstate Land Sales Full Disclosure Act.

3. Under the Lead Based Paint Poisoning Prevention Act:

To exercise the Secretary's authority under Section 301(a) of the Act, 42 U.S.C 4821(a), which authority is to be a exercised by the Assistant Secretary for Policy Development and Research in consultation with the Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection and the General Deputy to the latter Assistant Secretary.

Section C. Authority to Redelegate. The Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection, and the General Deputy to the Assistant Secretary, are authorized, individually, to redelegate to employees of the Department and to agents of the Department any of the power and authority delegated under Section A of

this delegation except the power and authority to issue rules and regulations.

Section D. Delegations revoked and Superseded. This delegation revokes and supersedes the following:

1. Delegation of authority from the Secretary to the Assistant Secretary for Consumer Affairs and Regulatory Functions at 41 FR 19365, May 12, 1976.

2. Amendments to said Delegation of Authority at 42 FR 7178, February 7, 1977 and at 42 FR 37603, July 22, 1977.

3. Delegation of authority from the Secretary to the Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection at 43 FR 38117, August 25, 1978.

4. Delegation of authority from the Secretary to the Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection at 43 FR 42045, September 19, 1978.

5. Delegation of authority from the Secretary to the Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection at 44 FR 19543, April 3, 1979.

Provide, That all regulations issued and actions taken under these delegations remain valid as if issued or taken under this delegation.

(Sec. 7(d), Department of HUD Act, 42 US.C. 3535(d))

Issued at Washington, D.C. January 12, 1981.

Moon Landrieu,

Secretary, Department of Housing and Urban Development.

[FR Doc. 81-1801 Filed 1-16-81; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Status of Current Planning Documents and Projected New Planning Starts, Including Wilderness Study and Reporting Schedules

AGENCY: Bureau of Land Management, Interior.

ACTION: Plan status and major planning actions in Fiscal Year 1981 and call for comments on the projected new Resource Management Plan starts for the next 3 fiscal years and the overall wilderness study and reporting schedule.

SUMMARY: Regulations governing resource management planning for Bureau of Land Management administered public lands were published in the **Federal Register** on Tuesday, August 7, 1979. Section 1601.3 of those regulations required that

"The Director shall, early in each fiscal year, publish a planning schedule which shall advise the public of the status of each plan in process or to be started during that fiscal year, the major action on each plan during that fiscal year and projected new planning starts for the three succeeding fiscal years. The notice shall call for comments on planning priorities for those three fiscal years so that such comments can be considered in refining priorities for those fiscal years."

Section A below complies with this requirement of the planning regulations.

The management framework plans mentioned below were in progress when the Planning regulations were published. The **Federal Register** notice of December 3, 1979 (page 69374) describes the use of planning regulation provisions in management framework plans in progress. Section B of this notice fulfills the provision of the Bureau of Land Management's *Interim Management Policy and Guidelines For Lands Under Wilderness Review* dated December 12, 1979, Chapter 2, B.2.b., which states in regard to the reclamation of temporary impacts within wilderness study areas that

"Any temporary impacts caused by the activity must, at a minimum, be capable of being reclaimed to a condition of being substantially unnoticeable in the wilderness study area or inventory unit as a whole by the time the Secretary of the Interior is scheduled to send his recommendations on that area to the President, and the operator will be required to reclaim the impacts to that standard by that date. If the wilderness study is accelerated, the reclamation deadline will not be changed. *A full schedule of wilderness studies will be developed by the Department upon completion of the intensive wilderness inventory."* (emphasis added.)

DATES: Comments on either the projected new resource management plan starts or the wilderness study and reporting schedule will be accepted until March 2, 1981.

ADDRESS: Comments or suggestions should be sent to: Director (202), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240, Gordon A. Knight, (202) 343-5682.

Projected New Planning Starts

Comments from the public, local and State government, and other Federal agencies are invited on the priorities reflected in both the projected new planning starts and wilderness study schedule. Comments will be received until March 2, 1981, and should be sent to the Director, Mail Code 202, Bureau of Land Management, U.S. Department of the Interior, Washington, D.C. 20240. Questions may be addressed to the Branch of Planning in Washington (202) 343-5682. All of the new starts will fully comply with the Bureau planning regulations. Exceptions will be granted, where necessary, to deviate from Resource Areas as the planning base. Preplanning activities in connection with Fiscal Years 1982, 1983, and 1984 new starts will take place in the year preceding each new start. This activity may involve review of existing inventories, baseline data gathering, and, in some instances, public meetings.

The wilderness study and reporting schedule reflects both the Secretary of the Interior's and the Bureau of Land Management's goal of reporting to the President by September 30, 1987. Furthermore, the highest priority has been given by the Bureau of Land Management to reporting as many wilderness study areas which contain energy related resource conflicts as possible to the President by September 30, 1985. The reporting dates listed below have been projected based upon the best information available. Considerations in these projections have included:

1. The time frame for the completion of the multiple use plan which will develop the tentative wilderness recommendations for each area.

2. The time required for the United States Geological Survey and the Bureau of Mines to complete mineral surveys on any area recommended for designation as wilderness prior to the submission by the Secretary of his recommendation to the President; and

3. The time in which a wilderness recommendation by the Bureau of Land Management must be subjected to administrative review within the Executive Branch.

To insure that the wilderness study and reporting schedules are responsive to changing national priorities, the Bureau of Land Management will periodically review the schedules and amend them as necessary to meet those priorities. All amendments to either the wilderness study or reporting schedules will be published for public review and comment early on in each successive fiscal year until such time as all wilderness study areas have been reported to the Secretary of the Interior.

Section A—*Plan Status and Projected New Starts*

State and district	Resource area	Plan name	Major resource issues	Plan status major/action—fiscal year 1981	New resource management plan starts—fiscal years		
					1982	1983	1984
Alaska:							
Anchorage	McGrath	Southwest	Multiple programs.	MFP (step 1)			
	Peninsula	Bristol Bay, Aleutians	do		Start plan		
	Glennallen	Denali	do				Start plan.
Fairbanks	Arctic Kobuk	Northwest	do	MFP (step 2)			
		Arctic Koyukuk	Oil/gas	RMP (1st year Inv.).			
	Yukon	White Mountain, NRA	Multiple programs.		Start plan		
		Steese NCA	do		do		
		Yukon-Tanna	do				Start plan.
Arizona strip	Shivwits	Shivwits	Vegetation allocation.	MFP (step 3)			
	Vermillion	Vermillion	Multiple programs.		Start plan		
Phoenix	Kingman	Hualapai-Aquarius	Vegetation allocation.	Program EIS (publish final).			
		Lower Gila-South	do	MFP (step 2)			
	Lower Gila	Lower Gila-South	do	RMP (1st year Inv.).			
	Phoenix	Phoenix	do			Start plan	
Safford	Gila	Winkleman	do	MFP (step 3)			
		Gila	Multiple programs.		Start plan		
Yuma	Havasu	Havasu	Vegetation allocation.		do		
	Yuma	Yuma	do				Start plan.
Calif.:							
Bakersfield	Caliente	S. Sierra foothills	do	MFP (complete Inv.).			
		Coast-Valley	do		Start plan		
	Hollister	Coast	do		do		
	Bishop	Benton-Owens Valley	do	Program EIS (publish final).			
		Bodie-Colville	do	MFP (step 2)			
	Folsom	Sierra	do	do			
Susanville	Surprise	Cowhead-Massacre	do	Program EIS (publish final.			
	Alturas	Pit River	do	RMP (2d year Inv.).			
	Eaglelake	Cal-Neva	do	Program EIS (publish final).			
		Willow Creek	do	MFP (step 2)			
Susanville	Eagle Lake	Honey-Lake Beckworth	do	do	Start plan		
Redding	Siskiyou	Mount Dome	do	Program EIS (publish final).			
	Siskiyou; Four Rivers; Ishi	Redding	do	MFP (complete Inv.).			
			do	do			
Ukiah	Clearlake	Yokayo	do	do			
Riverside	El Centro	McCain Valley	do	Program EIS (publish final).			
Colorado:							
Grand Junction	Glenwood Springs	Glenwood Springs	Vegetation allocation, coal, wilderness.	RMP (alternative formulation).			
	Grand Junction	Grand Junction	Coal/wilderness		Start plan		
Craig	Kremmling	Kremmling	Vegetation allocation, coal.	RMP (management situation analysis).			
	Little Snake	Little Snake	do	RMP (1st year Inv.).			
Montrose	San Juan	San Juan	Vegetation allocation, energy, cultural resources.	do			
	Uncompahgre	Uncompahgre	Coal/wilderness		Start plan		
Canon City	Northeast	Northeast	Coal, recreation, energy.	RMP (1st year Inv.).			
Idaho:							
Boise	Bruneau	Bruneau-Kuna	Vegetation allocation,.	MFP (step 2)			
	Jarbridge	Jarbridge	do	RMP (1st year Inv.).			
	Cascade	Cascade	Vegetation allocation, recreation, timber.				Start plan.
Burley	Magic	Twin Falls	Vegetation allocation.	MFP (step 2)			
	Raft River	Cassia	do	RMP (1st year Inv.).			
Idaho Falls	Big Butte	Big Desert	do	Program EIS (publish final).			
	Medicine Lodge	Medicine Lodge	Vegetation allocation, recreation.		Start plan		
	Soda Springs	Caribou-Bear Lake	Vegetation allocation, minerals.				Start plan.

Section A—*Plan Status and Projected New Starts*—Continued

State and district	Resource area	Plan name	Major resource issues	Plan status major/action—fiscal year 1981	New resource management plan starts—fiscal years		
					1982	1983	1984
Salmon	Lemhi	Lemhi	Vegetation allocation, timber, lands.		Start plan		
	Pahsimeroi	Ellis/Pahsimeroi	Vegetation allocation.	MFP (step 2)			
Shoshone	Monument/Bennett Hills	Monument	Vegetation allocation, recreation, lands.		Start plan		
	Monument/Bennett Hills	Sun Valley	Vegetation allocation.	Program EIS (publish final).			
Coeur d' Alene	Emerald, Empire and Cottonwood.	North Idaho	Vegetation allocation timber.	do			
Montana:							
Miles City	Big Dry	Jordon-North Rosebud	Vegetation allocation.	MFP (step 2)			
		New Prairie	do	do			
		Redwater	Vegetation allocation, coal.	Program EIS (initiate EIS).			
	Powder River	Powder River	do	RMP (1st year Inv.).			
	South Dakota	South Dakota	Vegetation allocation.			Start plan	
Lewistown	Valley	Valley	Vegetation allocation wilderness.			do	
	Billings	Billings	Vegetation allocation.	RMP (1st year Inv.).			
Butte	Headwaters	Headwaters	Vegetation allocation oil/gas.	RMP (2d yr. Inv.)			
	Garnet	Garnet	Vegetation allocation.		Start plan		
Dickinson	W. River	Southwest	Coal	MFP (Complete Inv.).			
	W. River/E. River	Williams/McKenzie	do	do			
Nevada:							
Las Vegas	Caliente-Virgin Valley/Stateline, Esmeralda.	Clark	Lands	MFP (step 2) initiate program EIS.			
	Stateline-Esmeralda	Esmeralda	Vegetation allocation.		Start plan		
Battle Mtn	Tonopah	Tonopah	do	MFP (step 3)			
	Shoshone-Eureka	Shoshone-Eureka	do	RMP (1st year Inv.).			
Winnemucca	Paradise-Denio	Paradise-Denio	do	Program EIS (publish final).			
Elko	Wells	Wells	Vegetation allocation, lands.	RMP (planning criteria developed).			
	Elko	Elko	Vegetation allocation, lands, minerals.		Start plan		
Carson City	Lahontan/Walker-Mina	Reno	Vegetation allocation, lands.	MFP (step 2) initiate program EIS.			
	Lahontan	Lahontan	Vegetation allocation.	RMP (1st year Inv.).			
	Walker-Mina	Walker	do				Start plan
Ely	Schell	Schell	do	MFP (step 2) initiate program EIS.			
	Egan	Egan	do	RMP (1st year Inv.).			
New Mexico:							
Albuquerque	Farmington	Chaco/San Juan	Coal/wilderness	MFP (step 3)			
	Taos	Taos	Vegetation allocation, wilderness.		Start plan		
	Rio Puerco	Rio Puerco	do			Start plan	
Albuquerque	Oklahoma	Southeast Oklahoma	Coal	Program EIS (initiate).			
Socorro	San Augustine	Divide	Vegetation allocation, wilderness.	MFP (step 2)			
	Jornada	Jornada	do			Start plan	
Las Cruces	White Sands and Las Cruces/Lordsburg.	South Rio Grande	Vegetation allocation.	Program EIS (publish final).			
	Las Cruces/Lordsburg	Las Cruces/Lordsburg	Vegetation allocation, wilderness.	RMP (1st yr. Inv.)			
	White Sands	White Sands	do			Start plan	
Roswell	Roswell	Roswell	do		Start plan		
	Carlsbad	Carlsbad	do				Start plan.
Oregon:							
Lakeview	High Desert, Lost River and Warner Lakes.	Lakeview	Vegetation allocation.	Program EIS (publish draft and final EIS).			

Section A—*Plan Status and Projected New Starts*—Continued

State and district	Resource area	Plan name	Major resource issues	Plan status major/action—fiscal year 1981	New resource management plan starts—fiscal years		
					1982	1983	1984
Burns	Riley/Andrews	Harney	do	MFP (step 2)			
	John Day	John Day	Vegetation allocation, wilderness.	RMP (1st yr. Inv.)			
Vale	Northern Malheur and Southern Malheur.	Southern Malheur	do	MFP (2d yr. Inv.)			
Prineville	Deschutes/Central Oregon	Brothers	Vegetation allocation.	do			
		Two Rivers	do		Start plan		
Baker	Grande Ronde	Grand Ronde	do			Start plan	
Salem	Alsea, Yamhill Tillamook	Westside Salem	Timber	Program EIS (publish draft).			
	Clackamas/Santiam	Eastside Salem	do	MFP (step 2) program EIS (publish draft).			
Eugene	Noti, Lorane, Mohawk and Dorena.	Eugene	do	MFP (step 2)			
Roseburg	Drain, Dillard, North Umpqua and South Umpqua.	Roseburg	do	do			
Medford	Butte Falls Klamath, Grants Pass and Rogue River.	Medford	Vegetation allocation.	MFP (complete Inv.).			
Coos Bay	Smith-Umpqua Loon Lake, Coos River, Burnt Mtn. and Myrtle Wood.	Southcoast Curry	Timber	Program EIS (publish final).			
Washington: Spokane	Border and Basin	Spokane	Vegetation allocation.		Start plan		
Utah:							
Salt Lake	Pony Express	Tooele	Vegetation allocation wilderness.	MFP (complete Inv.).			
	Bear River	Box Elder	Vegetation allocation.		Start plan		
	Pony Express/Bear River	Wasatch	do			Start plan	
Cedar City	Beaver River	Pinyon	do	MFP (step 2)			
	Beaver River/Kanab	Cedar	Vegetation allocation, coal.	RMP (1st yr. Inv.)			
Richfield	Henry Mountain	Henry Mountain	Vegetation allocation, coal, wilderness.	MFP (step 2)			
	House Range	House Range	Vegetation allocation.	MFP (1st yr. Inv.)			
	Warm Springs	Warm Springs	do				Start plan.
Moab	Price River	Price River	Vegetation allocation, coal.	MFP (step 2)			
	Grand	Grand	do	RMP (2d yr. Inv.)			
	San Juan	San Juan	Vegetation allocation, wilderness.			Start plan	
Vernal	Diamond Mountain	Ashley Creek/Duchesne	Vegetation allocation.	MFP (step 2) program EIS (publish draft).			
	Book Cliffs	Book Cliffs	do	RMP (1st yr. Inv.)			
Wyoming:							
Worland	Grass Creek	Grass Creek	Vegetation allocation, wilderness, coal.	Program EIS (publish final).			
	Washakie	Washakie	Vegetation allocation, wilderness.			Start plan	
Rawlins	Divide	Divide/Basin	do	MFP (complete Inv.).			
	Overland	Overland	do	do			
	Medicine Bow	Medicine Bow	do				Start plan.
	Lander	Green Mountain	Vegetation allocation.	Program EIS (publish final).			
		Lander	do		Start plan		
Rock Springs	Big Sandy	Big Sandy	Vegetation allocation, coal, wilderness trona.	Program EIS (publish final).			
	Salt Wells	Salt Wells	do	do			
	Kemmerer	Kemmerer	Vegetation allocation.		Start plan		
	Pinedale	Pinedale	do				Start plan
Casper	Buffalo	Buffalo	Vegetation allocation, wilderness.			Start plan	
	Platte River	Platte River	Vegetation allocation, coal.	RMP (1st yr. Inv.)			
	Newcastle	Newcastle	Vegetation allocation.				Start plan
ESO:							
Lake States	Minnesota	Minnesota	Lands	MFP (step 3)			
	Wisconsin	Wisconsin	do	RMP (management situation analysis).			
	Michigan	Michigan	do		Start plan		

Section A—*Plan Status and Projected New Starts*—Continued

State and district	Resource area	Plan name	Major resource issues	Plan status major/action—fiscal year 1981	New resource management plan starts—fiscal years 1982	1983	1984
Tuscaloosa	Florida	Pine Island Sound	do	RMP (alternative development.			
	Alabama	Alabama	Coal	RMP (2d yr. Inv.)			
	Florida	Florida	Lands		Start plan		

NOTE.—Fiscal year 1981 plan status and major actions refer to a sequence of planning actions relating to MFP and RMP development.

SECTION B.—*Wilderness Study and Reporting Schedule* [1]

State and district	Resource area	Plan name	Type	Plan start	Plan completion	Reporting year to the Secretary of the Interior
Arizona:						
Arizona Strip District	Shivwits	Shivwits	MFP-A	1982	1983	1984.
Arizona Strip District	Vermillion	Vermillion	RMP	1982	1985	1987.
Phoenix District	Kingman	Cerbat Black	MFP-A	1982	1983	1985.
Phoenix District	Kingman	Haulapais	MFP-T	1978	1980	1985.
Phoenix District	Kingman	Lower Gila North	MFP-T	1979	1982	1985.
Phoenix District	Kingman	Lower Gila South	RMP	1981	1984	1987.
Phoenix District	Phoenix	Black Canyon	MFP-A	1984	1985	1987.
Phoenix District	Phoenix	Middle Gila	MFP-A	1982	1983	1986.
Safford District	Gila	Gila	RMP	1982	1985	1987.
Safford District	San Simon	San Simon	MFP-A	1984	1985	1986.
Safford District	San Simon	Black Hills	MFP-A	1982	1983	1986.
Yuma District	Yuma	La Paz	MFP-A	1982	1983	1986.
Yuma District	Havasu	Havasu	RMP	1982	1985	1987.
California:						
Bakersfield District	Bishop	Benton Valley	MFP-A	1983	1984	1987.
Bakersfield District	Bishop	USFS (Inyo)	Forest Plan	1981	1983	1987.
Bakersfield District	Bishop	Bodie-Coleville	MFP-T	1980	1982	1985.
Bakersfield District	Bishop	USFS (Inyo-Toiyabe)	Forest Plan	1981	1983	1984.
Susanville District	Pit River	Alturas	RMP	1980	1983	1987.
Susanville District	Eagle Lake/Surprise	Eagle Lake/Surprise	MFP-A	1984	1985	1987.
Susanville District	Eagle Lake	Buffalo Hills	MFP-A [2]	1982	1983	1987.
Redding District	Four River/Ishi	Redding	MFP-T	1991	1983	1987.
Bakersfield District	Caliente	South Sierra	MFP-T	1981	1983	1987.
Bakersfield District	Bay Sierra/North Mother Lode	USFS (Tahoe/Stanislaus)	Forest Plan	1981	1983	1987.
Bakersfield District	Bay-Sierra	Sierra	MFP-A	1983	1984	1987.
Bakersfield District	Caliente	USFS (Sequoia)	Forest Plan	1981	1983	1987.
Folsom/Bakersfield Districts	Diablo/Caliente	Coast	RMP	1982	1985	1986.
Bakersfield/Folsom Districts	Caliente/Diablo	USFS (Los Padres)	Forest Plan	1981	1985	1985.
Ukiah District	North Coast	King Range	MFP-A	1982	1983	1987.
Ukiah District	North Coast	North Coast	MFP-A	1983	1984	1984.
Ukiah District	Mendocino	Mendocino	MFP-A	1981 [3]	1983	1986.
Ukiah District	Mendocino	Special Study (Thatcher Ridge)	MFP-A	1984	1985	1987.
Ukiah District	Clear Lake	Clear Lake	MFP-A	1981	1982	1987.
Riverside District	El Centro	Western Counties	MFP-A	1982	1983	1987.
Riverside District	El Centro	E. San Diego County	MFP-T	1978	1981	
Riverside District	California Desert					1984.
Bakersfield District	Conservation Area	California Desert	Special	1976	1980	
Colorado:						1984.
Craig District	White River	White River	MFP-A	1981	1982	1984.
Craig District	Kremmling	Kremmling	RMP	1980	1983	1986.
Craig District	Little Snake	Little Snake	RMP	1983	1985 [4]	1984.
Montrose District	Gunnison Basin	Gunnison Basin	MFP-A	1981	1982	1984.
Montrose District	American Flats	American Flats	MFP-A	1981	1982	1987.
Montrose District	Uncompahgre	Uncompahgre	RMP	1984	1986 [4]	1986.
Montrose District	San Juan	San Juan	RMP	1981	1984	1985.
Canon City District	Royal Gorge	Royal Gorge	MFP-A	1982	1983	1984.
Canon City District	San Luis	San Luis	MFP-A	1982	1983	1984.
Canon City District	San Luis	Saguach	MFP-A	1982	1983	1984.
Grand Junction District	Glenwood Springs	Glenwood Springs	RMP	1980	1983	1987.
Grand Junction District	Grand Junction	Grand Junction	RMP	1984	1986 [4]	
Idaho:						1985.
Salmon District	Challis	Challis	MFP-A	1981	1982	1986.
Coeur D' Alene District	Emerald Empire Cottonwood	North Idaho	MFP-A	1981	1982	1986.
Shoshone District	Bennett Hills	Shoshone	MFP-A	1981	1982	1986.
Shoshone District	Monument	Sun Valley	MFP-A	1982	1983	1986.
Idaho Falls District	Big Butte	Little Lost Birch Creek-Big Desert	MFP-A	1981	1982	1986.
Idaho Falls District	Soda Springs	Bear Lake	MFP-A	1982	1983	1986.
Burley District	Magic	Twin Falls	MFP-T	1981	1983	1984.
Burley District	Bannock-Oneida	Bannock Oneida	MFP-A	1982	1983	1985.
Boise District	Owyhee	Owyhee [5]	MFP-A	1981	1984	1985.
Boise District	Bruneau	Bruneau-Kuna	MFP-T	1981	1984	1986.
Idaho Falls District	Big Butte	Big Lost-Mackay	MFP-T	1981	1984	1986.
Salmon District	Pahsimerol	Ellis	MFP-T	1981	1984	1987.
Idaho Falls District	Medicine Lodge	Medicine Lodge	RMP	1982	1985	1987.
Boise District	Jarbidge	Jarbidge	RMP	1981	1984	1987.
Shoshone District	Monument	Monument	RMP	1982	1985	1987.
Salmon District	Lemhi	Lemhi	RMP	1982	1985	1987.
Boise District	Cascade	Cascade	MFP-A	1985	1986	
Montana:						1985.
Butte District	Headwaters	Headwaters	RMP	1980	1983	1985.
Butte District	Mountain Foothills	Dillon	MFP-A	1982	1983	1987.
Butte District	Garnet	Garnet	RMP	1982	1985	1985.
Lewistown District	Havre	South Bearpaw	MFP-A [6]	1981	1982	

SECTION B.—*Wilderness Study and Reporting Schedule* [1]—Continued

State and district	Resource area	Plan name	Type	Plan start	Plan completion	Reporting year to the Secretary of the Interior
Lewistown District	Judith	Fergus	MFP-A [6]	1981	1982	1985.
Lewistown District	Phillips	Phillips	MFP-A [6]	1981	1982	1985.
Lewistown District	Valley	Valley	RMP	1983	1986	1987.
Lewistown District	Billings	Billings	RMP	1981	1984	1987.
Miles City District	Big Dry	New Prairie	MFP-T	1980	1982	1986.
Miles City District	Powder River	Powder River	RMP	1981	1984	1987.
Miles City District	Big Dry	Musselshell	MFP-A	1985	1986	1987.
Nevada:						
Las Vegas District	Caliente	Caliente	MFP-A	1981	1983 [7]	1985.
Las Vegas District	Clark	Clark	MFP-A	1983	1984	1985.
Ely District	Egan	Egan	RMP	1981	1984	1986.
Elko District	Elko	Elko	RMP	1982	1986 [9]	1987.
Stateline-Esmeralda District	Esmeralda	Esmeralda	RMP	1982	1986 [9]	1987.
Carson City District	Lahontan	Lahontan	RMP	1981	1985 [9]	1987.
Winnemucca District	Paradise Denio	Paradise Denio	MFP-A	1981	1983 [8]	1986.
Ely District	Schell	Schell	MFP-A	1983	1984	1987.
Battle Mtn. District	Shoshone-Eureka	Shoshone-Eureka	RMP	1981	1984	1986.
Winnemucca District	Sonona-Gerlack	Sonona-Gerlack	MFP-A	1982	1983	1986.
Battle Mtn. District	Tonopah	Tonopah	MFP-A	1981	1982	1986.
Carson City District	Walker	Walker	RMP	1982	1986 [9]	1987.
Elko District	Wells	Wells	RMP	1980	1983	1987.
New Mexico:						
Las Cruces District	Las Cruces/Lordsburg	Las Cruces/Lordsburg	RMP	1981	1984	1985.
Las Cruces District	White Sands	Whate Sands	RMP	1983	1986	1987.
Las Cruces District	White Sands	Sacramento Escarpment	Forest Plan	1981	1981	1985.
Las Cruces District	White Sands	Guadulupe Escarpment	Forest Plan	1981	1981	1985.
Albuquerque District	Farmington	Chaco	MFP-T	1980	1983 [10]	1984.
Albuquerque District	Rio Puerco	Rio Puerco	RMP	1983	1986	1987.
Albuquerque District	Taos	Taos	RMP	1982	1985	1986.
Roswell District	Carlsbad	Carlsbad	MFP-A	1985	1986	1987.
Roswell District	Roswell	Roswell	RMP	1982	1985	1986.
Socorro District	San Augustine	Divide	MFP-T	1980	1982	1985.
Socorro District	Jornada	Jornada	MFP-A	1985	1986	1987.
Socorro District	Jornada	Sierra Ledrones	MFP-A	1981	1982	1986.
Oregon:						
Prineville District	Central Oregon/Deschutes	Brothers	MFP-T	1979	1981	1985.
Burns District	Andrews [13]	Andrews	MFP-T	1979	1981	1985.
Vale District	Southern Malheur	Southern Malheur	MFP-T	1980	1982	1986.
Vale District	Northern Malheur	Northern Malheur	MFP-A [11]	Planning—fiscal year 1980; EIS—fiscal year 1983.	Planning—fiscal year 1982; EIS—fiscal year 1984.	1987.
				Fiscal year:	Fiscal year:	
Medford District	Klamath	Medford	MFP-A [5]	1981	1984	1987.
Coos Bay District	Myrtle Wood	South Coast	MFP-A [12]	1981	1984	1987.
Lakeview District	High Desert	High Desert	MFP-A	1983	1984	1987.
Lakeview District	Warner Lakes	Warner Lakes	MFP-A	1983	1984	1987.
Burns District	Riley/Drewsey	Drewsey	MFP-A [13]	1981	1984	1985.
Baker District	Baker	Baker	MFP-A	1985	1986	1987.
Baker District	Grande Ronde	Grande Ronde	RMP	1983	1986	1987.
Burns District	John Day	John Day	RMP	1981	1984	1987.
Prineville District	Central Oregon/Deschutes	Two Rivers	RMP	1982	1985	1987.
Spokane District	Border	Border	RMP	1982	1985	1987.
Utah:						
Salt Lake District	Toole	Pony Express	MFP-T	1981	1983	1985.
Cedar City District	Kanab-Escalante	Escalante/Kanab	MFP-A	1981	1982	1984.
Cedar City District	Dixie	Dixie	MFP-A	1981	1982	1985.
Richfield District	House Range	House Range	RMP	1981	1984	1987.
Richfield District	Warm Springs	Warm Springs	MFP-A	1985	1986	1987.
Richfield District	Henry Mtns.	Henry Mtns.	MFP-T	1980	1982	1985.
Moab District	San Rafael	San Rafael	MFP-A	1984	1985	1986.
Moab District	Price River	Price River	MFP-A	1985	1986	1987.
Moab District	Grand	Grand	RMP	1980	1983	1987.
Moab District	San Juan	San Juan	RMP	1983	1986	1987.
Vernal District	Three Corners	Diamond Mountain	MFP-A	1983	1984	1985.
Vernal District	Book Cliffs	Book Cliffs	RMP	1981	1984	1987.
Richfield District	Henry Mountains	Henry Mountains	MFP-A	1981	1982	1983.
Wyoming:						
Rock Springs District	Kemmerer	Pioneer Trails	MFP-A	1981	1982	1984.
Worland District	Grass Creek	Grass Creek	MFP-T	1979	1981	1986.
Rock Springs District	Salt Wells	Salt Wells	MFP-T	1979	1981	1985.
Rock Springs District	Big Sandy	Pilot Butte	MFP-T	1979	1981	1985.
Rawlins District	Overland	Overland	MFP-T	1980	1982	1985.
Rawlins District	Divide	Divide/Ferris	MFP-T	1980	1982	1986.
Casper District	Buffalo	Buffalo	RMP	1983	1986	1987.
Rawlins District	Lander	Gas Mills	RMP	1982	1985	1987.
Worland District	Washakie	Washakie	RMP	1983	1986	1987.
Worland District	Cody	Cody	MFP-A	1985	1986	1987.
Rawlins District	Medicine Bow	Medicine Bow	RMP	1983	1986	1987.
Rock Springs District	Pinedale	Pinedale	MFP-A	1982	1983	1987.

SECTION B.—*Wilderness Study and Reporting Schedule* [1]—Continued

[1] All wilderness *management framework plan amendments* (MFP–A) are, unless otherwise noted, 2-year efforts which include the concurrent development of a wilderness environmental impact statement (EIS). *Transition management framework plans* (MFP–T) are 3-year efforts. Many of these are ongoing and wilderness considerations are being incorporated during the process. Unless otherwise noted, a wilderness EIS will be developed at the conclusion of the MFP–T. *Resource management plans* (RMP) are, unless otherwise noted, 4-year efforts which include the concurrent development of an environmental impact statement addressing all the proposed actions within the RMP. A separate final wilderness legislative EIS will be developed following publication of the proposed resource management plan.

[2] Joint study with BLM-Nevada lead agency.

[3] Joint study USFS—fiscal year 1981—USFS Lead; fiscal year 1982–83—BLM development of EIS, MFP–A.

[4] Two-year resource inventory will precede the RMP effort.

[5] Concurrent effort with Bruneau-Kuna MFP–T effort so that all wilderness study areas in the same geographic region can be examined simultaneously. Wilderness EIS for both is developed concurrently.

[6] Consolidated into one amendment, "Missouri Breaks."

[7] One additional year is required to incorporate the results of a pilot mineral resources inventory conducted on a cost sharing basis by the Nevada Bureau of Mines and Geology.

[8] These RMPs will require one additional year to complete an extensive inventory of all existing resources excluding wilderness.

[9] One additional year is required to incorporate the results of a pilot mineral resources inventory conducted on a cost sharing basis by the Nevada Bureau of Mines and Geology.

[10] Includes concurrent wilderness EIS development.

[11] Wilderness studies and EIS are scheduled for concurrent development with the Southern Malheur MFP–T effort so that all the WSAs in the same geographic region can be examined simultaneously. The wilderness EIS for both areas will be developed concurrently with the Southern Malheur Grazing EIS.

[12] Wilderness studies for both plans are integrated with a grazing plan amendment and EIS for the Medford Plan.

[13] Wilderness studies for both plans are integrated together.

Dated: January 13, 1981.

Ed Hastey,

Associate Director.

[FR Doc. 81–1638 Filed 1–16–81; 8:45 am]

BILLING CODE 4310–84–M

Status of Wilderness Review of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Status of Wilderness Review of Public Lands.

SUMMARY: This notice summarizes the present status of the wilderness review of roadless public lands and islands required by the Federal Land Policy and Management Act (FLPMA), section 603(a). The purpose of this notice and calendar of events are to provide (1) one source of information summarizing current wilderness review activities, and (2) advance notice of upcoming decisions and public review periods.

DATE: All information in this notice is current through January 13, 1981.

FOR FURTHER INFORMATION CONTACT: Gary G. Marsh, Bureau of Land Management, Division of Wilderness and Environmental Areas, 18th and C Street, N.W., Washington, D.C. 20240, Telephone: (202) 343–6064.

SUPPLEMENTARY INFORMATION: This calendar of events is the twelfth in a series whose last notice appeared in the **Federal Register** December 17, 1980, (p. 83028). The calendar of events focuses only on the current status of all ongoing wilderness review activities. Those inventories whose final decisions are in effect, as well as studies or reports not yet initiated, are not reported in this notice. For detailed information regarding each specific activity, reference is made either to the appropriate notice previously appearing in the **Federal Register**, or to notices which are anticipated to be published in the upcoming 30 days. It must be noted that "anticipated" dates are projected only, and thus are subject to change.

The Bureau of Land Management wilderness review includes (1) an inventory of public lands to identify roadless lands and islands having wilderness characteristics; (2) a study of those areas found to have wilderness characteristics (wilderness study areas or "WSA's"); and (3) a report from the Secretary of the Interior to the President as to whether each WSA is more suitable for wilderness or other resource uses. The President will send his recommendations to Congress. Only Congress has authority to designate an area as wilderness.

The inventory process has two stages: (1) an initial inventory designed to quickly identify and release from wilderness review those lands which clearly and obviously lack wilderness characteristics; and (2) an intensive inventory for those lands which may possess wilderness characteristics. The initial inventory process was completed in the contiguous Western States by November, 1979. In certain instances where important resource use decisions were pending, the criteria used in the intensive inventory process were applied ahead of the regular inventory schedule in order to reach final decisions as quickly as possible. Such inventories are referred to as "special project inventories" or "accelerated intensive inventories."

The wilderness intensive inventory for 14 contiguous Western States was completed for the majority of those lands and was announced in the **Federal Register** on November 14, 1980 (p. 75574). The statistical summary table reflects both proposed and final intensive inventory decisions in the contiguous Western States, Minnesota, and a special Nonwilderness Assessment in Alaska related to the Alaska Natural Gas Transportation System route. All acreages are presented by State political boundaries and not BLM administrative boundaries. Some final decisions listed under the "inventory completed" column may be under protest or appeal. In those instances, decisions are not yet in effect and are subject to interim management requirements are required by FLPMA, section 603(c). Any appeals of the State Directors' wilderness inventory decisions will be subject to the administrative procedures as outlined in Title 43 *Code of Federal Regulations*, Part 4. This regulation identifies the Interior Board of Land Appeals as the office to evaluate and act on such appeals.

The FLPMA also directed the Secretary of the Interior to make recommendations to the President on 55 natural and primitive areas which were formally identified prior to November 1, 1975. They are referred to as "instant study areas" (ISA's). To date BLM has reviewed these areas and submitted final suitability recommendations on 19 areas to the President. These recommendations are under administrative review. The President also has received status reports for the remaining 36 areas which outlined the progress in the development of final recommendations concerning their suitability for designation as wilderness.

The Notice of Availability of the draft Wilderness Study Policy and public comment period was announced in the **Federal Register** December 19, 1980 (p 83779). Two additional documents concerning the BLMN wilderness review program was anticipated to be announced in the **Federal Register** in mid-January, 1981, in which public review and comment will be requested: (1) a proposed wilderness study schedule, (2) a draft document containing management policies and guidelines for BLM administered wilderness areas. Any person wishing to receive these future documents for review should request copies from BLM State Directors or the Division of Wilderness and Environmental Areas,

Bureau of Land Management (430), 18th and C Street, N.W., Washington, D.C. 20240.

Dated: January 14, 1981.

Alden Sievers,

Acting Assistant Director, Recreation and Environmental Areas.

Calendar of Events

Arizona

Statewide Intensive Inventory:
—Final decision announced in **Federal Register** November 14, 1980, (p. 75577); protest period was extended and ended December 30, 1980, as announced in **Federal Register** December 10, 1980, (p. 81264) with protests. Decision on protests anticipated to be announced on or prior to February 13, 1981.

Accelerated Intensive Inventory:
—Hualapai-Aquarius Planning Area final decision announced in **Federal Register** October 14, 1980, (p. 67780); 30-day protest period ended November 14, 1980, with protest. Affects units 020–059, 062. Protest decision anticipated late January, 1981.
—State Director's decision on protests for the Overthrust Belt anticipated late January 1981. Affects units: 1–105 to 1–109, 1–112 to 1–115, 1–119 to 1–124, 1–127 to 1–130, 1–134, 1–135.

Study/Reporting:
—Aravaipa Canyon Instant Study Area final environmental impact statement and suitability report complete; under administrative review.
—Pauite, Paria, and Vermillion Cliffs ISA's draft suitability report and draft environmental impact statement availability announced in **Federal Register** April 22, 1980, (p. 27022); U.S. Geological Survey and Bureau of Mines mineral reports availability announced in **Federal Register** September 25, 1980, (p. 63558); public comment period ended December 22, 1980.

California

Statewide Intensive Inventory:
—Final decision for California-Oregon and California-Nevada interstate units announced in **Federal Register** November 14, 1980, (p. 75583) initiating a 30-day protest period ending on December 15, 1980. Protest extended and ended December 29, 1980 with protests. Decision on protests anticipated to be issued on or prior to February 13, 1981.

IBLA decision:
—December 11, 1980, IBLA dismissed certain CDCA units: 137A, 271, 305, 343, and 376 due to appellant's failure to file a statement of reasons and voluntary withdrawal.

Colorado

Statewide Intensive Inventory:
—Final decision announced in **Federal Register** November 14, 1980, (p. 75584); 30-day protest period ended December 15, 1980, with protests as announced in **Federal Register** January 5, 1981 (p. 1033). Decision on protests will be issued on or prior to February 13, 1981.

Study/Reporting:
—Powderhorn ISA draft environmental impact statement and draft suitability report availability announced in **Federal Register** May 7, 1980, (p. 30141); public comment period ended July 1, 1980.

Idaho

Statewide Intensive Inventory:
—State Director's proposed intensive inventory decision on Jim Sage unit 23–1 announced in **Federal Register** June 4, 1980, (p. 37738) initiating a 90-day comment period, which ended September 2, 1980; (p. 75586); 30-day protest period ended December 15, 1980, without protest.

Statewide Intensive Inventory:
—Final decision announced in **Federal Register** November 14, 1980, (p. 75586); 30-day protest period ended December 15, 1980 with protests as announced in **Federal Register** January 5, 1981, (p. 1038). Decision on protests anticipated to be issued on or prior to February 13, 1981.
—IBLA issued decision on November 26, 1980, directing the BLM State Director to release the intensive inventory decision for Stateline initial inventory units 16–48A (contiguous with OR–3–194A), 16–48B (contiguous with OR–3–195), 16–48C, 16–53 (contiguous with NV–010–103 and 103A), 16–56A (contiguous with NV–010–102), 16–59, 16–70E (contiguous with NV–020–811 and OR–3–159), 17–19, 17–21, 17–26, (contiguous with NV–010–179), 22–1 (contiguous with NV–010–164 and UT 020–001). Proposed decision anticipated to be announced late February initiating a 90-day public comment period.

Study/Report:
—Great Rift ISA draft environmental impact statement availability announced in **Federal Register** March 5, 1980, (p. 14251); public comment period ended May 27, 1980; under administrative review.

Montana

Statewide Intensive Inventory:
—Final decision announced in **Federal Register** November 14, 1980, (p. 75589) protest period ended December 31, 1980 with protests. Decision on protests anticipated to be issued on or prior to February 13, 1981.

Study/Reporting:
—Humbug Spires and Bear Trap Canyon ISA's draft environmental impact statements and draft suitability reports availability announced in **Federal Register** April 18, 1980. (p. 26477) and April 30, 1980, (p. 28823); public comment period ended June 17, 1980. U.S. Geological Survey and Bureau of Mines mineral reports were available for 30-day public review during the month of October as announced in **Federal Register** September 26, 1980, (p. 64937).

Nevada

Statewide Intensive Inventory:
—Final decision announced in **Federal Register** November 14, 1980, (p. 75594), 30-day protest period ended December 15, 1980, with protests. Decision on protests anticipated to be issued on or prior to February 13, 1981.

New Mexico

Statewide Intensive Inventory:
—Final decision announced in **Federal Register** November 14, 1980, (p. 75590); correction published in **Federal Register** December 19, 1980 (p. 83679); 30-day protest period ended on December 15, 1980 with protests. Decision on protests anticipated to be issued on or prior to February 13, 1981.

Oregon

Statewide Intensive Inventory (includes Washington):
—Final decision announced in **Federal Register** November 14, 1980, (p. 75597); 30-day protest period ended on December 15, 1980, with protests. Decision on protests anticipated to be issued on or prior to March, 1981.

Utah

Statewide Intensive Inventory:
—Final decision announced in **Federal Register** November 14, 1980, (p. 75602); 30-day protest period ended December 15, 1980, with protests as announced in **Federal Register** December 31, 1980, (p. 86556). Decision on protests anticipated to be issued on or prior to February 13, 1981.

Study/Reporting:

—Correction on Devil's Garden ISA published in **Federal Register** December 31, 1980, (p. 86558).

Wyoming

Statewide Intensive Inventory:

—Final decision announced in **Federal Register** November 14, 1980, (p. 75606); 30-day protest period ended December 15, 1980, with protests as announced in **Federal Register** December 29, 1980, (p. 85526). Decision on protests anticipated to be issued on or prior to February 13, 1981.

Study/Reporting:

—Scab Creek ISA draft environmental impact statement and draft suitability report notice of availability, along with scheduled hearings announced in **Federal Register** December 9, 1980, (p. 81127).

Inventory Units Under Appeal to IBLA

State	Initial (Non-CDCA)	Special project/ accelerated intensive	Intensive: CDCA	Intensive: Non-CDCA
CA	010-031		117	010-040
	-033		131	-060
	-047		136	-063
	-069			-065
	-087		143	-068
	-101		150	020-211
	020-701		156	-609
	-901		158	-1013
	-1001		172	030-054
	030-300		217	050-131
	-400		221	-134
	-500		222	-135
			227	-211
			242	
			263	
			264	
			265	
			299	
			321	
			325	
			334	
			348	

Inventory Units

State	Initial	Special project/ accelerated intensive	Intensive
CO	070-031		
ID	35-3	16-26	46-11
	-4	-28	-13
	-5	-36	-14
		-40	-14A
		-41	
		-42	
		-44	
		-45	
		-47	
		-49A	
		-49B	
		-49D	
		-49E	
		-52	
MT		064-356	
		075-123	
		076-001	
		-002	
		-003	
		-007	
		-011	
MT		-022	
		-025	
		-026	
		-028	
		-034	
		-059	
		-069	
NV	010-102/ID-16-56A		
	-103/ID-16-53	020-642/ IDOR—2-81	
	-103A/ID-16-53		

Inventory Units—Continued

State	Initial	Special project/ accelerated intensive	Intensive
	-179/ID-27-1/ UT-020-001.		
	020-811/ID-16-70E/ OR-3-159.		
OR	3-159/ID-16-70E/ NV-020-811.	2-81L/ NV—020-642	
		2-82H	
	3-194A/ID-16-48A		
	3-195/ID-16-48B		
	11-6		

Inventory Units—Continued

State	Initial	Special project/ accelerated intensive	Intensive
UT	020-011/ID-22-1/ NV-010-164.	050-233	
		-236	
		060-007	
UT		-011	
		-012	
WY		040-110	
		-221	
		-222	
		-223	

Statistical Summary Table.—*BLM Wilderness Inventory Results (Shown in Acres) as of Jan. 1, 1981*

Contiguous Western States	Public lands subject to wilderness inventory	Proposed intensive inventory decisions: Not yet announced	Announced-subject to public review: Lacking wilderness characteristics	Announced-subject to public review: With wilderness characteristics	Inventory completed final decisions announced: Lacking wilderness characteristics	Inventory completed final decisions announced: Wilderness study areas.
AZ	12,596,000	822,000	0	0	9,116,000	2,658,000
CA	16,585,000	0	0	0	10,339,000	6,246,000
CO	7,996,000	3,000	0	0	7,189,000	804,000
ID	11,949,000	252,000	0	0	10,105,000	1,592,000
MT	8,140,000	46,000	0	0	7,664,000	430,000
NV	49,116,000	103,000	0	0	43,895,000	5,120,000
NM	12,847,000	9,000	0	0	11,814,000	1,024,000
ND	68,000	0	0	0	68,000	0
OK	7,000	0	0	0	7,000	0
OR	13,965,000	280,000	0	0	11,194,000	2,491,000
SD	277,000	0	0	0	277,000	0
UT	22,076,000	0	0	0	19,499,000	2,577,000
WA	310,000	0	0	0	304,000	6,000
WY	17,793,000	0	0	0	17,212,000	581,000
Subtotal	173,727,000	[1] 1,515,000	0	0	148,683,000	23,529,000
Eastern States: MN	45,000	0	0	0	45,000	0

[1] Includes initial inventory units under protest or appeal and where additional time is needed for interagency coordination.

Alaska—Nonwilderness Assessment of the Alaska Natural Gas Transportation System route reviewed 2,482,000 acres of public land, of which 1,474,000 acres were removed from wilderness review and interim management policy (IMP) constraints and 1,008,000 acres are subject to the IMP and further inventory at a later date. Final decision in **Federal Register,** June 2, 1980 (p. 37304).

[FR Doc. 81-1842 Filed 1-16-81; 8:45 am]

BILLING CODE 4310-84-M

Heritage Conservation and Recreation Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before January 9, 1981. Pursuant to § 1202.13 of 36 CFR Part 1202, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, Heritage Conservation and Recreation Service, U.S. Department of the Interior, Washington, D.C. 20243. Written comments should be submitted by February 3, 1981.

Carol Shull,

Acting Chief, Registration Branch.

CALIFORNIA

Los Angeles County

Pacific Palisades vicinity, *Josepho Barn,* 1000 Rustic Rd.

Pacific Palisades vicinity, *Murphy Ranch Powerhouse,* 1000 Rustic Rd.

FLORIDA

Hillsborough County

Plant City, *Plant City High School,* N. Collins St.

NEBRASKA

Franklin County

Naponee, *First Congregational Church, U.C.C.,* Off NE 31C

OKLAHOMA

Payne County

Stillwater, *Citizens Bank Building,* 107 E. 9th St.

SOUTH DAKOTA

Brookings County

Brookings, *Horticulture Building,* South Dakota State University

Minnehaha County

Hartford, *Mundt, John, Building,* 103 N. Main Ave.

Pennington County

Keystone, *Keystone School,* 3rd St.

Rapid City, *Rapid City Carnegie Library,* 604 Kansas City St.

UTAH

Cache County

Smithfield, *Smithfield Public Library,* 25 N. Main St.

WYOMING

Park County

Cody vicinity, *Mummy Cave,* W of Cody

[FR Doc. 81-1810 Filed 1-16-81; 8:45 am]

BILLING CODE 4310-03-M

Approval of the Lower Little Miami River as a State-Administered Component of the National Wild and Scenic River System

Correction

In FR Doc. 81-925, published on page 2725, on Monday, January 12, 1981, in the second column, "Dated: January 11, 1981." should be corrected to read "Dated: January 11, 1980."

BILLING CODE 1505-01-M

INTERSTATE COMMERCE COMMISSION

[Notice No. 205]

Assignment of Hearings

January 12, 1981.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be held on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC-C-10641, Capitol Bus Company v. Newhurst, Inc., now assigned for hearing on January 7, 1981 (3 days), at Harrisburg, PA will be held at the Liquior Control Board, 1st Floor Hearing Room, Northwest Office Building, Capitol Forester Street.

MC 59856 (Sub-89F), Salt Creek Freightways, now assigned for hearing on January 5, 1981, is postponed to February 23, 1981 (2 weeks), Salt Lake City, UT, in a hearing room to be later designated.

MC 104149 (Sub-206M1F), Osborne Truck Line, Inc., now assigned for hearing on January 8, 1981, at St. Louis, MO, is canceled and re-assigned to January 8, 1981 (2 days), at the Interstate Commerce Commission, Washington, D.C.

MC 125433 (Sub-302F), F-B Truck Line Company, now assigned fro hearing on Januray 20, 1981, at Chicago, IL is canceled and application is dismissed.

MC 147568F, Sam Broussard Trucking Co., Inc., now assigned for hearing on December 1, 1980 (3 days), at New Orleans, LA will be held in Room No. 648, F. Edward Hebert Federal Building 600 South Street.

MC 142264 (Sub-2F), P.P.C., Inc., is transferred to Modified Procedure.

MC 42487 (Sub-928F), Consolidated Freightways Corporation, now assigned for continued hearing on January 19, 1981 (2 days), at Minneapolis, MN, in a hearing room to be later designated.

MC-F-14162F, Mccarty Truck Line, Inc.—Purchase (Portion)—Western Transportation Company, MC-F-14196, Mccarty Truck Line, Inc.—Purchase—De Wayne Marlay DBA Pike Truck Line, No. MC-F-14221F, Mccarty Truck Line, Inc.—Purchase (Portion)—Nebraska Iowa Missouri Express, Inc. And Kruse Transportation Co., Inc. MC 1263 (Sub-33F), MC 1263 (Sub-34 & 35F), Mccarty Truck Lines, Inc., MC-F-14332, Mccarty Truck Line, Inc.—Purchase (Portion)—Kruse Transportation Co., Inc., now assigned for hearing on December 2, 1980 (9 days), at Chicago, IL will be held in Room 1221, Everette Mckinley Dirksen Building, 219 South Dearborn Street.

MC 107496 (Sub-1244F), Ruan Transport Corporation, now assigned for hearing on December 2, 1980 (4 days), at Des Moines, IA will be held at the Hotel Savery, 4th & Locust.

MC 115826 (Sub-511F), W. J. Digby, Inc., now assigned for hearing on December 5, 1980 (1 day), at Denver, CO will be held in Suite 700, Securities and Exchange Commission, 410-17th Street.

MC 106194 (Sub-39F), Horn Transportation, Inc., now assigned for hearing on December 8, 1980 (1 week), at Denver, CO will be held in Suite 700, Securities and Exchange Commission, 410-17th Street.

MC 113651 (Sub-321F), Indiana Refrigerator Lines, Inc., now assigned for hearing on March 3, 1981 (1 day), at Chicago, IL, in a hearing room to be later designated.

MC 148968F, Universal Deliveries, Inc., now assigned for hearing on March 4, 1981 (3 days), at Chicago, IL, location of hearing room will be later designated.

MC 8515 (Sub-40F), Tobler Transfer, Inc., now assigned for hearing on March 9, 1981 (2 days), at Chicago, IL, in a hearing room to be later designated.

MC 115113 (Sub-36F), Iowa Packers Xpress, Inc., now assigned for hearing on March 11, 1981, (3 days), at Chicago, IL, in a hearing room to be later designated.

MC 73165 (Sub-513F), Eagle Motor Lines, Inc., now assigned for hearing on March 9, 1981, (5 days), at New Orleans, LA in a hearing room to be later designated and continued to April 7, 1981 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 109462 (Sub-29F), Lumber Transport, Inc., now assigned for hearing on March 16, 1981, (5 days), at Kansas City, MO in a hearing room to be later designated.

MC 135524 (Sub-114F), G. F. Trucking Co., now assigned for hearing on March 12, 1981, (2 days), at Kansas City, MO in a hearing room to be later designated.

MC 121568 (Sub-43F), Humboldt Express, Inc., now assigned for hearing on January 13, 1981, at Memphis, TN is canceled and applications dismissed.

MC 113974 (Sub-72F), Pittsburgh and New England Trucking Co., now assigned for hearing on February 10, 1981, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 96324 (Sub-43F), General Delivery, Inc., now assigned for hearing on February 10, 1981, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 124174 (Sub-177F), Momsen Trucking Co., now assigned for hearing on February 11, 1981, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 135684 (Sub-103F), Bass Transportation Co., Inc., now assigned for hearing on February 12, 1981, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 60014 (Sub-191F), Aero Trucking, Inc., now assigned for hearing on February 26, 1981, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC-C-10714, Carolina Coach Company v. Capital Cities Coach Company now assigned for hearing on February 24, 1981, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 143799 (Sub-4F), Specialty Transport, Inc., now assigned for hearing on February 24, 1981 (5 days), at Philadelphia, PA, in a hearing room to be later designated.

MC 148392 (Sub-3F), Service Transport, Inc., now assigned for hearing on February 24, 1981, (9 days), at Cookeville, TN, location of hearing room will be by subsequent notice.

MC 59617 (Sub-7F), Wares' Van Storage, Inc., now assigned for hearing on February 3, 1981 (3 days) at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC-C-10717, Salem Transportation Co., Inc. v. Yellow Limousine Service, Inc., et al, now assigned for hearing on February 4, 1981 (3 days) at Philadelphia, PA in a hearing room to be later designated.

MC 59856 (Sub-90F), Salt Creek Freightways, now assigned for hearing on February 23, 1981 (2 weeks) at Salt Lake City, UT in a hearing room to be later designated.

MC 148648F, Great Plains Transports, Inc., now assigned for hearing on January 26, 1981 at Oklahoma City, OK will be held in room 911, Alfred P. Murrah Building, 200 North West Fifth Street.

MC 76266 (Sub-132F), Admiral-Merchants Motor Freight, Inc., now assigned for hearing on March 9, 1981 (2 weeks) at Milwaukee, WI in a hearing room to be later designated.

MC 119774 (Sub-109F), Eagel Trucking Company, now assigned for hearing on March 24, 1981 (4 days) at Houston, TX and continued to March 30, 1981 (5 days) at Dallas, TX and continued to May 5, 1981 (4 days) at Dallas, TX in a hearing room to be later designated.

MC 144678 (Sub-9F), American Freight System, Inc., now assigned for further Prehearing Conference on March 16, 1981 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 73165 (Sub-519F), Eagle Motor Lines, Inc., now assigned for hearing on May 4, 1981 (5 days) at Tampa, FL in a hearing room to be later designated.

MC 73165 (Sub-519F), Eagle Motor Lines, Inc., now assigned for hearing on May 4, 1981 (5 days) at Tampa, FL in a hearing room to be later designated.

MC 73165 (Sub-519F), Eagle Motor Lines, Inc., now assigned for hearing on May 20, 1981 (1 day) at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 119988 (Sub-246F), Great Western Trucking Co., Inc., now assigned for hearing on January 14, 1981 at Dallas, TX is postponed indefinitely.

MC 129908 (Sub-56F), American Farm Lines, Inc., now assigned for hearing on January 15, 1981 at Dallas, TX is canceled and reassigned to January 15, 1981 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 94201 (Sub-179F), Bowman Transportation, Inc., No. MC-94201 (Sub-No. 181F), Bowman Transportation, Inc., now assigned for hearing on January 6, 1981 at Dallas, TX is postponed to January

19, 1981 (5 days) at Dallas, TX will be held at the Holiday Inn Downtown, 1015 Elm Street and continued to February 24, 1981 (4 days) at Dallas, TX in a hearing room to be later designated.

MC 105006 (Sub-11F), L. L. Smith Trucking, now assigned for hearing on January 12, 1981 at Casper, WY is canceled and application is dismissed.

MC 119493 (Sub-386F), Monkem Company, Inc., now assigned for hearing on January 12, 1981 at St. Paul, MN is transferred to Modified Procedure.

MC 118318 (Sub-44F), Ida-Cal Freight Lines, Inc., now assigned for hearing on January 8, 1981 at Boise, ID is transferred to Modified Procedure.

MC 136008 (Sub-114F), Joe Brown Company, Inc., now assigned for hearing on January 22, 1981 (2 days) at Oklahoma City, OK will be held in room 911, Alfred P. Murrah Building, 200 North West Fifth Street.

MC 136012 (Sub-6F), United States Transportation, Inc., now assigned for hearing on January 12, 1981 at Cincinnati, OH is cancelled and application is dismissed.

MC 147470F, Ray Cobb Transportation Co., Common Carrier Application, now assigned for hearing on January 13, 1981 at San Francisco, CA is transferred to Modified Procedure.

MC 145129 (Sub-4F), Whitaker Transportation Company, Inc., now assigned for hearing on January 26, 1981 at Chattanooga, TN is canceled and application is dismissed.

MC 145673 (Sub-6F), Road Rail Services, Inc., now assigned for hearing on January 7, 1981 at Chicago, IL is transferred to Modified Procedure.

MC 121568 (Sub-43F), Humboldt Express, Inc., now assigned for hearing on January 13, 1981 (4 days) at Memphis, TN will be held in Room 936—C. Davis Federal Building, 167 North Main Street.

MC 138875 (Sub-255F), Shoemaker Trucking Company, now assigned for hearing on January 6, 1981 at Boise, ID is canceled and application is dismissed.

MC 145579 (Sub-8F), D. D. Irvin Transport, Limited, now assigned for hearing on January 7, 1981 at Seattle, WA is transferred to Modified Procedure.

MC 107912 (Sub-29F), Rebel Motor Freight, Inc., now assigned for hearing on January 6, 1981 at Memphis, TN is transferred to Modified Procedure.

MC 109736 (Sub-48F), Capitol Bus Company, now assigned for hearing on January 26, 1981 (1 week) at Philadelphia, PA in a hearing room to be later designated.

FF 526F, United Van Lines, Inc., now assigned for hearing on January 27, 1981 at Washington, D.C., is postponed to February 10, 1981 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 23618 (Sub-63F), Mcallister Trucking Company DBA Matco, now assigned for hearing on February 9, 1981 at Dallas, TX and continued to March 16, 1981 at Dallas, TX is postponed and reassigned to February 17, 1981 at Houston, TX in a hearing room to be later designated.

MC 23618 (Sub-62F), Mcallister Trucking Company DBA Matco, now assigned for hearing on February 17, 1981 at Houston, TX is advanced and reassigned to February 9, 1981 (5 days) at Dallas, TX will be held at the Executive Inn, 3232 Mockingbird Lane, and continued to March 16, 1981 (5 days) at Dallas, TX will be held at the Executive Inn, 3232 Mockingbird Lane.

MC 111307 (Sub-11F), Overland Western Limited, now assigned for hearing on January 20, 1981 at Detroit, MI is canceled and application is dismissed.

MC 142941 (Sub-35F), Scarborough Truck Lines, Inc., now assigned for hearing on January 12, 1981 at Salt Lake City, UT is canceled and application is dismissed.

MC 115523 (Sub-186F), Clark Tank Lines, Inc., now assigned for hearing on January 13, 1981 at Salt Lake City, UT is postponed to February 24, 1981 (9 days) at Salt Lake City, UT in a hearing room to be later designated.

MC 11722 (Sub-62F), Brader Hauling Service, Inc., now assigned for hearing on January 12, 1981 at Seattle, WA is transferred to Modified Procedure.

MC 148752 (Sub-2F), H & H Services, Inc., now assigned for hearing on January 12, 1981 at Casper, WY is transferred to Modified Procedure.

MC 146962F, Mulder Trucking Company, now assigned for hearing on January 14, 1981 (3 days) at St. Paul, MN will be held in the Ramsey County Courthouse, County Board Meeting Room 356, Waubausha and Kellogg Boulevard.

MC 61264 (Sub-36F), Pilot Freight Carriers, Inc., now assigned for Prehearing Conference on January 9, 1981 at Washington, D.C., is transferred to Modified Procedure.

FF-523, Henry Ortiz, now assigned January 12, 1981, at Cleveland, OH, is cancelled and application dismissed.

MC 148078 (Sub-1F), Beau Parrish Express Co., Inc., now assigned for hearing January 27, 1981 (3 days), at Baton Rouge, LA, will be held in room No. 348, Ceta Plex Bldg. (Office Government Bldg.), 222 St. Louis Street.

MC 730 (Sub-507F), Pacific Intermountain Express Co., a Nevada corporation, now assigned hearing January 26, 1981 (1 day), at New Orleans, LA, will be held in room No. 648, F. Edward Hebert Fed. Bldg., 600 South Street.

MC 56679 (Sub-164F), Brown Transport Corp., now assigned hearing January 22, 1981 (1 day), at Memphis, TN, will be held in room No. 936, C. Davis Federal Building, 167 North Main Street.

MC 142743 (Sub-13F), Fast Freight Systems, Inc., now assigned hearing January 23, 1981 (1 day), at Memphis, TN, will be held in room No. 936, C. Davis Federal Bldg., 167 North Main Street.

MC 140094 (Sub-1F), Latin Express Service, Inc., MC 140094 (Sub-3F), Latin Express Service, Inc., now assigned for hearing on January 21, 1981 (3 days) at Miami, FL will be held at the Sheraton River House, Galeria No. 4, 3900 Northwest 21st Street.

MC 144606 (Sub-9F), Duncan Sales & Leasing Co., Inc., now assigned for hearing on January 19, 1981 at Phoenix, AZ is transferred to Modified Procedure.

MC 13651 (Sub-21F), Peoples Transfer, Inc., now assigned for hearing on January 19, 1981 at Sacramento, CA is canceled and application is dismissed.

MC 108223 (Sub-31F), Century-Mercury Motor Freight, now assigned for hearing on January 12, 1981 at St. Paul, MN is transferred to Modified Procedure.

MC 149331F, City Car Releasing Co., Inc., now assigned for hearing on February 26, 1981 (2 days) at Detroit, MI in a hearing room to be later designated.

37510, Menasha Corporation v. Louisville and Nashville Railroad Company, now assigned for hearing on January 24, 1981 (2 days) at Detroit, MI in a hearing room to be later designated.

MC 123389 (Sub-48F), Crouse Cartage Company, now assigned for hearing on January 15, 1981 at Omaha, NE is transferred to Modified Procedure.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-1836 Filed 1-16-81; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-43 (Sub-No. 43)]

Illinois Central Gulf Railroad Co.—Abandonment—Between Herscher and Barnes in Kankakee, Ford, Livingston, and McLean Counties, Ill.; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision October 4, 1979, as modified by the decision decided December 2, 1980, which is administratively final, was made by the Commission stating that, the public convenience and necessity permit the abandonment by the Illinois Central Gulf Railroad Company of the line of railroad extending from milepost 72 near Herscher, IL, to milepost 135 near Barnes, IL, a distance of 63 miles in Kankakee, Ford, Livingston, and McLean Counties, IL, subject to the conditions for the protection of employees discussed in *Oregon Short Line R. Co.—Abandonment Goshen*, 360 I.C.C. 91 (1979). A certificate of abandonment will be issued to the Illinois Central Gulf Railroad Company based on the above-described finding of abandonment, February 18, 1981, unless on or before February 3, 1981, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued. The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, D.C. 20423, no later than 10 days from publication of this Notice; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such

line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed. An offer may request that Commission to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made on the Commission to set conditions or amount of compensation, a certificate of abandonment will be issued no later than 50 days after this notice is published. Upon notification to the Commission of the execution of an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in 49 U.S.C. 10905 (as amended by the Staggers Rail Act of 1980, Pub. L. 96–448, effective October 1, 1980). All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81–1835 Filed 1–16–81; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 311]

Expedited Procedures for Recovery of Fuel Costs

Decided: January 13, 1981.

In our decision of January 6, 1980, a 15-percent surcharge was authorized on all owner-operator traffic, and on all truckload traffic whether or not owner-operators were employed. We ordered that all owner-operators were to receive compensation at this level.

The weekly figure set forth in the appendix for transportation performed by owner-operators and for truckload traffic is 15.7 percent. Accordingly, we are authorizing that the surcharge for this traffic be increased to 15.5-percent. All owner-operators are to receive compensation at this level.

In addition, the surcharge on less-than-truckload (LTL) traffic performed by carriers not utilizing owner-operators is increased to 2.7-percent, that for the bus carriers to 5.9-percent, and that for United Parcel Service to 1.7-percent.

Notice shall be given to the general public by mailing a copy of this decision to the Governor of each State and to the Public Utilities Commission or Boards of each State having jurisdiction over transportation, by depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection and by delivering a copy to the Director, Office of the Federal Register for publication therein.

It is ordered: This decision shall become effective Friday 12:01 a.m., January 16, 1981.

By the Commission, Chairman Gaskins, Vice Chairman Alexis, Commissioners Gresham, Clapp, Trantum, and Gilliam.

Agatha L. Mergenovich,

Secretary.

January 12, 1981.

Appendix.—*Fuel Surcharge*

Base date and price per gallon (including tax)

January 1, 1979 ..... 63.5¢

Date of current price measurement and price per gallon (including tax)

January 12, 1981 ..... 122.5¢

	Transportation performed by—			
	Owner operator [1]	Other [2]	Bus carrier	UPS
	(1)	(2)	(3)	(4)
Average percent fuel expenses (including taxes) of total revenue	16.9	2.9	6.3	3.3
Percent surcharge developed	15.7	2.7	5.9	[3] 2.5
Percent surcharge allowed	15.5	2.7	5.9	[4] 1.7

[1] Apply to all truckload rated traffic.
[2] Including less-than-truckload traffic.
[3] The percentage surcharge developed for UPS is calculated by applying 81 percent of the percentage increase in the current price per gallon over the base price per gallon to UPS average percent of fuel expense to revenue figure as of January 1, 1979 (3.3 percent).
[4] The developed surcharge is reduced 0.8 percent to reflect fuel-related increases already included in UPS rates.

[FR Doc. 81–1830 Filed 1–16–81; 8:45 am]

BILLING CODE 7035–01–M

[AB 160 (SDM)]

Montour Railroad Co.; Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the MONTOUR RAILROAD COMPANY has filed with the Commission its amended color-coded system diagram map in docket No. AB 160 (SDM). The Commission on December 29, 1980, received a certificate of publication as required by said regulation which is considered the effective date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each State in which the railroad operates and the Public Service Comission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 160 (SDM).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81–1833 Filed 1–16–81; 8:45 am]

BILLING CODE 7035–01–M

[Volume No. 3]

Motor Carrier Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: January 14, 1981.

The following restriction removal applications, filed after December 18, 1980, are governed by 49 CFR 1137. Part 1137 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with 49 U.S.C. 10922(h).

In the absence of comments filed on or before February 13, 1981, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Sporn, Alspaugh, and Shaffer.

Agatha L. Mergenovich,

Secretary.

MC 105755 (Sub-17X), filed January 12, 1981. Applicant: M.J.K. TRUCKING

CORP., 1040 John Alden Lane, Schenectady, NY 12306. Representative: John L. Alfano, Alfano & Alfano, 550 Mamaroneck Avenue, Harrison, NY 10528. Applicant seeks to reform its Sub-15 Certificate by (1) removing the commodity restriction "except mashed bananas", and (2) expanding its territoral authority to provide a round trip movement between Albany, NY, on the one hand, and, on the other, points in CT, MA, ME, NH, NJ, NY, RI and VT.

MC 114457 (Sub-583X), filed January 9, 1981. Applicant: DART TRANSIT COMPANY, 2102 University Avenue, St. Paul, MN 55114. Representative: James H. Wills (same as above). Applicant seeks to broaden the commodity description in its Sub-479F from automotive parts and materials and supplies used in the manufacture of automotive parts (except commodities in bulk) to such commodities as are dealt in by manufacturers of motor vehicles, and to remove restrictions against the transportation of specified commodities in its Sub-512F, parts 1 and 2, which authorizes the transportation of such commodities as are dealt in by home improvement centers.

MC 133917 (Sub-IIX), filed January 12, 1981. Applicant: CARTHAGE FREIGHT LINE, INC., P.O. Box 315, Carthage, TN 37030. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., NW., Washington, D.C. 20004. Applicant seeks removal of restrictions in its Sub-3 certificate in order to (1) broaden the commodity description from general commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) to general commodities (except Classes A and B explosives), and (2) authorize service at all intermediate points on the described regular-route, between South Carthage, TN, and Union Springs, AL.

MC 146199 (Sub-2X), filed January 12, 1981. Applicant: S.A.M. TRUCKING CO., INC., 1210 North Avenue, Plainfield, NJ 07062. Representative: Harold L. Reckon, 33–28 Halsey Road, Fair Lawn, NJ. Applicant seeks to remove restrictions in its Sub–1F permit to broaden the commodity description from aluminum chlorylhydrate (except in bulk) to chemicals and related products, and to broaden the territorial scope to include all points in the US.

[FR Doc. 81–1829 Filed 1–16–81; 8:45 am]

BILLING CODE 7035–01–M

[Volume No. 2]

Motor Carrier Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: January 13, 1981.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR 1137. Part 1137 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137. 12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with 49 U.S.C. 10922(h).

In the absence of comments filed on or before February 13, 1981, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Sporn, Alspaugh, and Shaffer.

Agatha L. Mergenovich,

Secretary.

MC 61440 (Sub-205X), filed January 8, 1981. Applicant: LEE WAY MOTOR FREIGHT, INC., 3401 Northwest 63rd Street, Oklahoma City, OK 73116. Representative: Richard H. Champlin, P.O. Box 12750, Oklh Oklahoma City, OK 73157. Applicant holds authority in Sub-160 to operate over regular routes transporting general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in AR, TN, and OK. It seeks to remove restrictions which prohibit the transportation of traffic originating at or destined to (1) points in AR, on the one hand, and, on the other, those points in the U.S. east of MT, WY, CO, and NM, (2) Texarkana, TX, and (3) Memphis, TN, and points in AR.

MC 99149 (Sub-18X), filed January 5, 1981. Applicant: MIDWAY MOTOR FREIGHT LINES, INC., 8400 New Benton Highway, Little Rock, AR 72219. Representative: Charles J. Lincoln, 1550 Tower Building, Little Rock, AR 72201. Applicant holds authority in Sub-6, 9, and 11 to operate over regular routes transporting general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in AR, TN, and LA. It seeks to remove restrictions in the authorities in order to serve all intermediate points on its routes between (1) Little Rock, Ar and Texarkana, TX, (2) Texarkana, AR and Shreveport, LA, (3) Hope, AR and Shreveport, LA, and (4) Hot Springs, AR and Memphis, TN.

MC 148553 (Sub-1X), filed January 5, 1981. Applicant: B. J. EXPRESS, INC., 4928 Assisi Lane, Cincinnati, OH 45238. Representative: Bobby Ray Johnson (same as applicant). Applicant seeks to remove restrictions in its lead certificate in order to (1) broaden the drug and toilet preparations commodity description to chemicals and elated products and to authorize round-trip authority radially between points in Hamilton County, OH, and points in Los Angeles County, CA, Tarrant County, TX, and Storey County, NV in place of its limited authority from Cincinnati, OH, to named facilities at Vernon, CA, Arlington, TX, and Sparks, NV; (2) broaden the commodity description from such commodities as are manufactured or dealt in by manufacturers of glass and glass products to such commodities as are manufactured or dealt in by manufacturers of clay, concrete, glass or stone products, and (3) broaden the commodity description from household products and foodstuffs to household products and food and related products and to authorize servcie (a) radially between Davidson County, TN, and Montgomery County, OH, on the one hand, and, on the other, Los Angeles County, CA, Mutnomah County, OR, AND Salt Lake County, UT, in place of its present authority between a city in each of the counties, and (b) to authorize round-trip authority between Los Angeles County, CA, and Washoe County, NV, in place of its present authority from La Miranda, CA, to Sparks, NV, and to remove a restriction to traffic originating at or destined to named facilities.

[FR Doc. 81–1828 Filed 1–16–81; 8:45 am]

BILLING CODE 7035–01–M

[Volume No. 2]

Petitions, Applications, Alternate Route Deviations, Intrastate Applications, Gateways, and Pack & Crate

Motor Carrier Alternate Route Deviations

Notice

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Passengers (49 CFR 1042.2(c)(9)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed on or before February 18, 1981.

Each applicant states that there will be no significant effect on either the quality of the human environment or energy policy and conservation.

Motor Carriers of Passengers

No. MC-74761 (Deviation No. 19), TRAILWAYS TAMIAMI, INC., 315 Continental Ave., Dallas, TX 75207, filed December 11, 1980. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage*, and *express* and *newspapers* in the same vehicle with passengers, over deviation routes as follows: From Lake City, FL over FL Hwy 27 to junction Interstate Hwy 75, then over Interstate Hwy 75 to junction US Hwy 441 near Alachua, FL, then over US Hwy 441 to Ocala, FL, with the following access route: From Gainesville, FL, over FL Hwy 26 to junction Interstate Hwy 75, and return over the same routes for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property over a pertinent service route as follows: From Lake City, FL over FL Hwy 47 to junction Interstate Hwy 75, then over Interstate Hwy 75 to junction FL Hwy 26, then over FL Hwy 26 to Gainesville, FL, then over US Hwy 441 to junction FL Hwy 331, then over FL Hwy 331 to junction FL Hwy 121 then over FL Hwy 121 to junction Interstate Hwy 75, then over Interstate Hwy 75 to junction US Hwy 27 near Ocala, FL, then over US Hwy 27 to Ocala, FL and return over the same route.

Motor Carrier Intrastate Application(s)

Notice

The following application(s) for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate of foreign commerce within the limits of the intrastate authority sought, pursuant to Section 10931 (formerly Section 206(a)(6)) of the Interstate Commerce Act. These applications are governed by Special Rule 245 of the Commission's *General Rules of Practice* (49 CFR 1100.245), which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, and any other related matters shall be directed to the State Commission with which the application is filed and shall *not* be addressed to or filed with the Interstate Commerce Commission.

New York Docket No. T-9810 (Correction), filed October 27, 1980. Applicant: GRAND ISLAND SALES & SERVICE, INC., 2024 Grand Island Blvd., Grand Island, NY 14072. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: Petroleum products between all points in Erie and Niagara Counties Intrastate, interstate and foreign commerce authority sought. Hearing: Date, time and place not yet fixed. Request for procedural information should be addressed to Department of Transportation, 1220 Washington Avenue, State Campus, Albany, NY 12232, and should not be directed to the Interstate Commerce Commission.

Noted.—The purpose of this correction is to indicate the correct commodity description as "petroleum products".

South Carolina Docket No. 80-331-T, Filed November 12, 1980. Applicant: R & D TRUCKING, INC., P.O. Box 2466, Greenville, SC 29603. Representative: Rex L. Carter, Esquire, 123 Broadus Avenue, P.O. Box 10304, Greenville, SC 29603. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: Commodities in General (Usual exceptions): Between points and places in Greenville County, and between points and places in Abbeville, Anderson, Cherokee, Chester, Fairfield, Greenwood, Kershaw, Laurens, Lexington, Newberry, Oconee, Pickens, Richland, Spartanburg, and Union Counties. Intrastate, interstate and foreign commerce authority sought. Hearing: Date, time and place not yet fixed. Requests for procedural information should be addressed to the State of South Carolina, The Public Service Commission, P.O. Drawer 11649, Columbia, SC 29211, and should not be directed to the Interstate Commerce Commission.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-1831 Filed 1-16-81; 8:45 am]

BILLING CODE 7035-01-M

[AB 9 (SDM)]

St. Louis-San Francisco Railway Co.; Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the St. Louis-San Francisco Railway Company has filed with the Commission its amended color-coded system diagram map in docket No. AB 9 (SDM). The Commission on December 31, 1980, received a certificate of publication as required by said regulation which is considered the effective date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each State in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 9 (SDM).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-1834 Filed 1-16-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special Rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient interest in the form of verified statements filed on or before March 5, 1981, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

On or before March 20, 1981, an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Vol. No. OP2–151

Decided: January 7, 1981.

By the Commission, Review Board No. 3, Members Parker, Fortier, and Hill.

MC 146402 (Sub-28F), filed November 28, 1980. Applicant: CONALCO CONTRACT CARRIER, INC., P.O. Box 968, Jackson, TN 38301. Representative: Charles W. Teske (same as applicant). Transporting (1)(a) *printed matter*, as described in Item 27 of the Standard Transportation Commodity Code Tariff, (b) *primary metal products*, as described in Item 33 of the Standard Transportation Commodity Code Tariff, (c) *fabricated metal products* (except ordinance), as described in Item 34 of the Standard Transportation Commodity Code Tariff, and (d) *waste or scrap materials*, as described in Item 40 of the Standard Transportation Commodity Code Tariff, and (2) *equipment, materials, and supplies* used in the production and distribution of the commodities in (1) between Chicago, IL on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 147382 (Sub-3F), filed December 8, 1980. Applicant: E.A.D. ENTERPRISES, INC., d.b.a. GARDEN STATE MOTOR FREIGHT, P.O. Box 709, Bordentown, NJ 08505. Representative: William J. Augello, Esq., 120 Main St., P.O. Box Z, Huntington, NY 11743. Transporting (1) *building materials, and non-carbonated fruit drinks and chilled juices*, and (2) *materials, equipment and supplies*, used in the manufacture and distribution of the commodities in (1) between points in the U.S., under continuing contract(s) with Coca-Cola Co., Foods Division, of Hightstown, NJ, and Church Brick Company, of Bordentown, NJ 08505.

MC 147942 (Sub-4F), filed December 29, 1980. Applicant: M & L TRUCK LINE, INC., P.O. Box 358, Memphis, TN 38101. Representative: John Paul Jones P.O. Box 3140, Front Street Station, 189 Jefferson Avenue, Memphis, TN 38103. Transporting (1) *food or kindred products* (except in bulk), as described in Item 20 of the Standard Transportaton Commodity Code Tariff between points in New Castle County, DE, Cobb County, GA, St. Louis, Greene, Jackson, Clay and Platte Counties, MO, and Douglas County, KS, on the one hand, and, on the other, points in DeSoto County, MS, and (2) *fibreboard drums* between points in Cook County, IL, St. Louis County, MO, and Van Wert County, OH, on the one hand, and, on the other, DeSoto County, MS.

MC 148082 (Sub-1F), filed December 18, 1980. Applicant: KEITH ASMUSSEN, d.b.a. ASMUSSEN RACING STABLES, P.O. Box 1861, Laredo, TX 78041. Representative: William E. Collier, 8918 Tesoro Drive, Suite 515, San Antonio, TX 78217. Transporting *race and show horses, stable equipment and supplies, and personal effects of attendants*, for the described horses, between points in the U.S. (except AK and HI).

MC 149412 (Sub-2F), filed December 18, 1980. Applicant: MILK TANK LINES, INC., P.O. Box 788, Frazer, PA 19355. Representative: Wilmer B. Hill, 805 McLachlen Bank Bldg., 666 Eleventh Street, NW, Washington, DC 20001. Transporting *vegetable oils, vegetable oil products, and foodstuffs*, in bulk, between Columbus, OH, West New York, Kearny, and Bayonne, NJ, on the one hand, and, on the other, points in CO and those points in the U.S. in and east of MN, IA, MO, AR, and TX.

MC 151393 (Sub-2F), filed December 16, 1980. Applicant: MILLERS BEND CARRIERS, INC., 1135 Hwy. 231 North, P.O. Box 197, Wetumpka, AL 36092. Representative: Ronald L. Stichweh, 727 Frank Nelson Bldg., Birmingham, AL 35203. Transporting (1) *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in AL, CA, CO, FL, GA, IL, IN, KY, LA, MA, MN, MS, MO, NC, NY, OR, SC, TN, TX, and WA, and (2) *athletic apparel*, from points in Clarke County, AL, to points in the U.S.

Vol. No. OP2–153

Decided: January 8, 1981.

By the Commission, Review Board No. 3, Members Parker, Fortier, and Hill.

MC 3753 (Sub-30F), filed December 19, 1980. Applicant: AAA TRUCKING CORP., 3620 Quaker Bridge Rd., P.O. Box 8042, Trenton, NJ 08650. Representative: Zoe Ann Pace, Suite 2373, One World Trade Center, New York, NY 10048. Over regular routes transporting *general commmodites* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between Scranton and Williamsport, PA: from Scranton, over Interstate Hwy 81 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction U.S. Hwy 15, then over U.S. Hwy 15 to Williamsport, and return over the same route, serving all intermediate points and the off route points in Bradford, Columbia, Lackawanna, Luzerne, Lycoming, Montour, Sullivan, Susquehanna and Wyoming Counties, PA.

MC 36473 (Sub-80F), filed December 16, 1980. Applicant: CENTRAL TRUCK LINES, INC., 3825 Henderson Blvd., Tampa, FL 33679. Representative: John C. Bradley, Suite 1301, 1600 Wilson Blvd., Arlington, VA 22209. Over regular routes transporting *commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment) the following regular routes: (1) Between Atlanta, GA, and Akron, OH: from Atlanta over U.S. Hwy 41 to Chattanooga, then over U.S. Hwy 11 to Knoxville, then over U.S. Hwy 25W to

junction U.S. Hwy 25, then over Hwy 25 to Cincinnati, OH, then over U.S. Hwy 42 to junction U.S. Hwy 224, and then over U.S. Hwy 224 to Akron, and return over the same route, serving all intermediate points; (2) Between Lexington, KY, and Akron, OH: from Lexington over U.S. Hwy 68 to junction U.S. Hwy 62, then over U.S. Hwy 62 to Columbus, OH, then over Ohio Hwy 3 to junction Ohio Hwy 5, then over Ohio Hwy 5 to Akron, and return over the same route, serving all intermediate points.

MC 107012 (Sub-631F) filed December 16, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). Transporting (1) *paper and paper products,* (2) *plastic articles and containers,* and (3) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) and (2) (except commodities in bulk), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Container Corporation of America.

MC 121642 (Sub-2F), filed December 17, 1980. Applicant: BEAMER BROTHERS TRUCKING COMPANY, 8241 Camargo Road, Cincinnati, OH 45243. Representative: Jack B. Josselson, 700 Atlas Bank Bldg., 524 Walnut St., Cincinnati, OH 45202. Transporting *building materials* between points in AL, AR, GA, IL, IN, KS, KY, MO, OH, PA, NC, SC, TN, WV, and VA.

MC 140312 (Sub-4F), filed December 17, 1980. Applicant: SARGENT TRANSPORT, INC., Obi Road, RD No. 1, Portfille, NY 14770. Representative: Raymond A. Richards, 35 Curtice Pk, Webster, NY 14580. Transporting (1) *such commodities* as are dealt in by grocery and food business houses, *alcoholic beverages,* and (2) *equipment, materials and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Leprino Foods, Inc., of Denver, CO.

MC 148793 (Sub-4F), filed December 15, 1980. Applicant: M & L MESSENGER SERVICE, INC., Jewel Lane, New Fairfield, CT 06810. Representative: James M. Burns, 1383 Main St., Suite 413, Springfield, MA 01103. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household good as defined by the Commission commodities in bulk, and those requiring special equipment) between points in CT, MA, NJ, NY, and PA.

MC 150432 (Sub-13F), filed December 17, 1980. Applicant: H & M TRANSPORTATION, INC., U.S. 42 & 70, London, OH 43140. Representative: Owen B. Katzman, 1828 L St., NW, Suite 1111, Washington, DC 20036. Transporting (1) *paper and paper products, lumber, forest products, janitorial equipment and supplies, packaging materials and equipment, and printing equipment and supplies,* and (2) *materials, equipment, and supplies* used in the manufacture, conversion, and distribution of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Hammermill Paper Company, of Erie, PA.

Vol. No. OP4–196

Decided: January 13, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman. (Member Liberman not participating.)

MC 26396 (Sub-384F), filed December 30, 1980. Applicant: THE WAGGONERS TRUCKING, P.O. Box 31357, Billings, MT 59107. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Transporting (1) *feed, feed ingredients, mineral mixtures, pesticides and feeding equipment,* and (2) *materials, equipment* and supplies used in the manufacture and distribution of the commodities in (1), between points in Adams County, IL, on the one hand, and, on the other, points in CA, ID, OR, and WA.

MC 26396 (Sub-385F), filed December 30, 1980. Applicant: THE WAGGONERS TRUCKING, a corporation, P.O. Box 31357, Billings, MT 59107. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Transporting *general commodities* (except classes A and B explosives, and household goods as defined by the Commission), between the facilities of Velsicol Chemical Corporation, on the one hand, and, on the other, points in the U.S.

MC 61396 (Sub-387F), filed December 31, 1980. Applicant: HERMAN BROS., INC., P.O. Box 189, Omaha, NE 68101. Representative: Scott E. Daniel, 800 Nebraska Savings Bldg., 1623 Farnam, Omaha, NE 68102. Transporting *kiln dust,* in bulk, between points in TX, LA, OK, MS and AR.

MC 99896 (Sub-7F), filed December 22, 1980. Applicant: ATKINSON TRANSFER, INC., 1475 W. River Rd., Dayton, OH 45418. Representative: James M. Burtch, 100 E. Broad St., Columbus, OH 43215. Transporting *general commodities* (except classes A and B explosives, and household goods as defined by the Commission), between points in Hamilton and Montgomery Counties, OH, on the one hand, and, on the other, points in AL, GA, IL, IN, IA, KY, MD, MI, MO, NY, NC, PA, SC, TN, VA, WV, and WI, restricted to traffic originating at or destined to the facilities of General Motors Corporation.

MC 117686 (Sub-295F), filed December 24, 1980. Applicant: HIRSCHBACH MOTOR LINES, INC., 920 West 21st Street, P.O. Box 155, South Sioux City, NE 68776. Representative: George L. Hirschbach (same address as applicant). Transporting *dairy products,* between points in Dallas and Tarrant Counties, TX, to points in OK, KS, MO and AR.

MC 117786 (Sub-282F), filed December 24, 1980. Applicant: RILEY WHITTLE, INC., P.O. Box 19038, Phoenix, AZ 85005. Representative: Baldo J. Lutich, 1441 E. Thomas Road, Phoenix, AZ 85014. Transporting *general commodities* (except commodities in bulk, classes A and B explosives, and used household goods), between the facilities of Ambassador International, a Division of Amba Marketing Systems, Inc., on the one hand, and, on the other, points in the U.S.

MC 149546 (Sub-3F), filed December 30, 1980. Applicant: D & T TRUCKING CO., INC., 498 First Street, NW., New Brighton, MN 55112. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440. Transporting *general commodities* (except classes A and B explosives, and household goods as defined by the Commission), (1) between points in Monroe County, NY, on the one hand, and, on the other, Chicago, IL; and (2) between Chicago, IL, on the one hand, and, on the other, points in MN and WI.

MC 147766 (Sub-3F), filed December 22, 1980. Applicant: COLORADO-DENVER/WAREHOUSE-DELIVERY, INC., 4902 Smith Road, Denver, CO 80216. Representative: Edward C. Hastings, 653 Grant Street, Denver, CO 80203. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), Between Denver and Gunnison, CO: From Denver over Interstate Hwy 70 (and also over U.S. Hwy 6) to junction CO Hwy 91, then over CO Hwy 91 to junction U.S. Hwy 24, then over U.S. Hwy 24 to junction U.S. Hwy 285, then over U.S. Hwy 285 to junction CO Hwy 291, then over CO Hwy 291 to junction U.S. Hwy 50, then over U.S. Hwy 50 to Gunnison, and return over the same routes, serving the intermediate points of Leadville, Buena Vista, and Salida, CO.

MC 153406F, filed December 23, 1980. Applicant: GWR TRANSPORTATION, 649 Realitos Drive, La Verne, CA 91750. Representative: Gale W. Roach (same address as applicant). Transporting *foodstuffs* (1) from points in Ventura County, CA, to points in OR and WA, and (2) between points in Ventura and Los Angeles Counties, CA.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-1917 Filed 1-16-81; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29549]

Louisiana & Arkansas Railway Co.; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts Louisiana & Arkansas Railway Company (L&A) from the requirement that it receive approval under 49 U.S.C. § 10901(a) and 49 U.S.C. § 11343(a) prior to performing operations over a segment of the Atchison, Topeka and Santa Fe Railway Company (Santa Fe) track in Dallas, TX.

DATES: The exemption is effective on December 31, 1980, and remains effective for 60 days thereafter, or, if an application for permanent authority is filed within this 60-day period, the exemption shall remain effective until the Commission issues its decision on the application. Petitions for reconsideration of this decision must be filed no later than 20 days following this publication.

ADDRESSES: Send petitions for reconsideration to:

(1) Section of Finance, Room 5414, Interstate Commerce Commission, 12th Street & Constitution Ave., NW, Washington, DC 20423.

(2) Petitioner's representative: Robert K. Dreiling, Attorney for Louisiana & Arkansas Railway Company, 114 West 11th Street, Kansas City, MO 64105.

Pleadings should refer to Finance Docket No. 29549.

FOR FURTHER INFORMATION CONTACT: Ellen Hanson, (202) 275-7245.

SUPPLEMENTARY INFORMATION:

Background

The Louisiana and Arkansas Railway Company (L&A), a subisidiary of the Kansas City Southern Lines, extends from Dallas, TX, through Shreveport, LA, to the Gulf Port of New Orleans, LA. Since June 6, 1977, L&A has been using the Chicago, Rock Island and Pacific Railroad Company (Rock Island) track and terminal facilities in its Cadiz Yard at Dallas, TX, in providing rail service to, from, and through the Dallas terminal.

To reach the Rock Island yard, which is situated beyond the Santa Fe yard, it is necessary that L&A operate over a portion of Santa Fe track, between mile post 53 plus 1802.2 feet and mile post 50 plus 4,100 feet, in Dallas, Santa Fe granted L&A use of such track by an agreement dated May 12, 1977. L&A began operating over the Santa Fe track under authority from this Commission in Service Order No. 1267, *Louisiana & Arkansas Railway Company Authorized to Operate Over Tracks of the Atchison, Topeka & Santa Fe Railway Company*, which became effective on May 19, 1977. This Service Order was issued on May 19, 1977, and extended through 6 amendments. The last amendment extended Service Order No. 1267 until November 30, 1980. In response to an urgent request by L&A for continuation of Service Order No. 1267, the Commission, on December 1, 1980, issued Service Order No. 1491, *Louisiana & Arkansas Railway Company Authorized to Operate Over Tracks of the Atchison, Topeka and Santa Fe Railway Company*. Service Order No. 1491 became effective on December 1, 1980, and is scheduled to expire at 11:59 p.m., December 30, 1980.

On December 9, 1980, L&A filed a statement requesting a continuance of Service Order No. 1491 beyond the December 30, 1980, expiration date. In 1979, L&A moved 20,077 carloads of freight from, to, or through the Dallas terminal. Expiration of authority provided under Service Order No. 1491 will eliminate L&A's ability to handle this traffic.

L&A has entered into agreements with both Rock Island and Santa Fe for permanent authority to use the involved facilities and trackage. L&A is in the process of preparing, and will file with the Commission, applications for approval of those agreements and for permanent authority to operate over the Santa Fe line.[1] L&A requested that it be allowed to continue operating over the Santa Fe track until such applications can be filed and acted upon by the Commission.

The Staggers Rail Act of 1980 (Pub. L. No. 96-448) substantially limits the Commission's authority to issue service orders under 49 U.S.C. 11123(a) to emergency situations of such magnitude as to have substantial adverse effects on rail service in the United States or a substantial region of the United States. In a separate decision we have denied L&A's requested extension of Service Order No. 1491 because it fails to meet the new criteria established by the Staggers Act. Consequently, Service Order No. 1491 will expire as scheduled on December 30, 1980.

Discussion and Conclusions

A rail carrier can operate over the line of another railroad only if it has a service order to do so or has been granted a certificate under 49 U.S.C. 10901. Moreover, acquisition by a rail carrier of trackage rights over a rail line owned or operated by another rail carrier can be carried out only with the approval and authorization of the Commission under 49 U.S.C. 11343. We have already determined that L&A has not made a sufficient showing under amended section 11123(a) for issuance of a service order. Although L&A plans to file appropriate applications for permanent authority to operate over the Santa Fe track, it will be some time before such applications can be filed and acted upon. Therefore, we cannot order or affirmatively authorize L&A to perform uninterrupted operations over the Santa Fe track.

However, Congress has given us authority under 49 U.S.C. 10505 to exempt certain rail matters as a means of eliminating burdensome regulation of rail carriers. That section provides that the Commission "shall" exempt a transaction from the application of any provision of the Interstate Commerce Act when it finds that (1) continued regulation is not necessary to carry out the Rail Transportation Policy in 49 U.S.C. 10101a; and (2) either (A) the transaction of limited scope, or (B) regulation is not necessary to protect shippers from the abuse of market power.[2] Moreover, we can issue the exemption on our own initiative. 49 U.S.C. 10505(b).

---

[1] The acquisition, operation, and construction of a line of railroad requires the approval of the Commission under 49 U.S.C. 10901. To obtain such approval, an application must be filed in compliance with the procedures established in the Commission's regulations outlined in *Construction Extension, Acquisition, or Operation of Railroad Lines*, 49 CFR Part 1120 (1979). The acquisition by a rail carrier of trackage rights over another rail line requires the prior approval of the Commission under 49 U.S.C. 11343 in accordance with regulations established in *Railroad Acquisition, Control, Merger, Consolidation, Coordination Project, Trackage Rights and Lease Procedures*, 49 CFR 1111 (1979) (*Consolidation Procedures*). See also *Railroad Consolidation Procedures*, 363 I.C.C. 200 (1980).

[2] The Section creates two additional limitations on our broad exemption power. We may not exercise this exemption authority "(1) to authorize intermodal authority that is otherwise prohibited by this title, or (2) to relieve a carrier of its obligation to protect the interests of employees as required by this subtitle". 49 U.S.C. 10505(g).

We believe the instant operation satisfies the criteria of Section 10505. Exempting L&A from the filing requirement of 49 U.S.C. 10901 for a short time period will merely maintain the status quo until L&A can file and the Commission can consider appropriate applications for permanent authority to provide such service. The Commission's prior approval of L&A's operation over the small segment of Santa Fe's track is not necessary to carry out any of the 15 factors listed in the rail tranportation policy of section 10101a.

The transaction is of limited scope because (1) it involves only a very short segment of track, (2) it is of limited duration, and (3) it should have no impact on any railroad employees or the operations of any other rail carrier.

Having concluded that the transaction is of limited scope, we need not determine whether prior approval of rail operations is necessary to protect shippers from the abuse of market power. We note, however, that since the temporary exemption granted here will merely allow a continuation of operations which have been in effect for over 3 years, it is unlikely that it would have any impact whatsoever on shippers. On the other hand, our failure to grant the exemption would result in a forced cessation of rail service upon which shippers have come to rely and could be detrimental to their business operations.

In light of these findings we are able to exempt this transaction. Our exemption authority provides us with the power to limit the duration of our exemptions. 49 U.S.C. 10505(c). Accordingly, this exemption is effective for 2 months only, subject to extension if and when L&A files applications for permanent authority.

To avoid any disruption in service, this exemption will become effective on December 31, 1980. Section 10505 enables us to revoke an exemption if we find the exempted provision necessary to carry out the rail transportation policy. We have found otherwise on the facts currently available to us. However, we will permit interested parties to file petitions for reconsideration alleging that grant of the exemption harms our ability to carry out the rail transportation policy. Petitions for reconsideration must be filed within 20 days after this decision's publication in this Federal Register.

Labor protection. In granting this exemption we may not relieve a carrier of its obligation to protect the interests of employees. Amended section 10901(e) indicates that the imposition of labor protective conditions is discretionary when authority is sought, as here, to operate a line. However, approval of a trackage rights agreement under § 11343 must include the employee protective conditions set forth in *Norfolk and Western Ry. Co.-Trackage Rights-BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.-Lease and Operate*, 360 I.C.C. 653 (1980). These conditions are here imposed as a condition to L&A's exercise of this exemption.

We find:

(1) Application of the requirements of 49 U.S.C. 10901 and 49 U.S.C. 11343(a) that L&A receive prior authority to operate over the Santa Fe rail line between milepost 50 plus 4,100 feet and milepost 53 plus 1802.2 feet is not necessary to carry out the transportation policy of 49 U.S.C. 1010a.

(2) This transaction is of limited scope.

(3) This decision will not operate to relieve L&A from an obligation either (a) to provide contractural terms for liability and claims which are consistent with 49 U.S.C. 11707, or (b) to protect the interest of its employees; and does not authorize intermodal ownership that is otherwise prohibited.

(4) This decision is not a major Federal action significantly affecting energy consumption or the quality of the human environment.

It is ordered:

(1) Pursuant to 49 U.S.C. § 10505 we exempt the operation by L&A over the Santa Fe rail line from 49 U.S.C. 10901(a) and 49 U.S.C. § 11343(a), subject to the employee protective conditions imposed in *Norfolk & Western Ry. Co.-Trackage Rights-BN*, 354 I.C.C. 650 (1978), as modified by *Mendocino Coast Ry., Inc.-Lease and Operate*, 360 I.C.C. 653 (1980).

(2) Notice of our action shall be given to the general public by delivery of the copy of this decision to the Director, Federal Register, for publication.

(3) This exemption will continue in effect for 2 months, unless revoked, or extended by further action of the Commission.

(4) This decision shall be effective at 12:01 a.m., December 31, 1980.

(5) Petitions to reopen this proceeding for reconsideration must be filed no later than 20 days after the date of publication.

Decided: December 30, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis and Gilliam. Commissioners Alexis and Gilliam were absent and did not particpate in the dispostion of this proceeding.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-1916 Filed 1-16-81; 8:45 am]
BILLING CODE 7035-01-M

[Volume No. OP2-152]

Motor Carriers; Permanent Authority Decisions

Decided: January 8, 1981.

The following applications, filed on or after July 3, 1980, are governed by Special rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the Federal Register on July 3, 1980, at 45 FR 45539. For compliance procedures, refer to the Federal Register issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings:

With the exception of those applications involving duly noted problems (e.g.s., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient interest in the form of verified statements filed on or before March 5, 1981 (or, if the application later becomes unopposed) appropriate authorizing

documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

Agatha L. Mergenovich,

Secretary.

Note: All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

MC 150482 (Sub-1F), filed December 17, 1980. Applicant: McCAULEY AIR FREIGHT, R.D. No. 4, Box 314A, Punxsutawney, PA 15767. Representative: John Smith (same address as applicant). Transporting (1) *general commodities,* between Belfast, Black Creek, Rockville, and Shongo, NY, Bridgetown, Cheviot, Covedale, Dent, Miami, and Wileys, OH, Alum Rock, Brightwood, Blairs, Coverdale, Dudley, Jefferson, Jewell, Library, Library Junction, McMurray, Ritts, St. Petersburg, Turkey, and Worthington, PA, on the one hand, and, on the other, points in the U.S.; and (2) *shipments weighing 100 pounds or less* if transported in a vehicle in which no one package exceeds 100 pounds, between points in the U.S.

[FR Doc. 81-1912 Filed 1-15-81; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL COMMUNICATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459) and Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), I hereby determine that certain objects to be included in the exhibit, "Kandinsky: The Improvisations" (designated in the list [1] filed as part of this determination); imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements between foreign lenders and the National Gallery of Art, Washington, D.C. I also determine that the temporary exhibition or display of the designated exhibit objects at the National Gallery of Art, Washington, D.C., beginning on or about April 26, 1981, to on or about August 2, 1981, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: January 13, 1981.

John E. Reinhardt,

Director.

[FR Doc. 81-1811 Filed 1-14-81; 12:34 pm]

BILLING CODE 8320-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Privacy Act of 1974; Annual Publication of Systems of Records

The Privacy Act of 1974 [5 U.S.C. 552a (e)(4)] requires agencies to publish annually in the **Federal Register** a notice of the existence and character of their systems of records. The Agency for International Development last published the full text of its systems of records at 42 FR 47371, September 20, 1977. No further changes have occurred; therefore, the systems of records remain in effect as published.

The full text of the Agency for International Development systems of records also appears in Privacy Act Issuances, 1979 Compilation, Volume III, page 2475. This volume may be ordered through the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The price of this volume is $9.50.

Norman Sherman,

Director, Office of Public Affairs.

January 9, 1981.

[FR Doc. 81-1727 Filed 1-16-81; 8:45 am]

BILLING CODE 4710-02-M

[1] An itemized list of objects included in the exhibit is filed as part of the original document.

Appointment to the Performance Review Board

The following individuals have been selected to serve on AID's Performance Review Board:

Chairperson: D.G. MacDonald
Vice Chairperson: Edward W. Coy
Members: Richard F. Weber, Peter Kimm, Kelly C. Kammerer, William T. White, Richard W. Parsons, Bradshaw Langmaid, Jr., Phyllis A. Drohat
Advisors: Pauline G. Johnson, Jan M. Barrow

If you have further inquiries, please address them to Mrs. Jan Barrow, International Development Cooperation Agency, A.I.D., Office of Personnel Management (PM/PO/W), Rm. 412, SA-2, Washington, D.C. 20523.

Dated: December 30, 1980.

Jan Barrow,

Technical Advisor, Performance Review Board.

[FR Doc. 81-1901 Filed 1-16-81; 8:45 am]

BILLING CODE 4710-02-M

DEPARTMENT OF JUSTICE

National Institute of Justice

Proposals To Study Various Aspects or the Local Jail and Its Use; Competitive Research Grant Solicitation

The National Institute of Justice announces a competitive research grant solicitation for proposals to study various aspects of the local jail and its use. The overall goal is to begin a systematic, long-term program of jail research which will yield more empirically-derived knowledge about its role and impact as a social control institution.

The solicitation requests submission of proposals which will then be considered by a peer review panel. In order to be considered, proposals must be postmarked to the National Institute no later than April 20, 1981. This announcement envisions two grant awards (up to a total of $245,000) with a maximum of $125,000 per award and an expected duration of 24 months.

Additional information and copies of the solicitation may be obtained by contacting: Lawrence A. Greenfield, Corrections Division, Office of Research Programs, National Institute of Justice, 633 Indiana Avenue, NW., Washington, D.C. 20531, (301) 492-9118.

Dated: January 9, 1981.

Harry M. Bratt,

Acting Director, National Institute of Justice.

[FR Doc. 81-1860 Filed 1-16-81; 8:45 am]

BILLING CODE 4410-18-M

METRIC BOARD

Final Consumer Program

AGENCY: United States Metric Board.

ACTION: Final Consumer Program.

SUMMARY: On September 26, 1979, the President issued Executive Order 12160 which was designed to improve the management, coordination and effectiveness of agency consumer programs. Although the United States Metric Board is an independent agency not subject to that Executive Order, it has determined to voluntarily comply with it. This Final Consumer Program describes a plan for assuring that consumer needs and interests are adequately considered in decisionmaking processes. It contains revisions resulting from comments received on this agency's previously published Draft Consumer Program.

EFFECTIVE DATE: February 18, 1981.

FOR FURTHER INFORMATION CONTACT: Consumer Specialist, Office of the Executive Director, U.S. Metric Board, 1600 Wilson Boulevard, Suite 400, Arlington, Virginia 22209, 703–235–1933.

SUPPLEMENTARY INFORMATION: On August 26, 1980, the United States Metric Board (USMB) published for comment its Draft Consumer Program (45 FR 56954). During the comment period, comments were received from 3 individuals, 2 associations, and 1 government office. They were reviewed by the USMB staff and incorporated in this program when deemed appropriate. On December 11, 1980, the USMB formally approved the Final Consumer Program (Program).

The following paragraphs summarize the comments received and explain the USMB responses thereto.

One commenter suggested that the position of Consumer Specialist be established at senior staff level. The Board considers the Executive Director and the head of each of the four staff divisions as senior staff. Accordingly, the Consumer Specialist can not be recognized as a member of the senior staff. However, the Consumer Specialist has many of the prerogatives of senior staff in that the incumbent will report directly to the Executive Director and will have a variety of other duties and responsibilities that will be independently accomplished as outlined in Section I of the Program.

Three respondents suggested that consideration be given to assigning staff to the Consumer Specialist to assist in carrying out assigned duties. The Consumer Specialist will be provided adequate clerical and other assistance to accomplish assigned tasks from existing resources. However, in an agency composed of only 36 full-time permanent employees, no additional personnel are available to be dedicated to this Program at this time. This determination will be reviewed annually during development of the budget.

Another commenter thought the Program was written in general, future terms and two commenters said it had no overall target date for implementation. However, the Program sets forth clearly in several sections minimum periods of time for the accomplishment of various tasks (see Sections I, III and V). The complete program is effective 30 days after publication in the **Federal Register.** Accordingly, no changes based on these comments are deemed appropriate.

A suggestion was received that Section I.A. be changed by removing the words "rules" and "legislation" and by putting the "and" between "policies" and "programs." The portion of the section affected would then read ". . . inclusion of a consumer perspective in the development of policies and programs." As the suggested changes more accurately reflect the Consumer Specialist's responsibilities, they have been adopted.

In response to one commenter, it should be noted that Section I.C. already contemplates the contacting of private consumer groups and consumer groups outside of the Washington, D.C. area. Accordingly, no additions are deemed necessary. Also, as the Board has in existence a program to receive the consumer perspective and this Program provides further extensive opportunities for consumer participation in Board activities, no further mention thereof is deemed necessary.

Two respondents thought that Section II.A should be changed by replacing the word "observation" with "participation." As this change accurately reflects the policy of the Board as expressed in Section 504.30(2) of the USMB Private Section Metric Conversion Planning Guidelines, it has been incorporated in the Program.

A respondent suggested that the Program include a requirement for an annual report to the Consumer Affairs Council created by Executive Order 12160. However, as the Executive Order requires only that agencies respond to requests for reports from the Council, a provision similar to that has been added to the Program.

One respondent suggested that the Consumer Specialist be specifically required to develop criteria for analyzing the adequacy of consumer participation needs and perspectives during review of private sector metric conversion plans and research calls. This suggestion has been adopted and a paragraph reflecting it was added to Section II.

A comment was received that the Consumer Specialist should be more directly involved in the shaping of educational programs of the Board. Changes to the Program have been made to accommodate this suggestion.

Two commenters also suggested that Section III be changed to more clearly authorize the Consumer Specialist to recommend changes to informational materials when thought appropriate. This has been accomplished.

One commenter thought that a specific requirement for dissemination of provisions of the Metric Conversion Act of 1975 should be included in the Program. Since this is a principal responsibility of all divisions of the staff, and more especially of the Office of Public Awareness and Education, no further mention of it seems necessary.

A comment was received suggesting that the Program be more specific as to the kind of technical assistance that may be available to consumers. This topic is addressed in Section IV in purposefully general terms. The Board, being a comparatively new agency with little experience in this area, has adopted an open attitude towards technical assistance. As more hands-on experience is gained, and if resources permit, the issue of more specificity as to the availability of technical assistance will be addressed.

There were also several comments expressing general approval or disapproval of the Program and several comments suggesting additions and changes that were clearly already incorporated in the Program. These comments are not addressed. Also, several administrative corrections were made.

Final Consumer Program

Introduction

The United States Metric Board (USMB) is an independent agency of the Federal Government created by the Metric Conversion Act of 1975 (Pub. L. 94–168) to coordinate and plan the increasing voluntary use of the metric system in the United States. The Board consists of a Chairman and sixteen Members appointed by the President with the advice and consent of the Senate. Members are representatives of all walks of American life: labor, small business, industry, retailing, science, engineering, education, state and local government, and four at-large members to represent consumers and other interests.

I. Consumer Affairs Perspective

The USMB supports the direction contained in Executive Order 12160 that agencies have an identifiable, accessible person with responsibility for coordination and oversight of the agency's consumer activities and has established within the Office of the Executive Director the position of Consumer Specialist. The Consumer Specialist shall report directly to the Executive Director of the USMB and be a professional consumer affairs person with experience working with people on consumer issues. The major duties of the Consumer Specialist shall include, but not be limited to:

A. Assessing consumer concerns and needs relative to metrication and, through participation at senior staff meetings and other means, assuring the inclusion of a consumer perspective in the development of policies and programs.

B. Working closely with the operational offices of the Board: assist in the review of metric conversion plans; suggest the direction for consumer oriented research projects; assist in the planning of consumer projects; work on consumer outreach at Board meetings and public forums; conduct consumer forums; review complaint data and provide recommendations on kinds and amounts of informational material needed to serve consumers; and carry out other related activities, as required.

C. Utilizing existing consumer advisory mechanisms, such as the U.S. Office of Consumer Affairs; the proposed committee of the National Council on State Metrication that will deal with consumer affairs; the Consumer Affairs Subcommittee of the Metrication Operating Committee, Interagency Committee on Metric Policy; the Consumer Advisory Group of the American National Metric Council; and the consumer affairs offices of individual Federal agencies, as well as contacting national and local consumer groups and activists to insure that the consumer perspective is fully understood and considered by the Board and staff. Within one year of appointment, the Consumer Specialist will assess the effectiveness of these mechanisms and contacts, and make recommendations as to the necessity for creating a Consumer Advisory Committee.

D. Preparing any reports that the Consumer Affairs Council may request.

II. Consumer Participation

The Consumer Program of the Board shall be the responsibility of the Consumer Specialist with assistance from the other divisions of the Board. Every major consumer organization in the United States has been contacted by letter and advised of the existence and functions of the USMB and requested to designate a metric coordinator as a point of continuing contact.

The predominant specifications which define consumer participation in conversion planning activities established under the auspices of the USMB are those which flow from the requirements of Section 6(2) of the Metric Conversion Act of 1975 which directs the USMB to provide for appropriate procedures or guidelines under which metric conversion plans may be developed for review by the USMB.

The USMB has developed Private Sector Metric Conversion Planning Guidelines and published them (45 FR 61550). Those guidelines address the necessity of consumer participation as well as representation of all interested parties in metric conversion planning activities and organized committees. The guidelines provide an open conversion planning process that the consumer may have access to in the following ways:

A. Direct attendance and participation in conversion planning committee meetings.

B. Requests made directly to conversion planning committees for agendas, minutes and other meeting records.

C. Request made to the USMB for relevant materials transmitted to USMB by conversion planning committees.

As private sector metric conversion plans are submitted for review, the Consumer Specialist will analyse them to determine if meaningful consumer participation is needed and is reflected. Where consumer participation is deemed necessary and is not reflected, that sector will be asked to formulate appropriate consumer participation programs before the plan will be considered for approval. The sector plan must demonstrate how consumer concerns will be analyzed and considered within the context of the proposed metric conversion.

The USMB Research Program is updated each Federal Planning Cycle by solicitation of interested parties for suggested research projects and objectives. This research call will be reviewed by the Consumer Specialist to insure that adequate consumer contact is made so that consumer concerns and issues can be defined independently or as salient research tasks within other more technical research issues.

The Consumer Specialist will recommend to appropriate Board committees the criteria for analyzing consumer participation needs and perspectives when reviewing private sector metric conversion plans and USMB research calls.

The Board conducts Public Forums in selected cities throughout the United States which provide opportuntity for comment to the USMB on metric matters by all citizens. Announcements of the time and place of these Forums is made through paid newspaper advertisements; multilingual public service radio and TV announcements distributed to local media; press releases; and written notification to consumer organizations and other groups in the immediate and surrounding areas.

Assistance is also provided by the U.S. Office of Consumer Affairs in contracting interested consumer programs. Notice of all public meetings is also provided in the **Federal Register**. Additionally, follow-up letters are sent to all members of the public who attend forums and Board meetings inviting them to write or call us with any questions.

In the case of public hearings on a specific metric issue, the Consumer Specialist, coordinating with the Office of Research, Coordination and Planning and the Office of Public Awareness and Education, will identify and solicit effective consumer presentations.

III. Informational Materials

The Office of Public Awareness and Education prepares and publicly disseminates a wide variety of educational and informational materials. Press releases are distributed free of charge to everyone on the USMB mailing list including approximately 400 consumer organizations. Radio public service announcements are produced and distributed to educate consumers about increased use of the metric system in the marketplace. Newspaper articles will be produced to advise the general public of research activities and other USMB programs.

USMB produces and distributes a publication describing the agency's responsibilities and the services it offers. USMB's annual reports will be distributed to all major consumer organizations with a cover letter soliciting questions or comments from consumers. Informational materials are displayed and made available to consumers who attend USMB meetings and public forums. A bibliography of reference material on the metric system will be compiled as an information source for the public.

Additionally, within 90 days of the effective date of this Consumer Program, the Consumer Specialist and the Office

of Public Awareness and Education will assess education programs and informational material for adequacy to inform consumers in the following areas:

A. The Board's functions, services and responsibilities as well as explanation of the Metric Conversion Act of 1975.

B. The impact of metric conversion on the consumer in the marketplace.

C. The method of consumer participation in USMB activities.

D. Materials that make the board meetings more understandable to consumers who attend these meetings. The meeting materials shall include appropriate information covering USMB responsibilities and the Metric Conversion Act of 1975, the meeting agendas with summaries of discussion topics, opportunities for specific consumer participation at the meetings, opportunities for consumer response after the meeting and the name of the USMB Consumer Specialist.

Within 30 days of this assessment, and whenever deemed necessary thereafter, the Consumer Specialist will recommend to the Public Awareness and Education Committee changes to existing and proposed educational programs and informational materials in the deficient areas and will recommend new programs and materials, when needed. The production of such programs and informational materials is normally the responsibility of the Office of Public Awareness and Education.

IV. Education and Training

The Consumer Specialist shall be responsible for educating the staff about the requirements of the Executive Order and the elements of the USMB response to the Order. Regular briefings shall be conducted by the Consumer Specialist for the Senior Staff. A summary of each briefing, along with the Executive Order and USMB Program, shall be circulated to each staff member.

Upon request of a particular office director, the Consumer Specialist shall conduct a briefing for the staff of that office.

Should a significant change be made by the Board in the Consumer Program, the Consumer Specialist shall by written memorandum inform the Staff of the substance and nature of the change.

The Consumer Specialist shall assist the senior staff to define operating plan initiatives to address specifically the question of technical assistance programs within USMB. The Consumer Specialist shall, at least semiannually, address the question of technical assistance programs within the USMB and make recommendations to the Board.

V. Complaint Handling

Under the direction of the Executive Director and the Board, the Consumer Specialist will have responsibility for handling consumer complaints and will receive all incoming mail from consumers. Within 90 days after the effective date of this plan, the Consumer Specialist will devise a system to log complaints and monitor requests for information as to category, source and content. All such complaints and requests will be routed by the Consumer Specialist to appropriate offices for handling.

The Office of Public Awareness and Education will have overall responsibility for responding to requests for information from the general public. The Office of Research, Coordination and Planning will respond to requests for technical information, technical assistance, and complaints that cannot be routinely handled by the Office of Public Awareness and Education. All complaints and requests for information shall be responded to within 30 days. Consumers will be notified by USMB of referral of their letters to another agency. Response letters to consumers must outline proposed USMB action, identify agency contact for further information and specify expected resolution date, all when appropriate.

Public awareness of the agency will be heightened through USMB publications, radio and TV spots and involvement in a variety of public appearances and events. Announcements will give USMB address and a special post office box number to facilitate communications. These announcements will encourage consumers to contact the agency if they have questions or concerns about metric usage. USMB consumer informational materials will explain complaint handling procedures, response times, and authority in handling complaints.

The Consumer Specialist shall organize and compile monthly, quarterly and yearly complaint statistics by source, subject, nature, state and other categories. The Consumer Specialist will analyze Office of Public Awareness and Education reports. Discussion of this complaint study will be regularly included on the agenda of Senior Staff meetings. Presentations to Senior Staff and the Board shall be made by the Consumer Specialist. The Consumer Specialist has the responsibility to suggest policy, program, or other changes to address the findings of the complaint data.

VI. Oversight

The Consumer Specialist shall report directly to the Executive Director and shall apprise the Executive Director of the potential impact on consumers of particular policy initiatives under development for review within the agency.

Malcolm E. O'Hagan,

Executive Director.

The White House,
Washington, January 6, 1981.

Mr. Theodore Farfaglia,
General Counsel, United States Metric Board, 1815 North Lynn Street, Arlington, Virginia 22209.

Dear Mr. Farfaglia: As Chairperson of the Consumer Affairs Council, I wish to express my pleasure at the development of a final consumer program by the United States Metric Board. I realize that as an independent agency, the Board is under no obligation to publish a program, so that it is especially notable that the Board has decided to institute a program that closely parallels the provisions of Executive Order 12160 establishing consumer program standards for Cabinet departments and executive agencies.

Under its new consumer program, the Metric Board will take a number of important measures that should ease the impact of voluntary metrication on the nation's consumers. These include establishing a consumer specialist position that will report directly to the Executive Director of the Metric Board; working with representatives of major consumer organizations; reviewing private sector metric conversion plans to assure that meaningful consumer participation activities are included; conducting public forums on metric issues; and other educational measures to assist consumers as well. Implementation of this program will help to assure that metric conversion can only be conducted in a specific economic sector if the effect of the program on consumers is known and understood in advance.

With the publication of a final consumer program by the Board and several other independent agencies, President Carter's effort to improve the consumer programs of the federal government will be substantially complete. This represents the culmination of the work of many competent and dedicated people throughout the last five Presidential administrations. I am pleased that the Metric Board has done its part in this effort. I am confident that implementing the program will make an important contribution to consumer welfare in the United States.

Sincerely,

Esther Peterson,

Special Assistant to the President for Consumer Affairs.

[FR Doc. 81-1815 Filed 1-16-81; 8:45 am]

BILLING CODE 6820-94-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[81-6]

NASA Advisory Council; Informal Ad Hoc Solar System Exploration Committee; Meeting

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces the following meeting:

Name of Committee: NASA Advisory Council, Informal Ad Hoc Solar System Exploration Committee.

Date and Time: January 26, 1981, 8:30 a.m.–4:30 p.m., January 27, 1981, 8:30 a.m.–4:30 p.m., January 28, 1981, 8:30 a.m.–3:00 p.m.

Address: Conference Room, Building 167, Jet Propulsion Laboratory, Pasadena, California 91103.

Type of Meeting: Open.

Agenda:

January 26, 1981

8:30 a.m.–12:30 p.m.—Program Status and Introduction.
1:30 p.m.–4:30 p.m.—Focussed versus Broad Programs.

January 27, 1981

8:30 a.m.–12:30 p.m.—Technology Presentation.
1:30 p.m.–4:30 p.m.—Technology Presentation Continued.

January 28, 1981

8:30 p.m.–12:00 noon—Technology Presentation Continued.
1:00 p.m.–3:00 p.m.—Round Table Discussion.

FOR FURTHER INFORMATION CONTACT: Mrs. Diane M. Mangel, National Aeronautics and Space Administration, Washington, D.C. 20546, (202/755-3728).

SUPPLEMENTARY INFORMATION: The Informal Ad Hoc Solar System Exploration Committee was established under the NASA Advisory Council to translate the scientific strategy developed by the Committee on Planetary Exploratory (COMPLEX) into a realistic, technically sound sequence of missions consistent with that strategy and with resources expected to be available for solar system exploration. The committee will report its findings to the Council and to NASA. The committee is chaired by Dr. John E. Naugle and is composed of four other members of the Council and its standing committees, who will meet with about 9 other invited participants and certain NASA personnel.

The meeting of the subcommittee is necessary at this time in order to conduct preliminary discussions and provide sufficient preparation time before the subcommittee's principal study period. The meeting will be open to the public up to the seating capacity of the room (approximately 90 persons, including committee members and invited meeting participants). Visitors will be requested to sign a visitor's register.

Gerald D. Griffin,

Associate Administrator for External Relations.

January 13, 1981.

[FR Doc. 81-1884 Filed 1-16-81; 8:45 am]

BILLING CODE 7510-01-M

[81-7]

NASA Advisory Council (NAC); Space and Terrestrial Applications Advisory Committee; Ad Hoc Informal Advisory Subcommittee on Geodynamics and Geology: Meeting

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces the following meeting:

Name of Committee: NAC Space and Terrestrial Applications Advisory Committee, Ad Hoc Informal Advisory Subcommittee on Geodynamics and Geology.

Date and Time: February 9–11, 1981; 9.m.–5 p.m.

Address: National Aeronautics and Space Administration, Room 226A, Federal Building 10B, 600 Independence Avenue SW, Washington, DC 20546.

Type of Meeting: Open.

Agenda:

February 9, 1981

9:00 a.m. Chairperson's Remarks.
9:30 a.m. Objectives and Plans for Non-Renewable Resources Program.
1:30 p.m. Objectives and Plans for Geodynamics Program.
5:00 p.m. Adjourn.

February 10, 1981

9:00 a.m. NASA Response to Subcommittee Recommendations.
9:30 a.m. Non-Renewable Resources and Geodynamics Budget Plans.
11:00 a.m. Landsat-D Program Status.
11:30 a.m. Operational Land Remote Sensing.
1:30 p.m. Caribbean Plate Project.
2:00 p.m. Shuttle Imaging Radar Plans.
3:00 p.m. Report on Luminescence Workshop.
3:30 p.m. Summary of Findings and Recommendations for the Non-Renewable Resources Program.
5:00 p.m. Adjourn.

February 11, 1981

9:00 a.m. Expected Accomplishments of the Crustal Dynamics Measurements.
10:00 a.m. Laser/Very Long Baseline Interferometry Intercomparison Experiments.
11:00 a.m. Satellite Emmission Radio Interferometric Earth Surveying Development and Test Plans.
11:30 a.m. Airborne Laser Ranging Development Plan.
1:30 p.m. National Geodetic Survey Geodynamics Program.
2:30 p.m. U.S. Geological Survey Geodynamics Program.
3:30 p.m. Summary of Findings and Recommendations for the Geodynamics Program.
5:00 p.m. Adjourn.

FOR FURTHER INFORMATION CONTACT: James P. Murphy, National Aeronautics and Space Administration, Code ERG-2, Washington, DC 20546 (202/755-3848).

SUPPLEMENTARY INFORMATION: This Subcommittee, comprised of thirteen members of the NAC-STAAC, including the Chairperson, Dr. Michael A. Chinnery, reviews status and plans of the NASA Geodynamics and Non-Renewable Resources Programs. Members of the public will be admitted to the meeting on a first-come, first-served basis and will be required to sign a visitor's register. The seating capacity of the room is 35 persons.

Gerald D. Griffin,

Acting Associate Administrator for External Relations.

January 13, 1981.

[FR Doc. 81-1885 Filed 1-16-81; 8:45 am]

BILLING CODE 7510-01-M

[81-5]

Space and Terrestrial Applications Steering Committee (STASC); Proposal Evaluation Advisory Subcommittee; Meeting

The Materials Processing in Space (MPS) Panel of the STASC, Proposal Evaluation Advisory Subcommittee will meet on February 4, 1981 from 8:30 a.m. to 5:00 p.m. at NASA Headquarters, Room 226A, Federal Building 10B, 600 Independence Avenue SW, Washington, DC 20546. The Subcommittee will discuss, evaluate, and categorize the proposals submitted to NASA in response to the Announcement of Opportunity for data use investigations for the Fluids Experiment System (FES).

Public discussion of the professinal qualifications of the proposers and their potential scientific contributions to the FES Program would invade the privacy of the proposers and the other individuals involved. Since the Subcommittee sessions will be concerned throughout with matters

listed in 5 U.S.C. 552b(c), (6), as described above, it has been determined that the sessions should be closed to the public.

For further information, please contact Dr. John C. Carruthers, Director, Materials Processing in Space Division, NASA Headquarters, Washington, DC 20546, telephone number 202/755–2070.

Gerald D. Griffin,

Acting Associate Administrator for External Affairs.

January 14, 1981.

[FR Doc. 81–1883 Filed 1–16–81; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Physics Notice of Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Physics.
Date and time: February 5–7, 1981; 9:00 a.m.–5:00 p.m. each day.
Place: National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550. Room 540 each day.
Type of meeting: Open.
Contact person: Dr. Laura P. Bautz, Deputy Director, Division of Physics, National Science Foundation, Washington, D.C. 20550. Telephone: (202) 357–7611.
Summary of minutes: May be obtained from Dr. Laura P. Bautz, Division of Physics, National Science Foundation, Washington, D.C. 20550.
Purpose of committee: To provide advice and recommendations concerning support for research in physics.
Agenda:

February 5, 1981, 9:00 a.m.–5:00 p.m. Oversight review of NSF support of theoretical physics, including the report of the Subcommittee for the Review of the NSF Theoretical Physics Program. FY 1982 Budget. Support of Physics.

February 6, 1981, 9:00 a.m.–5:00 p.m. Report of the Subcommittee on Computational Facilities for Theoretical Research. Discussion of Accelerator-Based Atomic Physics. Continuation of previous day's discussions.

February 7, 1981, 9:00 a.m.–5:00 p.m. Continuation of discussions from previous two days.

M. Rebecca Winkler,

Committee Management Coordinator.

January 14, 1981.

[FR Doc. 81–1865 Filed 1–16–81; 8:45 am]

BILLING CODE 7555–01–M

Subcommittee on Memory and Cognitive Processes; Meeting

In accordance with the Federal Advisory Committee Act Pub. L. 92–463 the National Science Foundation announces the following meeting.

Name: Subcommittee of Memory and Cognitive Processes of the Advisory Committee for Behavioral and Neural Sciences.
Date and time: February 9 and 10, 9:00 a.m., 5:00 p.m., each day.
Place: National Science Foundation, 1800 G Street, NW., room 421, Washington, D.C. 20550.
Type of meeting: Closed.
Contract person: Dr. Joseph L. Young, Program Director, Memory and Cognitive Processes Program, Room 320, National Science Foundation, Washington, D.C. 20550, telephone (202) 357–9898.
Purpose of subcommittee: To provide advice and recommendations concerning support for research in Memory and Cognitive Process.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature including technical information; financial data such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c) Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10 (d) of Pub. L. 92–463. The Committee Management Officer was delgated the authority to make such determinations by the Director NSF on July 6, 1979.

January 14, 1981.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 81–1861 Filed 1–16–81; 8:45 am]

BILLING CODE 7555–01–M

Subcommittee on Regulatory Biology of the Advisory Committee for Physiology, Cellular and Molecular Biology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee on Regulatory Biology of the Advisory Committee for Physiology, Cellular and Molecular Biology.
Date and time: February 4, 5, 6, 1981 (8:30 a.m. to 5:00 p.m.).
Place: Conference Room 338, National Science Foundation; 1800 G Street, NW; Washington, DC 20550.
Type of meeting: Closed.
Contact person: Dr. Bruce L. Umminger, Program Director, Regulatory Biology, Room 332, National Science Foundation, Washington, DC 20550, Telephone 202/357–7975.
Purpose of subcommittee: To provide advice and recommendations concerning support for research in regulatory biology.
Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. The matters are within the Sunshine Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of P.L. 92–463. The Committee Management Officer delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. R. Winkler,

Committee Management Coordinator.

January 14, 1981.

[FR Doc. 81–1862 Filed 1–16–81; 8:45 am]

BILLING CODE 7555–01–M

Subcommittee on Neurobiology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Neurobiology of the Advisory Committee for Behavioral and Neural Sciences.
Date and time: February 9, 10, and 12, 13, 1981: 9:00 a.m. to 5:00 p.m. each day.
Place: Room 543, National Science Foundation, 1800 G Street, N.W., Washington, D.C.
Type of meeting: Closed.
Contact person: Dr. A. O. Dennis Willows, Program Director, Neurobiology Program, Room 320, National Science Foundation, Washington, D.C. 20550, telephone 202/357–7471.
Purpose of subcommittee: To provide advice and recommendations concerning support for research in Neurobiology.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such

determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

January 14, 1981.

[FR Doc. 81-1866 Filed 1-16-81; 8:45 am]

BILLING CODE 7555-01-M

Subcommittee for Sensory Physiology and Perception; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Behavioral and Neural Sciences Subcommittee for Sensory Physiology and Perception.

Date and time: February 5 and 6, 1981: 9:00 a.m. to 5:00 p.m.

Place: Room 642, National Science Foundation, 1800 "G" Street, N.W., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Terrence R. Dolan, Program Director, Sensory Physiology and Perception, Room 320, National Science Foundation, Washington, D.C. 20550.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in sensory physiology and perception.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(C), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

January 14, 1981.

[FR Doc. 81-1863 Filed 1-16-81; 8:45 am]

BILLING CODE 7555-01-M

Subcommittee for the Linguistics Program; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Behavioral and Neural Sciences; Subcommittee on Linguistics.

Date and time: February 5 and 6, 1981, 9:00 a.m.-5:00 p.m.

Place: National Science Foundation, 1800 G Street, N.W., Room 628, Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Paul G. Chapin, Program Director, Linguistics, Room 320, National Science Foundation, Washington, D.C. (202) 357-7696.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in Linguistics.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. The matters are within the exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

January 14, 1981.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 1864 Filed 1-16-81; 8:45 am]

BILLING CODE 7555-01-M

Subcommittee on Facilities of the Materials Research Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee on Facilities of the Materials Research Advisory Committee.

Date: February 9, and 10, 1981.

Time: 9:00 a.m.-5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550, Room 540.

Type of meeting: February 9, Closed, February 10, Open.

Contact person: Dr. William T. Oosterhuis, Materials Research Laboratory Section, Room 408, National Science Foundation, Washington, D.C. 20550, Telephone (202) 357-9791.

Summary minutes: May be obtained from the Contact Person, Dr. William T. Oosterhuis, at the the above stated address.

Purpose of subcommittee: To provide advice and recommendations concerning the user facilities supported by the Division of Materials Research.

Agenda: General discussion of the current status and future plans of the user facilities supported by the Division of Materials Research.

Reason for closing: The first days' meeting is closed since the proposals being reviewed include information of a propietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within the exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

January 14, 1981.

[FR Doc. 81-1867 Filed 1-16-81; 8:45 am]

BILLING CODE 7555-01-M

Subcommittee on Molecular Biology, Group A, of the Advisory for Physiology, Cellular, and Molecular Biology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee on Molecular Biology, Group A, of the Advisory Committee for Physiology, Cellular and Molecular Biology.

Date and Time: February 9 & 10, 1981; 9:00 a.m. to 5:00 p.m. each day.

Place: Room 338, National Science Foundation, 1800 G Street, N.W., Washington, DC 20550.

Type of Meeting: Closed.

Contact person: Dr. Arthur Kowalsky, Program Director, Biophysics Program, Room 329, National Science Foundation, Washington, DC 20550, Telephone: 202/357-7777.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in Molecular Biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Office pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such

determinations by the Director, NSF, on July 6, 1979.

January 14, 1981.

M. R. Winkler,

Committee Management Coordinator.

[FR Doc. 81-1868 Filed 1-16-81; 8:45 am]

BILLING CODE 7555-01-M

Task Group No. 14 of the NSF Advisory Council; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Task Group No. 14 of the NSF Advisory Council.

Place: Room 536, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

Date: Tuesday, February 10, 1981.

Time: 9:00 a.m. till 5:00 p.m.

Type of meeting: Open.

Contact person: Ms. Jeanne Huson, Executive Secretary of the NSF Advisory Council, National Science Foundation, Room 518, 1800 G Street, N.W., Washington, D.C. 20550. Telephone: 202/357-9433.

Purpose of task group: The purpose of the Task Group, composed of members of the NSF Advisory Council, is to provide the full Advisory Council with a mechanism to consider numerous issues of interest to the Council that have been assigned by the National Science Foundation.

Summary minutes: May be obtained from the contact person at above stated address.

Agenda: The Task Group is asked to study the question of continuing education of engineers and computer professionals in universities and/or industry. The Task Group will focus on university and/or industrial programs to foster continuing engineering education for industrial employees, the possible impact of such programs within the university structure, and will address the question of whether there will be a developing shortage of engineering faculty with degrees from U.S. universities.

January 14, 1981.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 81-1869 Filed 1-16-81; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for PCM, Subcommittee on Genetic Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Genetic Biology of the Advisory Committee for Physiology, Cellular and Molecular Biology.

Date and Time: February 12 thru 14, 1981, 9:00 a.m.

Place: Room 338, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

Type of Meeting: Closed.

Contact person: Dr. DeLill S. Nasser, Program Director, Genetic Biology Program, Room 329, National Science Foundation, Washington, D.C. 20550, Telephone: (202) 357-9687.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in genetic biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

January 14, 1981.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 81-1870 Filed 1-16-81; 8:45 am]

BILLING CODE 7555-01-M

Subcommittee on Social and Developmental Psychology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Social and Developmental Psychology of the Advisory Committee for Behavioral and Neural Sciences.

Date and time: February 12-13, 1981: 9:00 a.m. to 5:00 p.m. each day.

Place: Room 643, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Robert A. Baron, Program Director, Social and Developmental Psychology, Room 320, National Science Foundation, Washington, D.C. 20550, telephone 202/357-9485.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in Social and Developmental Psychology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

January 14, 1981.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 81-1871 Filed 1-16-81; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on NRC Safety Research Program; Meeting

The ACRS Subcommittee on the NRC Safety Research Program will hold a meeting on February 4, 1981 in Room 1046, 1717 H Street, N.W., Washington, DC to discuss NRC's Draft Long-Range Research Plan (NUREG-0740) and ACRS comments on RES response to ACRS Recommendations listed in NUREG-0699. Notice of this meeting was published December 22, 1980.

In accordance with the procedures outlined in the **Federal Register** on October 7, 1980. (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Wednesday, February 4, 1981
8:30 a.m. until 3:00 p.m.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding pertinent portions of

the NRC Draft Long-Range Research Plan.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Sam Duraiswamy (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., EST.

Dated: January 14, 1981.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 81–1903 Filed 1–16–81; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Plant Features Important to Safety; Meeting

The ACRS Subcommittee on Plant Features Important to Safety will hold a meeting at 1:00 p.m. on February 3, 1981 in Room 1167, 1717 H Street, N.W., Washington, DC to begin discussion of the NRC definitions of plant features important to safety and related criteria for such systems developed by the NRC Staff in connection with the TMI–1 restart review.

In accordance with the procedures outlined in the **Federal Register** on October 7, 1980 (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Tuesday, February 3, 1981

1:00 p.m. until the conclusion of business

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Paul Boehnert (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., EST.

Dated: January 14, 1981.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 81–1904 Filed 1–16–81; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Regulatory Activities; Meeting

The ACRS Subcommittee on Regulatory Activities will hold a meeting on February 3, 1981 in Room 1046, 1717 H Street, N.W., Washington, DC. Notice of this meeting was published December 22, 1980.

In accordance with the procedures outlined in the **Federal Register** on October 7, 1980 (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify te Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Tuesday, February 3, 1981

The meeting will commence at 8:45 a.m.

The Subcommittee will hear presentations from the NRC Staff and will hold discussions with this group pertinent to the following:

(1) Regulatory Guide (Task No. RS 705–4), "Lightning Protection for Nuclear Power Plants" (Post comment).

(2) Regulatory Guide 1.136, Revision 2, "Materials, Construction and Testing of Concrete Containments" (Post comment).

(3) Regulatory Guide (Task No. SC 705–4), "Ultrasonic Testing of Reactor Vessel Welds During Pre-Service and Inservice Examination" (Post comment).

Other matters which may be of a predecisional nature relevant to reactor operation or licensing activities may be discussed following this session.

Persons wishing to submit written statements regarding Regulatory Guides with Task numbers RS 705–4, SC 705–4, and Regulatory Guide 1.136, Revision 2, may do so by providing a readily reproducible copy to the Subcommittee at the beginning of the meeting. However, to insure that adequate time is available for full consideration of these comments at the meeting, it is desirable to send a readily reproducible copy of the comments as far in advance of the meeting as practicable to Mr. Sam Duraiswamy, the Designated Federal Employee for the meeting in care of ACRS, Nuclear Regulatory Commission, Washington, DC 20555 or telecopy them to the Designated Federal Employee (202/634–3319) as far in advance of the meeting as practicable. Such comments shall be based upon documents on file and available for public inspection at the NRC Public Document Room, 1717 H Street, N.W., Washington, DC 20555.

Further information about topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Sam Duraiswamy, (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., EST.

Dated: January 14, 1981.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 81–1905 Filed 1–16–81; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Safety Philosophy, Technology and Criteria; Meeting

The ACRS Subcommittee on Safety Philosophy, Technology and Criteria will hold a meeting at 3:00 p.m. on February 4, 1981 in Room 1046, 1717 H Street, N.W., Washington, DC to discuss requirements for new Near-Term Construction Permit reactor plants.

In accordance with the procedures outlined in the **Federal Register** on October 7, 1980 (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that

appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Wednesday, February 4, 1981, 3:00 p.m. Until the Conclusion of Business.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Richard Savio (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., EST.

Dated: January 14, 1981.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 81–1906 Filed 1–16–81; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Boston Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

January 12, 1981.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

Advanced Micro-Devices, Inc., Common Stock, $.0.1 Par Value (File No. 7–5822)
Commodore International, U.S. Capital Shares, $1 Par Value (File No. 7–5823)
Computervison Corp., Common Stock, $.05 Par Value (File No. 7–5824)
Dorchester Gas Corp., Common Stock, $.10 Par Value (File No. 7–5824)
Federal Express Corp., Par Value (File No. 7–5825)
Flowers Industries Inc., Class A Common Stock, $.62 ½ Par Value (File No. 7–5826)
GCA Corp., Common Stock, $.60 Par Value (File No. 7–5827)
Global Marine, Inc., Common Stock, $.25 Par Value (File No. 7–5828)
Mesa Royalty Trust Units of Beneficial Interest, No Par Value (File No. 7–5829)
Oak Industries, Inc. Common Stock, $1 Par Value (File No. 7–5830)
Ocean Drilling & Exploration Co., Common Stock, $.50 Par Value (File No. 7–5831)
Patrick Petroleum Co., Common Stock, $.10 Par Value (File No. 7–5832)
Pneumo Corp., Common Stock, $1 Par Value (File No. 7–5833)
Southland Royalty Co., Common Stock, $.12 ½ Par Value (File No. 7–5834)
Southwest Airlines, Common Stock, $1 Par Value (File No. 7–5835)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 3, 1981 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81–1793 Filed 1–16–81; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 11547; (811–3018)]

Federated Cash Reserve Trust; Filing of Application Pursuant to Section 8(f) of the Act for an Order Declaring that Applicant has Ceased to be an Investment Company

January 13, 1981.

Notice is hereby given that Federated Cash Reserve Trust ("Applicant"), 421 Seventh Avenue, Pittsburgh, PA 15219, which is registered under the Investment Company Act of 1940 ("Act") as an open-end diversified, management investment company, filed an application on October 21, 1980, requesting an order of the Commission, pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company as defined by the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it registered under the Act on March 24, 1980, and that it simultaneously registered an indefinite number of its shares of beneficial interest of common stock under the Securities Act of 1933. According to the application, the registration of those shares became effective on April 2, 1980, at which time an initial public offering of those shares commended. Applicant further states that it was dissolved pursuant to its Declaration of Trust and applicable state law on August 18, 1980.

According to the application, on August 18, 1980, Applicant's Trustees recommended to its shareholders that Applicant's affairs be wound up and terminated and that unanimous consent of shareholders approving such termination was obtained on August 18, 1980. Applicant states that it voluntarily redeemed all of its 10,523,121 outstanding shares at their $1 net asset value per share and that such redemptions were completed on August 18, 1980. Applicant further states that all its portfolio securities either matured or were sold to Money Market Management, Inc. (a money market fund registered under the Act) pursuant to Rule 6C–5(T) under the Act. According to the application, that liquidation resulted in transfer agent and administrative fees of $24,801.75, which were assumed by Federated Income Research Corp., Applicant's investment adviser.

Applicant states that as of the date of the filing of the application it had no assets or liabilities and was not a party to any litigation or administrative proceeding. Applicant further states that it is not engaged and does not propose to engage in any business activities other than those necessary for the winding up of its affairs and that there are no shareholders of Applicant to whom distribution in complete liquidation of their interests has not been made. According to the application, Applicant intends to file Articles of Dissolution with the Secretary of State of the Commonwealth of Massachusetts.

Section 8(f) of that Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company as defined by the Act, it shall so declare by order and, upon taking effect of such order, the registration of such company under the Act shall cease to be in effect.

Notice is further given that any interested person may, not later than February 9, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 1886 Filed 1–16–81: 8:45 am]

BILLING CODE 8010–01–M

Midwest Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

January 12, 1981.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

The Parsons Corp/RMP International Ltd. Common Stock, $1 Par Value (File No. 7–5837)

General Nutrition, Inc. Common Stock, No Par Value (File No. 7–5838)

Hydraulic Company Common Stock, No Par Value (File No. 7–5839)

Towle Manufacturing Company Common Stock, No Par Value (File No. 7–5840)

Cenvill Communities, Inc. Common Stock, $.01 Par Value (File No. 7–5841)

Wackenhut Corporation Common Stock, $.10 Par Value (File No. 7–5842)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 3, 1981 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81–1794 Filed 1–16–81: 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–5289]

New Hampshire Ball Bearings, Inc., Common stock, $2 Par Value; Application To Withdraw From Listing and Registration

January 12, 1981.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 (the "Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the Boston Stock Exchange, Incorporated ("BSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

1. The common stock of New Hampshire Ball Bearings, Inc. (the "Company") is listed and registered on the BSE and the American Stock Exchange, Inc. ("Amex"). Over the past two years, only 33 shares of the Company's stock were traded on the BSE. The Company has determined that the volume of trading on the BSE is insufficient to warrant continued listing, registration, and the related fees connected therewith.

2. This application relates solely to withdrawal of the common stock from listing and registration on the BSE and shall have no effect upon the continued listing of such stock on the Amex.

Any interested person may, on or before February 3, 1981, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81–1795 Filed 1–16–81: 8:45 am]

BILLING CODE 8010–01–M

[Release No. 21880; 70–6465]

Northeast Utilities, et al.; Proposal to Increase Amounts of Short-Term Borrowing Authorization

January 9, 1981.

In the matter of Northeast Utilities, Western Massachusetts Electric Company, 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, The Connecticut Light & Power Company, The Hartford Electric Light Company, and Northeast Nuclear Energy Company, Selden Street, Berlin, Connecticut 06037 and Holyoke Water Power Company, One Canal Street, Holyoke, Massachusetts 01040 (70–6465).

Notice is hereby given that Northeast Utilities ("NU"), a registered holding company, and five of its wholly-owned subsidiary companies, The Connecticut Light & Power Company ("CL&P"), The Hartford Electric Light Company ("HELCO"), Western Massachusetts Electric Company ("WMECO"), Holyoke Water Power Company ("HWP") and Northeast Nuclear Energy Company ("NNECO"), have filed a post-effective amendment to an application-declaration previously filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6, 7 and 12(b) of the Act and Rules 45 and 50 promulgated thereunder regarding the proposed transaction.

By orders dated July 1, 1980 (HCAR No. 21647) and August 21, 1980 (HCAR No. 21684) in this matter the applicants-declarants were authorized to issue notes to banks and, with the exception

of HWP and NNECO, commercial paper to a dealer in commercial paper from time to time through June 30, 1981. In addition, CL&P, HELCO and WMECO were authorized to enter into a multibank revolving credit and term loan agreement under the terms of which the three companies can borrow up to an aggregate of $140,000,000. The aggregate amount of all such notes at any time outstanding, whether issued to banks ("Bank Notes") or to a dealer in commercial paper ("Commercial Paper") or to banks under the revolving credit/term loan agreement ("Revolving Credit/Term Notes") may not exceed $55,000,000 in the case of NU, $185,000,000 in the case of CL&P, $100,000,000 in the case of HELCO, $55,000,000 in the case of WMECO, $8,000,000 in the case of HWP and $30,000,000 in the case of NNECO.

It is now proposed that the maximum borrowing limits of CL&P and NNECO be changed to $210,000,000 and $40,000,000, respectively. It is stated that CL&P and NNECO will have to rely more heavily on short-term financing than previously anticipated because, during 1980, particularly in the second half of the year, the nuclear generating units owned by the Northeast Utilities System companies, or in which they have ownership interests, have been out of operation for refueling, modifications and repairs for longer periods than had been anticipated. As a result, the System companies have experienced unbudgeted increases in fossil fuel, purchased power and exchange power expenses. The retail rates for CL&P and HELCO include a Generation Utilization Adjustment Clause ("GUAC") under which CL&P and HELCO receive revenues from, or return revenues to, customers based on nuclear performance during the twelve-month period ending July 31 in each year. Low nuclear performance in the current GUAC year through October, 1980 has led to a $15,500,000 balance which would be payable to CL&P and HELCO beginning August 1, 1980 by customers if nuclear performance is at the 70% capacity factor between November 1, 1980 and July 31, 1980. Until cost recovery begins through GUAC, CL&P and HELCO finance expenses associated with below-par nuclear performance through short-term debts; the operating and maintenance expenses associated with repairs and improvements are financed by short-term debt by NNECO.

It is stated that no special or separable fees, commissions or expenses will be incurred in connection with the proposed transaction. No state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than February 2, 1981, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-1796 Filed 1-16-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17429; SR-Amex-80-26]

American Stock Exchange, Inc.; Order Approving Proposed Rule Change

January 9, 1981.

In the matter of American Stock Exchange, Inc., 86 Trinity Place, New York, New York (SR-Amex-80-26).

On October 27, 1980, the American Stock Exchange, Inc. ("Amex") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would adopt as Amex Rule 620 a simplified small claim arbitration procedure for resolving disputes between Amex members or member organizations where the amount in dispute is $5000 or less. The proposed rule is similar to Amex Rule 619 which currently governs small claim disputes between public customers and Amex members or member organizations.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-17268, November 3, 1980) and by publication in the **Federal Register** (45 FR 74136, November 7, 1980). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-1791 Filed 1-16-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17430; SR-Amex-80-27]

American Stock Exchange, Inc.; Order Approving Proposed Rule Change

January 9, 1981.

In the matter of American Stock Exchange, Inc., 86 Trinity Place, New York, New York (SR-Amex-80-27).

On October 17, 1980, the American Stock Exchange, Inc. ("Amex") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would incorporate Securites Exchange Act Rules 19c-1 and 19c-3 [1] as Amex Rule 5(c) Rule 19c-3,[2] which is required to be incorporated within the rules of each national securites exchange, provides that an exchange may not prohibit its members, member organizations, or affiliated persons from effecting over-the-counter transactions in any equity security that, subject to certain exceptions, is not a

[1] 17 CFR 240.19c-1, 240.19c-3.

[2] Rule 19c-3 recently was adopted by the Commission in Securities Exchange Act Release No. 16888 (July 11, 1980), 45 FR 41125 (June 18, 1980), 20 SEC Docket (June 24, 1980).

"covered security" as that term is defined in Rule 19c-3.[3]

The proposal also would rescind Amex Rule 189, which prohibits off-floor purchases by a specialist, and Amex Rule 550, which prohibits participation by Amex members and member organizations in off-floor secondary distributions of securities traded on the Amex, would be modified to permit such participation when the distribution is made on an agency basis or does not involve a "covered security" as defined in Rule 19c,-3.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-17267, November 3, 1980) and by publication in the **Federal Register** (45 FR 74136, November 7, 1980). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the Requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-1792 Filed 1-16-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17437; SR-OCC-80-2]

Options Clearing Corporation; Order Approving Proposed Rule Change

January 9, 1981.

In the matter of the Options Clearing Corporation ("OCC"), 5950 Sears Tower, 233 South Wacker Drive, Chicago, Illinois 60606 (SR-OCC-80-2).

On January 15, 1980, OCC filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change that would permit OCC to offset the value of certain exercised long positions carried by clearing members in customer and firm non-lien accounts against the value of assigned short positions in the same account for the purpose of calculating the margin to be required by OCC.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16532, January 25, 1980) and by publication in the **Federal Register** (45 FR 7660, February 4, 1980). No written comments were received by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to clearing agencies and, in particular, the requirements of Section 17A and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above mentioned rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-1797 Filed 1-16-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17436; SR-PSE-80-24]

Pacific Stock Exchange; Order Approving Proposed Rule Change

January 9, 1981.

In the matter of Pacific Stock Exchange, 301 Pine Street, San Francisco, CA 94104 (SR-PSE-80-24).

On December 5, 1980, the Pacific Stock Exchange, Incorporated ("PSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would increase the PSE's listing fees with respect to the initial listing of bonds, the initial listing of additional shares of stock or warrants, and the annual listing maintenance fees for all PSE securities.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 17375, December 15, 1980) and by pubication in the **Federal Register** (45 FR 83728, December 19, 1980). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-1798 Filed 1-16-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17432; SR-PSE-80-21]

Pacific Stock Exchange; Order Approving Proposed Rule Change

January 9, 1981.

In the matter of Pacific Stock Exchange, 301 Pine Street, San Francisco, CA 94104 (SR-PSE-80-21).

On November 17, 1980, the Pacific Stock Exchange, Incorporated ("PSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which requires that each PSE specialist have a registered specialist assistant, with full authority to transact business on behalf of the specialist, in order to provide enhanced coverage of every specialist post.[1]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 17330, November 24, 1980) and by publication in the **Federal Register** (45 FR 79620, December 1, 1980). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

[3] In general, covered securities include any equity security that initially was listed and registered on a national securities exchange on or before April 26, 1979. For further explanation, see Rule 19c-3(b)(3).

[1] The use of RSAs would apply only on the PSE's equity floor which has a specialist system, and not on the PSE's options floor which has a competing market maker system.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-1799 Filed 1-16-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11546; (812-3695)]

Security Bond Fund, Inc., et al.; Filing of Application for an Order Amending a Previous Order Granting Exemption From the Provisions of Section 22(d) of the Act and Rules 22d-1 and 22d-2 Thereunder Pursuant to Section 6(c) of the Act and Permitting Offers of Exchange Pursuant to Section 11(a) of the Act

January 13, 1981.

In the Matter of Security Bond Fund, Inc., Security Equity Fund, Inc., Security Investment Fund, Inc., Security Ultra Fund, Inc., Life Insurance Investors, Inc. and Security Distributors, Inc., Security Benefit Life Building, 700 Harrison Street, Topeka, Kansas 66636.

Notice is hereby given that Security Bond Fund, Inc. ("Bond"), Security Equity Fund, Inc. ("Equity"), Security Investment Fund, Inc. ("Investment"), Security Ultra Fund, Inc. ("Ultra"), and Life Insurance Investors, Inc. ("Investors") (collectively referred to as the "Funds"), open-end, diversified management investment companies registered under the Investment Company Act of 1940 ("Act"), and Security Distributors, Inc. ("Distributors") (collectively referred to with the Funds as "Applicants"), filed an application on November 10, 1980, and an amendment thereto on December 15, 1980, requesting an order of the Commission amending in the manner described below an earlier order of the Commission dated December 19, 1974 (Investment Company Act Release No. 8621). This earlier order, pursuant to Section 11(a) of the Act, permitted all the Funds, except Investors, to exchange their shares for shares of Bond on a basis other than their relative net asset value per share at the time of the exchange, and, pursuant to Section 6(c) of the Act, exempted such exchanges from the provisions of Section 22(d) of the Act and Rules 22d-1 and 22d-2 thereunder. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

According to the application, Security Cash Fund, Inc. ("Cash"), is a "money market" fund which is registered under the Act as an open-end, diversified managment investment company. There is no sales charge on the sale of shares of Cash.

Distributors, as principal underwriter for each of the Funds, maintains a continuous public offering of Fund shares at their respective net asset values plus a sales charge. At present, the sale charges on sales of Bond shares are 2.75% of the offering price in transactions of less than $100,000, 1.75% of the offering price in transactions $100,000 and over but less than $1,000,000 and 0.75% of the offering price in transactions of $1,000,000 and over. The applicable sale charge for shares of Equity, Ultra, Investment and Investors varies with the quantity purchased in the transaction, as follows:

Size of transaction at offering price	Sales load (as percentage of offering price)
Less than $10,000	8.50
$10,000 but less than $25,000	7.75
$25,000 but less than $50,000	6.25
$50,000 but less than $100,000	4.75
$100,000 but less than $250,000	3.75
$250,000 but less than $1,000,000	2.75
$1,000,000 and over	1.75

Applicants state that shares of each of the Funds, other than Bond, which have been owned thirty days or more, may be exchanged for shares of any of the other Funds, including Bond, on the basis of the relative net asset value per share at the time of exchange, without the payment of any sales charge. Applicants further represent that, pursuant to the order of the Commission dated December 19, 1974, stockholders of Bond are permitted to exchange shares of Bond for shares of any of the other Funds, except Investors, on the basis of their relative net asset value per share at the time of exchange, plus the sales charge described in the prospectus of the Fund whose shares are being acquired, less the sales charge that was initially paid on such bond shares being exchanged. Since the sales charge on the sale of Bond shares is generally less than the applicable sales charge for the other Funds, an investor acquiring shares of one of the Funds through an exchange of Bond shares initially purchased at the reduced sales charge pays approximately the same overall sales charge that would have been paid had the same number of shares of one of the Funds been purchased directly.

Cash now proposes to permit the stockholders of any of the Funds to exchange their shares of such other Fund for shares of Cash at their relative net asset value per share at the time of exchange, without a sales charge, which is the same basis on which shares of Cash are offered to the general public by its prospectus.

Each of the Funds and the Distributor propose to permit stockholders of Cash who acquired their shares through direct purchase for cash, to exchange such shares for shares of the Funds upon the basis of their relative net asset values per share at the time of exchange, plus the sales charge described in the prospectus of the Fund issuing the new shares. Since there is no sales charge on the purchase of Cash shares, Applicants state that the sales charge on shares of the Fund acquired in the exchange would be the same as the sales charge on shares of the Fund offered to the general public by its prospectus.

Each of the Funds and the Distributor further propose to permit holders of shares of Cash which have been acquired upon the exchange of shares of one of the Funds for shares of Cash, to exchange such Cash shares for shares of the Fund on the basis of their relative net asset value per share. There will be no sales charge upon the issue of shares of the new Fund in exchange for such shares of Cash in those cases in which the sales charge of the original Fund was the same as the sales charge described in the prospectus of the Fund issuing shares in the exchange. In cases in which shares of Bond have been exchanged for shares of Cash, such shares of Cash will be exchanged for shares of the new Fund on the basis of their relative net asset value per share at the time of the exchange, plus a sales charge described in the prospectus of the Fund being acquired, less the charge paid on Bond shares at the time they were originally acquired.

Each of the Funds and the Distributor proposes to permit stockholders of Cash who acquired Cash shares through the reinvestment of dividends to convert those Cash shares into shares of the Funds on the basis of the relative net asset value of shares involved at the time of the exchange, without a sales charge.

Investors and the Distributor propose to permit stockholders of the Funds, other than Bond, to transfer their shares into shares of Investors at relative net asset value at the time of the exchange, without payment of a sales charge. Investors and the Distributor further propose to permit the stockholders of Bond to exchange their Bond shares for shares of Investors on the basis of their relative net asset values per share at the time of the exchange, plus the sales charge described in the prospectus of

Investors, less the sales charge paid on the Bond shares at the time they were originally acquired. Investors and the Distributor propose, however, that no additional sales charge will be imposed upon the exchange of shares of Bond which were acquired as a result of an exchange of shares of the Funds, or as a result of the reinvestment of dividends or captal gain distributions.

In addition, Investors and the Distributor propose to permit stockholders of Bond who redeem their shares of Bond to have a one-time privilege for 30 days after redemption, to the extent the redeemed Bond shares were eligible for the exchange privilege, to purchase shares of Investors up to the dollar amount of the redemption proceeds at a sales charge equal to the additional sales charge which would have been paid had the redeemed Bond shares been exchanged for shares of Investors.

Section 11(a) of the Act provides that it shall be unlawful for any registered open-end company or any principal underwriter for such company to make or cause to be made an offer to the shareholder of a security of such a company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged unless the terms of the offer have first been submitted to and approved by the Commission.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company or principal underwriter thereof shall sell any redeemable security issued by such company to any person except at a current offering price described in the prospectus. Rule 22d–1 provides for exemption from Section 22(d) to the extent necessary to permit the sale of securities of a registered investment company at prices which reflect reductions in or eliminations of the sales load under certain stated circumstances. Rule 22d–2 provides for a further exemption from the provisions of Section 22(d) to the extent necessary to permit, without sales charge, reinvestment of the proceeds of a redemption made during the prior 30 days or the purchase with such proceeds of shares of another investment company which offers to exchange its shares for shares of the fund whose shares had been redeemed without any sales charge.

Applicants state that the overall purpose of the exchange offers and arrangements is to permit a stockholder of any one of the investment companies in the Security group of funds, who wishes to change his investment objectives, to convert his investment to another fund in the group, without paying the full sales charge which would otherwise be applicable. Applicants further state, however, that if exchange offers to stockholders of Bond and to stockholders of Cash were made solely at relative net asset values, the exchanging stockholder would pay substantially less in sales charges on his investment in the Fund to be acquired than would other investors who purchased shares directly from that Fund for cash. According to the application, the terms of the exchange of Cash shares or Bond shares for shares of the other Funds (upon the basis of net asset values per share at the time of the exchange, plus the sales charge described in the prospectus of the investment company whose shares are being acquired, less the sales charge previously paid on the purchase of the prior investment company's shares) are designed to discourage attempts to circumvent the higher sales charges paid by investors purchasing directly for cash from the Fund whose shares are being acquired. Applicants further represent that the exchange terms are gauged so that an investor acquiring shares of one of the other funds in the group through an exchange of Bond shares or Cash shares would pay approximately the same overall sales charge that he would have paid had he purchased the same number of shares of one of the other Funds directly. Applicants further assert that the terms of the exchange privilege appear to be consistent and compatible with the intent and spirit of Section 22(d) of the Act and the Rules promulgated thereunder since they would prevent an investor from purchasing shares of one of the Funds at a sales charge other than that described in the prospectus through the device of purchasing shares of Bond or of Cash and subsequently exchanging those shares at net asset value for shares of one of the other Funds.

Section 6(c) provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision or provisions of the Act or any rule or regulation promulgated thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

On the basis of the foregoing, Applicants submit that the proposed exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than February 9, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81–1687 Filed 1–16–81; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Optional Peg Rate

The Small Business Administration publishes on a quarterly basis an interest rate called the optional "peg" rate (13 CFR 120.3(b)(2)(iii)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans.

For the January–March quarter of 1981, this rate will be twelve (12) percent.

Dated: January 12, 1981.
William H. Mauk, Jr.,
Acting Administrator.
[FR Doc. 81-1789 Filed 1-16-81; 8:45 am]
BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #1969]

Territory of Guam; Declaration of Disaster Loan Area

The Territory of Guam constitutes a disaster area as a result of physical damage caused by Typhoon Betty which occurred on October 31, 1980. Eligible persons, firms and organizations for loans for physical damage until the close of business on March 13, 1981 and for economic injury until the close of business on October 13, 1981 at: Small Business Administration, Branch Office, Pacific Daily News Building, Room 508, Martyr & O'Hara, Agana, Guam 96910 or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: January 12, 1981.
William H. Mauk, Jr.,
Acting Administrator.
[FR Doc. 81-1788 Filed 1-16-81; 8:45 am]
BILLING CODE 8025-01-M

(License No. 06/06-5240)

Southern Orient Capital Corp.; Issuance of a Small Business Investment Company License

On October 23, 1980, a notice was published in the **Federal Register** (45 FR 70365) stating that an application has been filed by Southern Orient Capital Corporation, 2419 Fannin, Suite 200, Houston, Texas 77002, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1980)) for a license as a small business investment company.

Interested parties were given until close of business November 7, 1980, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 06/06-5240 on December 29, 1980, to Southern Orient Capital Corporation, to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59-011, Small Business Investment Companies)

Dated: January 12, 1981
Michael K. Casey,
Associate Administrator for Investment.
[FR Doc. 81-1915 Filed 1-16-81; 8:45 am]
BILLING CODE 8025-01-M

[License No. 02/02-0350]

Quidnet Capital Corp.; Filing of Application for Approval of Conflict of Interest Transaction Between Associates

Notice is hereby given that Quidnet Capital Corporation (Quidnet), 909 State Street, Princeton, New Jersey 08540, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application pursuant to § 107.1004 of the Regulations governing small business investment companies (13 CFR 107.1004 (1980)), for approval of a conflict of interest transaction.

On June 8, 1979, the Small Business Administration granted an exemption under § 107.1004(b)(1) of its Regulations, to enable Quidnet to provide financing in the amount of $28,875 to J. P. Industries, Inc. (JPI), 3001 South State Street, Ann Arbor, Michigan 48104. Quidnet additionally committed through June 4, 1982, to provide up to $271,125 of additional funds to JPI. Quidnet now proposes to make an investment in JPI through the purchase of up to $250,000 of a subordinated debenture offering.

An officer, director and stockholder of Quidnet is also a director of JPI. The holder of Quidnet's Preferred Stock is also a shareholder of JPI. As the result of these affiliations, JPI is deemed an Associate of Quidnet as defined under Section 107.3 of the SBA's Regulations. Consequently, the proposed transaction falls within the purview of Section 107.1004 of the Regulations and requires a written exemption granted by the SBA.

Notice is hereby given that any person may, not later than 15 days from date of publication of this notice submit written comments on the proposed transaction. Any such comments should be addressed to the Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Princeton, New Jersey and Ann Arbor, Michigan.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: January 12, 1981.
Michael K. Casey,
Associate Administrator for Investment.
[FR Doc. 81-1914 Filed 1-16-81; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 736]

Intent To Prepare Environmental Impact Statement and Conduct a Scoping Meeting for Intelsat Headquarters and Expansion of International Center, Washington, D.C.

In accordance with the requirements of the National Environmental Policy Act (Public Law 91-190), this is a Notice of Intent to prepare an Environmental Impact Statement (EIS) and initiate the scoping process for the proposed agency action specified below:

AGENCY: The U.S. Department of State has been authorized by Public Law 90-553 to develop a Federal International Center in Washington, D.C., and has initiated work for that purpose.

Cooperating Agencies:

The General Services Administration and the National Capital Planning Commission will be requested to participate as cooperating Federal agencies.

ACTION: The purpose of the study is to ascertain the environmental impacts that may result from the changes in the proposed Federal International Center as follows:

1. Change the prime lessor of the approximate 8 acres previously identified for the Organization of American States (OAS) to the International Telecommunications Satellite Organization (INTELSAT).

2. Expand the chancery sites to include an additional 11 acres more or less of the "northwest quadrant" of the old National Bureau of Standards site to accommodate up to 9 additional foreign missions.

Study Area:

The study area will concentrate on the site and its immediate environs, located within the northwest quadrant of the District of Columbia. The site is bounded on the east by Connecticut Avenue, N.W. and the University of the District of Columbia, on the south by Tilden Street, on the west by Reno Road and 36th Street, and on the north by Van Ness Street and the residential lots fronting on Yuma Street.

The Proposed Project:

The proposed project consists of long-term leases of Federal land to INTELSAT and foreign governments for the purposes of constructing the INTELSAT Headquarters building, chanceries, and chancery enclaves in the "northwest quadrant". Phase 1 of the INTELSAT Headquarters building will consist of approximately 375,000 sq. ft. Ultimately, the building may be expanded to 700,000 sq. ft. The chanceries may be developed with a FAR of 1.0 for the exterior lots and a FAR of 1.5 in the interior lots.

Public Participation:

Public comment is a very important element of the decision making process which has been sustained throughout the International Center project's progress to date. Because of the significant interest shown by the public, and the number of recent studies that have been completed, there will be a scoping meeting at: Date and Time: Wednesday, Feb. 4, 1981 at 7:00 p.m. Place: National Capital Planning Commission, 1325 G Street, NW., Washington, D.C., 10th Floor Commission Meeting Room.

The Department of State and their consultants will present the proposed scope of analysis and will receive public comments at the scoping meeting. Written comments will be received by the Director of the International Center Project until close of business on Wednesday, February 11, 1981. For further information, please address your requests to Mr. James A. Edgins, Director, A/ICP, Room 1890, Department of State, 2201 C Street, NW., Washington, D.C. 20520 or call 632-9540.

James A. Edgins,

Director, International Center Project.

[FR Doc. 81-1908 Filed 1-16-81; 8:45 am]

BILLING CODE 4710-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular on Design Considerations Concerning the Use of Titanium in Aircraft Turbine Engines

AGENCY: Federal Aviation Administration.

ACTION: Notice of availability of draft advisory circular and request for comments.

SUMMARY: The draft Advisory Circular is intended to provide guidance for demonstrating compliance with the design requirements of Part 33 to minimize the probability of the occurrence of internal fire when titanium is used in aircraft turbine engines.

DATES: Commenters must identify file number AC 33.17-X and comments must be received on or before March 20, 1981.

ADDRESS: Send all comments in duplicate on the draft to Federal Aviation Administration, Office of Airworthiness, Attention: Propulsion Branch (AWS-140), 800 Independence Ave., SW., Washington, DC 20591, or delivered in duplicate to Room 331B, 800 Independence Ave., SW., Washington, DC 20591. Comments delivered must be marked file number AC 33.17-X. Comments may be inspected at Room 331B between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas G. Horeff, Chief, Propulsion Branch (AWS-140), Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591 (Telephone (202) 426-8200).

SUPPLEMENTARY INFORMATION:

Comments Invited

Comments are solicited on all aspects of the draft Advisory Circular. A copy of the draft Advisory Circular may be obtained by contacting the person identified under "For Further Information Contact."

Issued in Washington, DC, on January 12, 1981.

M. C. Beard,

Director of Airworthiness.

Subject: Design Considerations Concerning the use of Titanium in Aircraft Turbine Engines

1. *Purpose.* This circular provides guidance and acceptable means, not the sole means, by which compliance may be shown with the design requirements of Part 33 to minimize the probability of the occurrence of an internal fire when titanium is used in aircraft turbine engines.

2. *Applicable regulations.* Part 33, Sections 33.17(f) and 33.19.

3. *References.*

a. Report No. FAA-RD-79-51, "Titanium Combustion in Turbine Engines," July 1979. (NTIS Accession Number AD A075 657.)

b. British Civil Airworthiness Requirements, Appendix to Chapter C3-2, Paragraph 3, Titanium Fires.

4. *Background.* Titanium is used in aircraft engines because of its low density, high specific strength, and corrosion resistance. While these are significant benefits, titanium has some unique properties that make it unsuited for some applications within turbine engines. Particularly, titanium has two properties that can combine to make it vulnerable to combustion; (1) unlike most other structural metals, titanium ignites at a lower temperature than it melts, and (2) it has a lower conductivity of heat. Thus, heat may not be readily conducted away from its source, thereby permitting the titanium to more rapidly reach its ignition temperature. Hard rubs are the most common source of heat. Rubs may result from foreign object damage (FOD), secondary damage, stall, bearing failure, unbalance and/or case deflection. During a rub, the low thermal conductivity titanium component may rapidly rise to the ignition temperature.

There have been over 140 known instances of titanium fires in aircraft turbine engines in flight and during ground tests. Few of these instances have been serious from a flight safety point of view. A fair proportion have, however, resulted in significant damage to the engine and could under some circumstances be hazardous. In almost all these instances, the titanium fire was a secondary event where something else failed first and resulted in a situation which caused some titanium part to be heated to its ignition temperature. Usually this failure was a titanium compressor blade that failed from foreign object ingestion, vibration, a heavy rub, or some other occurrence. For example, a broken blade when lodged in a location where it is rubbed by a rotating component can be heated by friction to its ignition temperature. Once ignited, titanium combustion continues until either the titanium is depleted, the air pressure falls below some critical value, the combustion progresses to a heavy section or the ignition energy source is removed. Titanium fires are fast burning, i.e., 20 seconds or less, and are extremely intense. The molten particles in titanium fires generate highly erosive hot sprays which have burned through compressor casings with resulting radial expulsion of molten or incandescent metal.

Theoretical studies and experiments have been conducted to define the conditions for ignition and self-sustained combustion of titanium. The results of these studies and experiments are shown in Figures 17 and 18 of Reference a. These results illustrate the following aspects of self-sustained combustion:

a. Increase in size of a titanium blade (increase in Reynolds No.) helps to promote sustained combustion because of less area for heat dissipation by convection and radiation relative to heat of reaction compared with a small blade.

b. Reduction in pressure and air density (decrease in Reynolds No.)

reduces the likelihood of sustained combustion because of the lack of oxygen.

c. Large blades in low pressure stages probably do not cause titanium fires because they do not readily ignite due to low pressure and temperature conditions and, if ignited, the low air density and low supply of oxygen prevent sustained combustion.

d. Intermediate size blades in medium pressure stages probably do not cause titanium fires because there is less likelihood of sustained combustion due to the smaller size of blade although they may more readily ignite locally as a result of an external heat source from rubbing contact.

e. Small blades in high pressure stages will result in titanium fires because heat input due to rubbing contact will produce a temperature high enough for ignition and the high air density and high air velocity over the blades results in a high Reynolds No. conducive to sustained combustion.

Based on arbitrary values chosen from actual experience, the British Civil Aviation Authority has specified in Reference b that it will normally be assumed a titanium fire is possible if stationary titanium material exists in areas where:

a. Pressure will exceed 200 kN/m² (29.4 lbf/in²); and

b. Relative air velocities are in excess of approximately 50 m/sec (150 ft/sec); and

c. The geometry is such that relatively thin titanium sections exist which can be rubbed, directly or after shedding, by rotating parts. Stator blades of conventional design, of up to 15 cm (6 in.) of airfoil height are regarded as falling into this category.

The National Aeronautics and Space Administration and U.S. Air Force are sponsoring contractual, university, and in-house research programs to allow titanium to be used in engines such that only unsustained combustion would occur under abnormal operating conditions. These programs pertain to titanium combustion fundamentals, rub energetics, blades coatings, and new alloys. While considerable attention is being given to develop engineering/material solutions to the titanium fire problem, it should be emphasized that recent experience has demonstrated near complete freedom from case penetration on engines which have been designed using acceptable titanium usage criteria.

5. *Design considerations.* Section 33.17(f) of the Federal Aviation Regulations requires that: "The design and construction of turbine engines must minimize the probability of the occurrence of an internal fire that could result in structural failure, overheating, or other hazardous conditions." To comply with this requirement ideally, there should be no titanium in the gas path of turbine engines. However, the properties of titanium are such that to prohibit its use in certain rotating parts of the engine would significantly increase engine weight. Fortunately, experience indicates this extreme position is not necessary. The application of titanium in the engine design should be directed primarily to minimizing the probability of uncontained titanium fires, i.e., fires that penetrate the engine casing. Design features that minimize the possibility of ignition and propagation of combustion will aid in achieving the primary objective and overall engine reliability.

Reference a has a section on the precautions and preventative measures that can be used to assist in the design of aircraft turbine engines when titanium is to be used. The following considerations are based on proven design experience and should be followed in evaluating the use of titanium in engines, however they are not necessarily the only means available to the designer.

a. *Path of combustion products.* When titanium materials are used in an engine design, an analysis should be made of the paths the products of combustion will take to verify that a titanium fire will be contained within the engine. If these molten products can result in failures that are uncontained or other hazardous conditions, the design should be changed to prevent these possibilities.

b. *Compressor casing.* The design, construction, and materials used for the compressor casing must provide for the containment of fire and consequential damage in compliance with FAR §§ 33.17(f) and 33.19. The compressor casing should not be of titanium unless it is suitably protected to prevent an uncontained fire and its consequential damage.

c. *Compressor stator vanes.* The design, construction, and materials used for compressor stator vanes must conform to the containment requirements as specified in FAR Part 33.17(f). The compressor stator vanes should not be of titanium if ignition can result in uncontained fire. Experience shows that forward stages can be excepted if the vanes are large enough and/or shrouded to avoid breaking during foreign object ingestion.

d. *Seals.* The design, construction, and materials used for seals must conform to the requirements of FAR § 33.17(f). The use of titanium for either the rotating or stationary part of seals should have design features that inhibit ignition and minimize the possibility of propagating combustion.

[FR Doc. 81-1763 Filed 1-16-81; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

Formula Grant Program for Areas Other Than Urbanized Areas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: Public transportation providers located in the new or expanded urbanized areas identified by the 1980 Census will no longer be eligible for assistance under Section 18 of the Urban Mass Transportation Act of 1964. This notice describes transition guidance for authorizing Section 18 projects within areas affected by the census during the transition.

FOR FURTHER INFORMATION CONTACT: Mr. Don Glasco, Office of Highway Planning, 202–426–0153, or Mr. Lee J. Burstyn, Office of the Chief Counsel, 202–426–0754, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

Section 313 of the Surface Transportation Assistance Act of 1978, Pub. L. 95–599, amended the Urban Mass Transportation Act of 1964 by adding a new Section 18. This program provides Federal assistance for public transportation in nonurbanized areas by way of a formula grant program that is administered by each State.

As a result of the 1980 Census, new urbanized areas will be established and the boundaries of existing areas will be expanded. Public transportation providers in these new urbanized areas will no longer be eligible for assistance under the Section 18 program. Instead, formula assistance for transit in urbanized areas is provided under the Urban Mass Transportation Administration's (UMTA) Section 5 program of the Urban Mass Transportation Act of 1964, as amended. The procedures below describe guidance for the authorization of Section 18 projects within these affected areas during their transition from nonurbanized to urbanized status.

1. The Bureau of the Census should make available the names and boundaries of all urbanized areas during the Spring of 1981. No exact publication date has been set.

2. Section 18 projects within newly designated or expanded areas may

continue to be authorized, with discretion, through September 30, 1981.

3. Section 18 projects should not be authorized within these areas after September 30, 1981.

The FHWA objective is transit service continuity. Transitional projects should not be faced with a funding assistance gap. Conversely, the FHWA has limited the eligible expense period for these projects so that scarce Section 18 resources will not be used once UMTA's Section 5 transit assistance funding mechanism is in place. The Section 18 program of projects should begin to identify those operations which are known or expected to exist in new or expanded urbanized areas. Review of these projects will be accomplished through coordination between the UMTA and FHWA field offices.

Furthermore, for those rural areas being absorbed by expanding urbanized areas, the State and local officials should establish an early dialogue with the existing Metropolitan Planning Organizations to discuss the distribution of the UMTA Section 5 funds.

(Catalog of Federal Domestic Assistance Program Number 20.509, Public Transportation for Nonurbanized Areas. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program)

Issued on: January 9, 1981.

John S. Hassell, Jr.,

Federal Highway Administrator.

[FR Doc. 81-1625 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-22-M

National Advisory Committee on Outdoor Advertising and Motorist Information; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. I), notice is hereby given of two meetings of the National Advisory Committee on Outdoor Advertising and Motorist Information.

DATES: Meetings to be held February 5 and 6, 1981, and March 5 and 6, 1981.

TIME: Meetings will be held from 8:30 a.m. to 5:30 p.m. on February 5 and March 5, and from 8:30 a.m. to 3:30 p.m. on February 6 and March 6.

ADDRESS: The meetings will be held at Room 4200, Nassif Building, 400 Seventh Street, SW., Washington, D.C.

Attendance

The public is invited to attend. Any member of the public will be permitted to file a written statement with the Committee. Interested persons may be permitted to speak at the meeting in accordance with the bylaws established by the Committee.

Agenda

February Meeting

1. Subcommittees on Legislative Changes and Administrative Changes, which were established by the committee at its December 4 and 5, 1980 meeting, will meet to formulate recommendations and proposed resolution for full committee consideration. The Subcommittees will meet as indicated:

Subcommittee on Legislative Changes

February 5, 8:30 a.m. to 12:30 p.m.
February 6, 8:30 a.m. to 11:30 a.m.

Subcommittee on Administrative Changes

February 5, 1:30 p.m. to 5:30 p.m.
February 6, 12:30 p.m. to 3:30 p.m.

2. Based on the actions of the subcommittees during the above meetings, the Chairperson of the full committee may, at his/her discretion, alter the remaining February 1981 agenda to include a meeting of the full committee.

March meeting

The full committee will meet to:

1. Review and approve minutes,

2. Consider subcommittees' recommendations,

3. Vote on resolutions, and

4. Consider other matters as may be specified by the Chairman or Acting Executive Director.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Laska, Acting Executive Director of the National Advisory Committee, Room 4223, HCC-10, (202) 426-0761, or Mr. Edward V. A. Kussy, Deputy Assistant Chief Counsel, Room 4230, HCC-40, (202) 426-0791, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

(Catalog of Federal Domestic Assistance Program Number 20.214, Highway Beautification—Control of Outdoor Advertising, and Control of Junkyards. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program)

Issued on: January 12, 1981.

John S. Hassell, Jr.,

Federal Highway Administrator.

[FR Doc. 81-1578 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-22-M

Research and Special Programs Administration

Applications for Renewal or Modification of Exemptions or Applications to Become a Party to an Exemption

AGENCY: Materials Transportation Bureau, D.O.T.

ACTION: List of Applications for Renewal or Modification of Exemptions or Application to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes February 3, 1981.

ADDRESS COMMENTS TO: Dockets Branch, Information Services Division, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, S.W., Washington, DC.

Application No. and applicant	Renewal of exemption
3095-X—Dow Chemical Co., Midland, MI [1]	3095
3330-X—General Electric Co., Schenectady, NY	3330
4453-X—Maynes Explosives Co., Lee's Summit, MO	4453
4684-X—Honeywell, Inc., Minneapolis, MN	4684
4698-X—American Bosch, Springfield, MA	4698
5649-X—Great Lakes Chemical Corp., Adrian, MI	5649
6016-X—Southern Welding Supply Co., Inc., Bowling Green, KY	6016
6403-X—Ethyl Corp., Baton Rouge, LA	6403
6500-X—Blue Star Line, Ltd., London, England	6500
6500-X—East Asiatic Co., Inc., Copenhagen, Denmark	6500
6545-X—San Diego Gas & Electric Co., San Diego, CA	6545
6602-X—Great Lakes Chemical Corp., El Dorado, AR [2]	6602
6618-X—Monsanto Co., St. Louis, MO	6618
6626-X—Airco Welding Products, Springfield, NJ	6626
6946-X—Badger Welding Supplies, Inc., Madison, WI	6946
7078-X—Carroll Air Service, Inc., Kingston, NY	7078
7286-X—Liquid Carbonic Corp., Chicago, IL	7286
7491-X—Process Engineering, Inc., Plaistow, NH [3]	7491
7610-X—W. R. Grace & Co. (Dewey & Almy Chem. Div.), San Leandro, CA	7610
7700-X—U.S. Department of Agriculture, Washington, DC	7700
7725-X—Economics Laboratory, Inc., St. Paul, MN [4]	7725
7834-X—Magnaflux Corp., Chicago, IL	7834
7862-X—General Electric Co., Milwaukee, WI	7862
7883-X—RMI Co., Ashtabula, OH	7883
8030-X—Halliburton Co., Duncan, OK	8030
8047-X—Compagnie des Containers Reservoirs, Paris, France	8047
8096-X—Pressure Pak Container Co., East Hampton, CT	8096
8136-X—Eastman Kodak Co., Rochester, NY	8136
8144-X—Hercules, Inc., Wilmington, DE	8144
8159-X—Transport International Containers, S.A., Paris, France	8159
8159-X—Fauvet-Girel, Paris, France	8159
8196-X—ANF Industries, Paris, France [5]	8196
8237-X—Sanders Associates, Inc., Nashua, NH	8237
8308-X—Sky Cab, Inc., East Brunswick, NJ	8308
8401-X—ERA Helicopters, Inc., Anchorage, AK	8401

[1] To authorize additional carrier under terms of exemption.
[2] To authorize use of stainless steel valves in place of the bronze valves for shipment of bromine chloride in DOT Specification 106A500X.
[3] To authorize liquefied methane as an additional commodity.
[4] To renew and provide for coded bill of lading update.
[5] To authorize an additional refrigerant gas (R-500) classes as a nonflammable compressed gas.

Application No. and applicant	Parties to exemption
6205-P—Chicago Bridge and Iron Co., Oak Brook, IL	6205
6571-P—Chicago Bridge and Iron Co., Oak Brook, IL	6571
6765-P—U.S. Department of Interior, Amarillo, TX	6765
7052-P—Magnavox Government & Industrial Electronics Corp., Fort Wayne, IN	7052
7423-P—Amax Specialty Metals Corp., Salt Lake City, UT	7423
7834-P—Department of the Army, Washington, DC	7834
8009-P—FIBA Leasing Co., Inc., Westboro, MA	8009
8020-P—Soweco, Inc. Amarillo, TX	8020
8127-P—Hercules Inc., Wilmington, DE	8127
8159-P—SLEMI, Paris, France	8159
8390-P—Ashland Chemical Co., Dublin, OH	8390
8408-P—Environmental Pollution Control Service, Akron, OH	8408
8441-P—Electrochem Industries, Inc., Clarence, NY	8441

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 CFR U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on January 9, 1981.

J. R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 81-1747 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-60-M

Urban Mass Transportation Administration

Innovation in Operating Procedures

AGENCY: Urban Mass Transportation Administration.

ACTION: Notice of Pilot Program.

SUMMARY: The Urban Mass Transportation Administration (UMTA) has established a Pilot Program to Test Innovation in UMTA Operating Procedures. This is one element of UMTA's ongoing effort to streamline operating procedures. The Pilot Program will test procedures which, UMTA believes, will reduce the paperwork required of grantees and will expedite the obligation of grant funds.

FOR FURTHER INFORMATION CONTACT: William Hannan, Office of Transit Assistance, Urban Mass Transportation Administration, Washington, D.C. 20590, 202-472-6997.

SUPPLEMENTARY INFORMATION:

Background

The Urban Mass Transportation Administration is currently examining its internal and external operating procedures in an effort to determine where revisions can be made that would expedite the grantmaking process. A principal element of this effort has been the establishment of a Steering Committee, which was assigned the task of developing and implementing a Pilot Program to Test Innovation in UMTA Operating Procedures. As an initial effort, the Steering Committee addressed approval procedures for routing grants made pursuant to Section 5 of the Urban Mass Transportation Act of 1964, as amended. The Steering Committee has developed a process which offers potential for reducing the amount of time needed to satisfy procedural requirements and actually to obligate funds. The process would also reduce paperwork requirements for UMTA grantees. As experience is gained in this initial effort, additional innovative procedures, designed to reduce paperwork and streamline processes, will be tested for implementation.

Procedural Changes

The procedural changes to be tested in this Pilot Program involve UMTA's review of the annual element of each urbanized area's transportation improvement program (TIP/AE) to allow UMTA to declare its "willingness to fund" routine Section 5 projects included therein. Declaration of "willingness to fund" will imply that the proposed project is fully justified and that it will be approved provided sufficient funds are available and program requirements are met. Participating Metropolitan Planning Organizations (MPO's) will be encouraged to work with transit authorities in their areas to identify a subset of proposed projects as candidates for the declaration of "willingness to fund."

Accordingly, the contents of the TIP/AE will have to be augmented so as to permit UMTA to determine its "willingness to fund" routine projects. Information contained in two Exhibits, which are currently submitted with a capital project application, will—under the Pilot Program—be submitted with the TIP/AE. They are Exhibit A, "Project Description," including budgetary information, and Exhibit C, "Project Justification." In cases where a project justification has been previously submitted to UMTA, that justification need only be referenced in the TIP/AE, with an indication of which previously submitted document wherein the justification can be found.

Once the TIP/AE has been submitted to UMTA for review and approval, the entire program of projects will be forwarded to the Department of Labor (DOL) for review and certification of routing projects contained therein, pursuant to Section 13(c) of the UMT Act. DOL will review each project individually for certification purposes. Concurrently, public hearings can be held, if appropriate, on the entire program of projects.

UMTA will still not obligate funds for a specific project until an application is received and approved. The application will not require a project justification, however, since that will have been submitted with the TIP/AE.

Consequently, only the following exhibits will accompany applications for routine capital grants:

—Exhibit A, Project Description (for identification purposes);
—Exhibit D, Revenue Financing;
—Exhibit H, Use of Project Facilities;
—Exhibit J, Public Hearing;
—Exhibit L, Protection of the Environment;
—Exhibit O, Evaluation of Flood Hazards;
—Opinion of Counsel; and
—Resolution.

In addition, the following Exhibits must be on file with UMTA at the time of project approval:

—Exhibit B, Public Transportation System;
—Exhibit I, Labor; and
—Charter and School Bus.

Anticipated benefits from these Pilot Program procedures will accrue primarily from the revised staging of procedural elements. With Department of Labor review and public hearings being held concurrently with UMTA's project review efforts, considerable time should be saved in the project approval process. Under current procedures, DOL does not receive a project description, and cannot begin its certification review, until a project application is submitted. An ancillary benefit is the reduction in paperwork that will be experienced by grantees, DOL, and UMTA, as multiple routine projects advance through the approval process collectively, rather than individually.

Eligible Projects

The new procedures will apply, for a two-year experimental period, to "routine" Section 5 projects for select Metropolitan Planning Organizations served by Regional offices in Philadelphia (Region III), Chicago (Region V), Kansas City (Region VIII), and San Francisco (Region IX). Participation will be voluntary. For the purpose of this Pilot Program, eligible routine projects are general purpose operating grants (not paratransit), routine bus replacement, and small support equipment and shelters.

Evaluation

Pilot Program procedures will be tested through September 30, 1982. At that time, the program will be evaluated to determine the feasibility and desirability of implementing the procedures nationally.

Dated: January 14, 1981.

Theodore C. Lutz,

Administrator.

[FR Doc. 81-1790 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Customs Service

Decision Denying American Manufacturer's Petition Requesting Reclassification of Radio Remote Control Apparatus: Petitioner's Desire To Contest This Decision

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

ACTION: Notice of (1) decision on American manufacturer's petition, and (2) receipt of notice of petitioner's desire to contest the decision.

SUMMARY: In response to an American manufacturer's petition requesting that radio remote control apparatus designed to be used with toy and model airplanes, boats, tanks, and similar articles, be reclassified under the provision for toys, and parts of toys, not specially provided for, other, in item 737.95, Tariff Schedules of the United States (TSUS), (19 U.S.C. 1202), Customs advised the petitioner that such radio remote control apparatus would continue to be classified under the provision for radio remote control apparatus in item 685.60, TSUS. Upon being informed that its petition had been denied, the petitioner filed notice of its desire to contest the decision.

FOR FURTHER INFORMATION CONTACT: Donald F. Cahill, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202 566-8181).

SUPPLEMENTARY INFORMATION:

Background

A petition was filed under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), by Kraft Systems, Inc., of Vista, California, an American manufacturer, requesting that imported radio remote control apparatus, designed to be used with toy and model airplanes, boats, tanks, and similar articles, be reclassifed under the provision for toys, and parts of toys, not specially provided for, other, in item 737.95, Tariff Schedules of the United States (TSUS), (19 U.S.C. 1202). Radio remote control apparatus is specifically provided for, and uniformly classified by Customs, under item 685.60, TSUS. Notice of the petition was published in the **Federal Register** on May 10, 1979 (44 FR 27528).

In support of its contention that the radio remote control apparatus involved is properly classifiable as a toy under item 737.95, TSUS, the petitioner made the following arguments:

(1) The intent of Congress was to include only extremely sophisticated military and scientific radio remote control apparatus in the provision for radio remote control apparatus in item 685.60, TSUS; and

(2) Radio remote control apparatus which is used with toys and model airplanes, boats, tanks, and similar articles, is classifiable according to its chief use, i.e., toys for the amusement of children or adults.

Customs is of the position that the legislative history to item 685.60, TSUS, does not support the petitioner's contention that only sophisticated military and scientific radio remote control apparatus were intended by the Congress to be included under this item of the tariff schedules.

Further, Customs does not believe that the radio remote control apparatus involved can be classified as a toy under item 737.95, TSUS, because it does not provide amusement in and of itself. It amuses only in connection with model airplanes, boats, tanks, and similar articles. See *Mattel Inc.* v. *United States*, 61 Cust. Ct. 75, C.D. 3531 (1968).

Decision on Petition and Receipt of Petitioner's Notice of Desire to Contest

By letter dated October 2, 1980, file No. 521489, the petitioner was advised that his petition was denied and that Customs would adhere to its practice of classifying radio remote control apparatus designed to be used with toy and model airplanes, boats, tanks, and similar articles under the provision for radio remote control apparatus in item 685.60, TSUS.

In response, by letter dated October 30, 1980, the petitioner filed notice of its desire to contest this decision in accordance with section 516(c), Tariff Act of 1930, as amended (19 U.S.C. 1516(c)), and section 175.23, Customs Regulations (19 CFR 175.23). However, under section 516(d), Tariff Act of 1930, as amended (19 U.S.C. 1516(d)), the current Customs practice of classifying this type of radio remote control apparatus under item 685.60, TSUS, will continue so long as no decision of the United States Court of International Trade or the United States Court of Customs and Patent Appeals not in harmony with this practice is published.

Authority

This notice is being published in accordance with section 516(c), Tariff Act of 1930, as amended (19 U.S.C.

1516(c)), and § 175.24, Customs Regulations (19 CFR 175.24).

Drafting Information

The principal author of this document was Barbara E. Whiting, Regulations and Information Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: January 8, 1981.

William T. Archey,

Acting Commissioner of Customs.

[FR Doc. 81-1857 Filed 1-16-81; 8:45 am]

BILLING CODE 4810-22-M

Fiscal Service

[Dept. Circ. 570, 1980 Rev., Supp. No. 17]

Surety Companies Acceptable on Federal Bonds

A certificate of authority as an acceptable surety on Federal bonds is hereby issued to the following company under Sections 6 to 13 of Title 6 of the United States Code. An underwriting limitation of $234,000 has been established for the company.

Name of Company: New South Insurance Company

Business Address: P.O. Box 3199 Winston-Salem, North Carolina 27102

State of Incorporation: North Carolina

Certificates of authority expire on June 30 each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1980 Revision, at page 44509 to reflect this addition. Copies of the circular, when issued, may be obtained from the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226.

Dated: January 13, 1981.

W. E. Douglas,

Commissioner, Bureau of Government Financial Operations.

[FR Doc. 81-1924 Filed 1-16-81; 8:45 am]

BILLING CODE 4810-35-M

VETERANS ADMINISTRATION

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Commission on Educational Allowances that on February 10, 1981, at 1:00 p.m., the Veterans Administration Regional Office Station Committee on Educational Allowances shall at Estes Kefauver Federal Building—U.S. Courthouse, Room A-220, 110 Ninth Avenue, South, Nashville, Tennessee, conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in Manchester Police Department, City Hall, Manchester, Tennessee, should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the Committee at the time and place.

Dated: January 8, 1981.

R. S. Bielak,

Director.

[FR Doc. 81-1872 Filed 1-16-81; 8:45 am]

BILLING CODE 8320-01-M

WATER RESOURCES COUNCIL

Yadkin-Pee Dee Level B Study; Intent To Prepare an Environmental Impact Statement

Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, and the Water Resources Council Rules for Compliance with NEPA (18 CFR Part 707), the Water Resources Council as a joint lead agency with the States of North and South Carolina will prepare an environmental impact statement on the Yadkin-Pee Dee River Basin Level B Plan. The final recommended plan for development, conservation and management of water and related land resources in the Yadkin-Pee Dee River Basin will be submitted to the Water Resources Council for its review under Section 104 of Pub. L. 89-80. Council recommendations for Federal implementation actions along with the plan will be sent to the President and to the Congress. The plan, if adopted by the participating States as an approved regional plan, will be subject to application of the Water Resources Council's Consistency Policy.

The Yadkin-Pee Dee Basin covers an 18,000 square mile area in central North Carolina and northeastern South Carolina. The Plan will make recommendations for solving water resource problems expected in the Basin through the year 2010. Focal problems concern water supply, water quality, flood damage reduction, water management and legal issues. Plan recommendations will apply to Federal and State agencies and local governments. In order for Federal agencies to implement of fund some of the recommendations, project-specific Environmental Impact Statements may be required.

The Preliminary Draft Recommended Plan has been completed. Public meetings to discuss this plan are scheduled for late January and early February 1981. For copies of the Preliminary Draft Recommended Plan and specific meeting times and locations please contact: North Carolina—Reba Gettys Hill, Office of Water Resources, North Carolina Department of Natural Resources and Community Development, P.O. Box 27687 Raleigh, NC 27611, telephone (919) 733-7856 or South Carolina—Thomas Cullinan, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201, telephone (803) 758-7921.

The draft environmental impact statement is tentatively scheduled to be transmitted to the Environmental Protection Agency in April 1981. A 90-day period for public review and comment will follow. The final environmental impact statement is tentatively scheduled to be transmitted to the EPA in August 1981. Further notice of meetings or publications available will be made only through the regional media.

For further information please contact either: Thomas W. Nelson, Study Manager, 8001 Silas Creek Parkway Extension, Winston-Salem, NC 27016, telephone (919) 761-2222 or Joel Frisch, Acting Director of Regional Programs Division, Water Resources Council, Washington, DC 20037, telephone (202) 254-6442.

Dated: January 13, 1981.

Gerald D. Seinwill,

Acting Director.

[FR Doc. 81-1826 Filed 1-16-81; 8:45 am]

BILLING CODE 8410-01-M

Sunshine Act Meetings

Federal Register
Vol. 46, No. 12
Monday, January 19, 1981

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Chrysler Corporation Loan Guarantee Board	1, 2
Educational Research, National Council	3
Equal Employment Opportunity Commission	4
Federal Deposit Insurance Corporation	5
Federal Election Commission	6
National Credit Union Administration	7
Parole Commission	8-10

1

CHRYSLER CORPORATION LOAN GUARANTEE BOARD.

The Chrysler Corporation Loan Guarantee Board will hold a meeting closed to the public on Janaury 16, 1981 at 2:30 p.m., in Room 4426, Main Treasury Building, 15th Street and Pennsylvania Avenue, N.W., Washington, D.C.

The Board will continue its discussion of Chrysler Corporation's new Operating and Financing Plans and related documents and its request for additional guarantees. On Wednesday, January 14, the Board approved a summary of the terms on which it is expected to be able to grant formal approval later in the week. At the January 16 meeting the Board expects to take formal action on Chrysler's application for up to an additional $400 million of guarantees.

Discussions of the above matters are closed to the public pursuant to applicable exemptions under the Government in the Sunshine Act. The discussions at the meeting will involve significant amounts of non-public financial and commercial information received from Chrysler Corporation, relating to anticipated profitability, market positions, capital expenditures and cost reduction actions.

An open meeting is likely to disclose (1) confidential commerical and financial information, which is exempt under 5 U.S.C. § 552b(c)(4); and (2) information the premature disclosure of which would be likely to significantly frustrate implementation of Board action, which is exempt under 5 U.S.C. § 552b(c)(9)(B).

The meeting was closed pursuant to a unanimous vote of the Board taken on December 17, 1980 to close all Board meetings held during the thirty days after the Board's December 18, 1980 meeting, at which the same matters are discussed.

Those persons expected to attend the meeting, or portions thereof, include the Board members, the Executive Director, General Counsel, and Secretary of the Board, and members of the respective staffs of each Board member.

Those persons desiring further information should contact Bruce D. Bolander, Secretary of the Board, at (202) 566-2278.

This notice is given as a result of a court order. The position the Board is that it is not subject to the Government in the Sunshine Act.

Dated: January 15, 1981.

Bruce D. Bolander,

Secretary of the Board.

[S-74-81 Filed 1-15-81; 11:51 am]

BILLING CODE 4810-27-M

2

CHRYSLER CORPORATION LOAN GUARANTEE BOARD.

TIME AND DATE: January 16, 1981 at 2:30 p.m.

PACE: Room 4426, Main Treasury Building, 15th Street and Pennsylvania Avenue NW., Washington, D.C.

STATUS: Closed to the public.

MATTERS TO BE DISCUSSED: The Board will continue its discussion of Chrysler's new Operating and Financing Plans and related documents and its request for additional guarantees. On Wednesday, January 14, the Board approved a summary of the terms on which it is expected to be able to grant formal approval later in the week. At the January 16 meeting the Board expects to take formal action on Chrysler's application for up to an additional $400 million of guarantees.

CONTACT PERSON FOR MORE INFORMATION: Bruce D. Bolander, Secretary of the Board (202) 566-2278.

This notice is given as a result of a court order. The position of the Board is that it is not subject to the Government in the Sunshine Act.

Dated: January 15, 1981.

Bruce D. Bolander,

Secretary of the Board.

[S-75-81 Filed 1-15-81; 11:51 am]

BILLING CODE 4810-27-M

3

NATIONAL COUNCIL ON EDUCATION RESEARCH.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: December 19, 1980

DATE AND TIME: 9:30 a.m.-3:30 p.m., January 22, 1981.

PLACE: Room 823, National Institute of Education, 1200 19th Street NW., Washington, D.C.

STATUS: Certification is being sought from the Department of Education Office of General Counsel, that in the opinion of that office, the NCER "would be authorized to close portions of its meeting on January 22, 1981, under 5 U.S.C. 522b(c)(9)(B) and 45 CFR 1440.2(a)(9) for the purposes of reviewing and discussing with the Director of NIE, the executive branch budget for fiscal year 1982, in particular, the sections dealing with the budget and funding priorities of NIE." The certification approval date will be published in the **Federal Register** at a later date. Agenda item *No. 8* will be closed, the rest of the agenda will be open to the public. The public should call to verify the *closing* of this portion of the meeting.

MATTERS TO BE CONSIDERED:

1. Swearing-in Ceremony (9:30 a.m.-9:45 a.m.)
2. Director's Report (9:45 a.m.-10:15 a.m.)
3. Dissemination Policy Implementation (10:15 a.m.-11:15 a.m.)
4. International Education (11:15 a.m.-11:45 a.m.)
5. Early Adolescents (11:45 a.m.-12:15 p.m.)
6. Vocational Education (1:15 p.m.-1:45 p.m.)
7. Teaching (1:45 p.m.-2:30 p.m.)
8. Fiscal year 1982 Budget (closed session-2:30 p.m.-3:30 p.m.)

CONTACT PERSON FOR MORE INFORMATION:

Ella L. Jones, Administrative Coordinator/NCER; telephone: 202/254–7900.

Peter H. Gerber,

Chief, Policy and Administrative Coordination, National Council on Educational Research.

[S-73-81 Filed 1-15-81; 11:40 am]

BILLING CODE 4000-05-M

4

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. (eastern time), Wednesday, January 21, 1981.

PLACE: Commission Conference Room No. 5240, fifth floor, Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE DISCUSSED: Open to the public:

1. Combined 12th and 13th EEOC Annual Reports.
2. Final Regulations on Attorney Fees in the Federal Sector.
3. A report on Commission Operations by the Executive Director.

Closed to the Public:

1. Litigation Authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION: Treva I. McCall, Acting Executive Officer, Executive Secretariat, at (202) 634–6748.

This Notice Issued January 14, 1981.

[S-78-81 Filed 1-15-81; 1:14 pm]

BILLING CODE 6570-06-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 12:05 p.m. on Wednesday, January 14, 1981, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider the following matter:

Suspension of trading in the securities of an insured State nonmember bank, pursuant to sections 12(i) and 12(k) of the Securities Exchange Act of 1934.

In calling the meeting, the Board of Directors determined, on motion of Chairman Irvine H. Sprague, seconded by Director William M. Isaac (Appointive), concurred in by Director John G. Heimann (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the meeting was exempt from the open meeting requirements of the "Government in the Sunshine Act" by authority of subsections (c)(8), (c)(9)(A)(i), and (c)(9)(A)(ii) thereof (5 U.S.C. 552b(c)(8), (c)(9)(A)(i), and (c)(9)(A)(ii)).

Dated: January 14, 1981.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-77-81 Filed 1-15-81; 1:07 pm]

BILLING CODE 6714-01-M

6

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Thursday, January 22, 1981 at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C., fifth floor.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates for future meetings
Correction and approval of minutes
Certification
Advisory opinion 1980–143; Ray Mark, Courter for Congress Committee
Appropriations and budget
Pending legislation
Classification actions
Routine administrative matters

* * * * *

DATE AND TIME: Thursday, January 22, 1981 (immediately following the conclusion of the regular open meeting).

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Personnel. Compliance. Litigation. Audits.

* * * * *

DATE AND TIME: Tuesday, January 27, 1981 at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Personnel. Compliance. Litigation. Audits.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Public Information Officer; telephone: 202–523–4065.

Marjorie W. Emmons,

Secretary of the Commission.

[S-79-81 Filed 1-15-81; 3:36 pm]

BILLING CODE 6715-01-M

7

NATIONAL CREDIT UNION ADMINISTRATION.

TIME AND DATE: 9:30 a.m., Thursday, January 22, 1981.

PLACE: Seventh floor board room, 1776 G Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Review of Central Liquidity Facility Lending Rate.
2. Central Liquidity Facility Dividend: First Quarter fiscal year 1981.
3. Consideration of Staff Study on the Feasibility of a Floating or Indexed Loan Interest Rate Ceiling.
4. Merit Pay.
5. Preliminary review of existing Section 701.20, Surety Bond and Insurance Coverage for Federal Credit Unions, of the NCUA Rules and Regulations.
6. Amendment of Part 748, Minimum Security Devices and Procedures, of the NCUA Rules and Regulations.
7. Report of actions taken under delegations of authority.
8. Applications for charters, amendments to charters, bylaw amendments, mergers as may be pending at that time.

RECESS: 10:15 a.m.

TIME AND DATE: 10:30 a.m., Thursday, January 22, 1981.

PLACED: Seventh floor board room, 1776 G Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed Mergers. Closed pursuant to exemptions (8) and (9)(A)(ii).
2. Proposed Conversions. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Requests from federally insured credit unions for special assistance under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
4. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (10).
5. Administrative Adjudication. Closed pursuant to exemptions (8), (9)(A)(ii) and (10).
6. Proposed changes in the NCUA Regional Office Organization and Operations. Closed pursuant to exemption (2).
7. Proposed Decentralization of Administrative Costs. Closed pursuant to exemption (2).

FOR MORE INFORMATION CONTACT: Joan O'Neill, Program Assistant; telephone (202) 357–1100.

S-76-81 Filed 1-15-81; 1:05 pm]

BILLING CODE 7535-01-M

8

[1P0401]

PAROLE COMMISSION.

TIME AND PLACE: 9:30 a.m., Wednesday, January 21, 1981.

PLACE: Room 724, 320 First Street, N.W., Washington, D.C. 20537.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Referrals from Regional Commissioners of approximately 10 cases in which inmates of federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Case Analyst, National Appeals Board, U.S. Parole Commission (202) 724–3094.

[S30–81 Filed 1–15–81; 3:41 pm]

BILLING CODE 4410–01–M

9

[OP0401]

PAROLE COMMISSION

TIME AND DATE:

9 a.m.–5:30 p.m., Monday, February 2, 1981.
9 a.m.–1:30 p.m., Tuesday, February 3, 1981.

PLACE: Room 500, 320 First Street NW., Washington, D.C. 20537.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Appeals to the Commission of approximately 10 cases decided by the National Commissioners pursuant to a reference under 28 CFR § 2.17 and appealed pursuant to 28 CFR § 2.27. These are all cases originally heard by examiner panels wherein inmates of Federal Prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSONS FOR MORE INFORMATION: Linda Wines Marble, Chief Case Analyst (202) 724–3094.

[S–81–81 Filed 1–15–81; 3:42 pm]

BILLING CODE 4410–01–M

10

[1P0401]

PAROLE COMMISSION.

TIME AND DATE:

2:30–5:30 p.m., Tuesday, February 3, 1981.
9–5:30 p.m., Wednesday, February 4, 1981.

PLACE: Room 500, 320 First Street NW., Washington, D.C. 20537.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of minutes of prior meetings.
2. Reports from Chairman and Commissioners.
3. Early termination of supervision: Evaluation of public comment on interim rule.
4. Proposed Guideline Revision:
a. Reclassifying very large scale heroin offenses.
b. Subdividing Greatest II and setting ranges for Greatest IIa.
5. Proposed pre-hearing record review procedures.
6. Revised initial hearing summary format.
7. Proposals for reduction of work load:
a. Granting parole on the record at pre-hearing record reviews.
b. Use of probation officers as second hearing examiner for state cases.
c. Revised F–3 Form.
8. Correcting factual errors under § 2.24(b)(1).
9. Dispositional revocation hearing procedures:
a. Reevalutaion of 18 month concurrency policy.
b. Discussion of procedural problems.
10. Commission recommendations for CTC placement.
11. Issuance of Policy and Procedures Memoranda by the Chairman: Legal certification of IDC hearings.
12. Declassification of Original Jurisdiction cases.
13. *Consent Agenda:* The following Consent Agenda items only if specifically requested to be opened for discussion at the meeting.
Policy and Procedure Memoranda Issued Since Last Meeting:
(a) 80/24: Has been placed on the agenda by request;
(b) 80/26: Concerning ancient prior record implements the discussion at the last meeting and requires no further vote.
(c) 80/23: Correcting Mistaken Executions of Warrants.
(d) 80/25: Clarification of Drug Severity Rating and Additions to Drug Conversion Chart.
14. Research Reports: The following reports are submitted for adoption.
a. Report 24: Work load and Decision Trends (Fiscal Years 1977–1979).
b. Report 25: Reliabaility in Guideline Application.
c. Report 27: The Effective of Presumptive dates on Institutional Behavior.
15. OPM Opinion re: Confirmation of Examiners.

CONTACT PERSON FOR MORE INFORMATION:
Barbara Meierhoefer, Acting Director of Research (202) 724–3095.

[S–82–81 Filed 1–15–81; 3:41 pm]

BILLING CODE 4410–01–M

federal register

Monday
January 19, 1981

Part II

Department of Education

Office of Elementary and Secondary Education

Financial Assistance to Local and State Agencies To Meet Special Educational Needs, and Financial Assistance to Local Educational Agencies for Children With Special Educational Needs; Regulations

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Parts 200 and 201

Financial Assistance to Local and State Agencies To Meet Special Educational Needs; and Financial Assistance to Local Educational Agencies for Children With Special Educational Needs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations for Title I of the Elementary and Secondary Education Act of 1965, (Title I). These final regulations implement all changes required by the Title I statute as re-enacted by the Education Amendments of 1978 (Pub. L. 95–561). The regulations set forth the Title I requirements and provide State and local agencies with guidance regarding the procedures, criteria and standards for meeting those requirements.

These requirements include financial assistance to local and state agencies to meet special educational needs; and financial assistance to local educational agencies for children with special educational needs.

DATES:

Effective Date: These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the **Federal Register**. The effective date is changed by statute if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

Comments on the requirements concerning "Excess Costs" (§§ 200.93–200.95) and "Supplement, not Supplant" (§§ 201.130–201.143) must be received on or before March 20, 1981.

ADDRESS: Comments should be addressed to Dr. John F. Staehle, Office of Compensatory, Education, Department of Education, 400 Maryland Avenue, S.W., (Room 3642, ROB–3) Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. John F. Staehle, Office of Compensatory Education, Department of Education, 400 Maryland Avenue, S.W., (Room 3642, ROB–3) Washington, D.C. 20202 Telephone (202) 245–2722.

SUPPLEMENTARY INFORMATION:

A. Background

The Education Amendments of 1978 (Pub. L. 95–561) reenacted Title I of the Elementary and Secondary Education Act of 1965. The U.S. Office of Education published proposed Title I regulations in the **Federal Register** on June 29, 1979 (44 Fed. Reg. 38400–38413). Because many of the provisions in the new statute were not included in those proposed regulations and many commenters indicated that more guidance was desirable with respect to many provisions, the U.S. Department of Education published revised proposed Title I regulations on June 11, 1980 (45 Fed. Reg. 39712–39764). The preamble to those revised proposed regulations identified changes from the June 29, 1979 version.

Overview of These Final Regulations

These final regulations consist of two parts: Part 200 contains requirements that apply to all Title I grantees—local educational agencies (LEAs), State agencies operating projects for handicapped children or projects for neglected or delinquent children, and state educational agencies (SEAs) operating projects for migrant children. The provisions of Part 200 also apply to State and Federal administration of Title I programs. Part 201 contains requirements that apply only to those Title I projects operated by LEAs to provide supplemental educational services for educationally deprived children in eligible low-income areas and for children in local institutions for neglected or delinquent children.

C. Other Applicable Regulations

Other Title I Regulations

As previously indicated, the regulations in Part 200 apply to all programs authorized under the Title I statute. The regulations in Part 200 are supplemented by the regulations in 34 CFR Parts 201, 203, 204 and 302 which contain additional requirements relating to each of the categories of Title I programs.

The regulations for Part 201 apply to Title I projects that are operated by LEAs for educationally deprived children in eligible low-income areas and for children in local institutions for neglected or delinquent children. The regulations in 34 CFR Parts 203, 204 and 302 were published separately and are now in effect as final regulations. Part 203 governs Title I grants to State agencies operating projects for neglected or delinquent children. Part 204 governs Title I grants to SEAs operating projects for migratory children. Part 302 governs Title I grants to State agencies operating projects for handicapped children.

Education Department General Administrative Regulations (EDGAR)

These Title I regulations do not contain certain types of general administrative requirements that apply to all State-administered programs under which the Department provides assistance. Those requirements are covered in the Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 76 and 77, which replace the General Provisions for the Office of Education Programs Regulations. EDGAR was published as final regulations in the **Federal Register** on April 3, 1980 (45 Fed. Reg. 22494–22631).

D. Public Participation

Over 150 persons, agencies, and organizations submitted more than 1300 written comments on the June 11, 1980 version of the proposed regulations. In preparing these final regulations, the Department of Education considered comments and suggestions it received on both the June 29, 1979 and June 11, 1980 versions of the proposed regulations. A discussion of these public comments and the Department's responses to them is contained in the Appendix to these final regulations.

E. Summary of the Major Changes From the June 11, 1980. Proposed Regulations

The following discussion briefly explains some of the major changes that have been made in Parts 200 and 201 since publication of the June 11, 1980 proposed regulations:

Part 200.

Maintenance of effort (§ 200.90)

The proposed regulations permitted a reduction of up to 2 percent in an agency's current level of expenditures and provided that the Secretary may, in limited circumstances make a finding of "substantial compliance." In response to a number of comments, both of these provisions have been deleted from the final regulations which instead conform to the strict language of the Title I statute.

Excess costs: instructional services (§ 200.94)

The excess cost requirements have been expanded to provide more detailed guidance. In response to comments and the legislative history to this and the related "supplement, not supplant" provisions, § 200.94 as revised, explains how the excess cost requirement applies to the following types of Title I projects: (a) in class projects; (b) limited pull out

projects; (c) extended pull out projects; (d) add on projects; and (e) replacement projects.

State audits (§ 200.190)

In response to comments, § 200.190(b) has been revised to permit SEAs to determine—on the basis of specified factors—that an agency or agencies may be audited less frequently than once every three years.

State compliance agreements (§§ 200.210–200.214)

In response to comments, the maximum duration of a State compliance agreement has been extended from 60 days to 90 days after the date on which the agreement is entered into.

Part 201

Allocation of Title I funds among project areas and project schools (§ 201.15)

This provision, which is based on Section 124(e) of the Title I statute, was inadvertently omitted from the proposed regulations. Briefly stated, an LEA satisfies this requirement if it allocates Title I funds on the basis of the number and needs of the children to be served.

Special incentive grants (§§ 201.20–201.24)

The proposed regulations required that—in order to be eligible for an incentive grant—only 95 percent of the LEAs in a State must spend 50 percent or more of the State compensatory education funds in school attendance areas that are eligible for Title I funds. In response to comments, § 201.20 has been revised to conform to the strict statutory language. As revised, § 201.20 requires that not less than 50 percent of the funds spent in any LEA under the State program must be spent in school attendance areas that have high concentrations of children from low-income families.

Selecting a limited number of lower ranked eligible school attendance areas; and *Selecting a limited number of project areas through the use of alternative rankings.* (§ 201.63 and § 201.66) Section 201.63 has been separated from § 201.66 in order to address separately, the requirements of Sections 122(d) and 122(a)(2) of Title I. In accordance with Section 122(a)(2) of the Title I statute, § 201.66 permits use of the alternative ranking with the prior consent of the district advisory council and if the SEA determines that the LEAs use of the alternative ranking procedures will not substantially impair the delivery of services to educationally deprived children from low-income families.

Continuation of eligibility for certain school attendance areas or schools (§ 201.64)

In response to comments, this section has been revised to provide, with certain exceptions, that an LEA may select a school attendance area or a school to receive Title I services—even though that area or school does not qualify under the procedures in §§ 201.61–201.63—if the area or school qualified and was selected as a Title I project area or school in either of the two fiscal years preceding the fiscal year for which the funds will be granted.

Submission of comparability reports (§ 201.113)

This section has been revised to state that an LEA that is currently relieved of the obligation to file a comparability report because it qualifies for an exemption must still maintain records that demonstrate that the LEA is in compliance with those comparability requirements.

Maintaining comparability (§ 201.120)

This section has been revised in two respects. First, an LEA that has met the comparability requirements is required to make only one comparability determination between January 1, and April 30. Second, the LEA does not have to make any adjustments in enrollments or staffing for any of its schools unless the LEA has a school with a staff ratio in excess of 110 percent or instructional service expenditures per child of less than 90 percent of the corresponding staff ratios or instructional service expenditures for the comparison group of schools.

Supplement, not supplant (§§ 201.30–43)

These sections retain the same basic substantive provisions that were included in the proposed regulations. However, in response to public comments, and in reconsideration of the legislative history, further clarification and additional examples, have been included in §§ 201.30–43.

The Secretary recognizes that the regulations for supplement, not supplant are extensive and somewhat complex, however the regulations deal comprehensively with extremely difficult statutory provisions. The additional guidance was requested by commenters, and consistent with the legislative history included in the reports on the Education Amendments of 1978 (Pub. L. 95–561) issued by the House of Representatives and the Senate (See H. Rep. No. 95–1137, 95th Cong. 2d. Sess., 28–30 (1978); S. Rep. No. 95–856, 95th Cong. 2d. Sess., 15–18 (1978)). The reports concluded that previous regulations were not "sufficiently comprehensive," and that new regulations "must contain legal non-supplanting models and include examples, explaining how the general principles apply to day-to-day situations." (H. Rep. No. 95–1137, p. 29; S. Rep. No. 95.1137, pp. 15–16).

The regulations give grantees necessary guidance and considerable flexibility in areas such as designing projects which include handicapped children, or children whose primary or home language is other than English.

F. Invitation to Comment

Although these regulations are issued in final form, the Department invites further comments on the problems faced in administering the requirements concerning "Excess Costs" (§§ 200.93–200.95) and "Supplement, not Supplant" (§§ 201.130–201.143), and suggestions for changes in these provisions in future Title I regulations and legislation. These comments and suggestions are being invited because of the additional material included in those sections. To be considered, comments on these sections must be received on or before (60 days after publication).

G. Address

Comments should be addressed to Dr. John F. Staehle, Office of Compensatory Education, Department of Education, 400 Maryland Avenue, S.W., (Room 3642, ROB–3) Washington, D.C. 20202.

H. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (Pub. L. 96–354, enacted Sept. 19, 1980) requires each Federal agency to prepare an initial regulatory flexibility analysis and a final regulatory flexibility analysis for each regulation that—

(1) Is published as a notice of proposed rulemaking after January 1, 1981, and

(2) Has a significant economic impact on a substantial number of small entities (small businesses, small organizations, or small governmental jurisdictions).

Because the Department has not yet established its own definitions of "small organization" and "small governmental jurisdiction", as contemplated by the Act, it is not possible to prepare a full initial regulatory flexibility analysis at this time for the regulations on "Excess Cost" (§§ 200.93–200.95) and "Supplement, not Supplant (§§ 201.130–201.143). Further, it is impracticable to delay publication while the necessary definitions are being developed. In these circumstances, the Regulatory Flexibility Act permits a waiver or delay of the initial regulatory flexibility

analysis. If it is determined that these regulations are subject to that Act, the Secretary will prepare the necessary analyses at a later date.

As an interim measure, this document, to the maximum extent possible, includes information of the kind contemplated by the Regulatory Flexibility Act, including the reasons for the regulations, the objectives and legal basis for the regulations, and any significant issues and alternatives for consideration by the public. To assist the Department in determining whether the Regulatory Flexibility Act applies to these regulations, and in complying with the Act's requirements, public comment is especially invited on the following matters:

(1) The number and kind of small entities (small businesses, small organizations, or small governmental jurisdictions) affected by the regulations;

(2) The reporting, recordkeeping, and compliance burdens imposed by the regulations on small entities;

(3) The type of professional skills necessary for preparation of any reports or records required by the regulations;

(4) Any Federal rules that may duplicate, overlap, or conflict with the regulations;

(5) Any significant alternatives that would accomplish the purposes of the applicable statute but would minimize any significant economic impact of the regulations on small entities. The Secretary is particularly interested in suggestions on alternatives such as the following:

- The establishment of differing reporting or compliance requirements or timetables that take into account the resources available to small entities.
- The clarification, consolidation, or simplification of compliance and reporting requirements for small entities.
- The use of performance rather than design standards.
- An exemption for small entities from coverage of part or all of the regulations.

I. Citations of Authority

Both the statutory and United States Code citations and, in some cases, other legal authority are included in parenthesis on the line following each provision in these proposed regulations. References to Sec. in these citations of authority relate to sections of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978, Pub. L. 95-561.

Dated: January 8, 1981.

Shirley M. Hufstedler,

Secretary of Education.

(Catalog of Federal Domestic Assistance, No. 13.428, Educationally Deprived Children-Local Educational Agencies and No. 13.430, Educationally Deprived Children-State Administration)

The Secretary revises Part 200 of Title 34 of the Code of Federal Regulations to read as follows:

PART 200—FINANCIAL ASSISTANCE TO LOCAL AND STATE AGENCIES TO MEET SPECIAL EDUCATIONAL NEEDS

Subpart A—General

Sec.
200.1 Purpose.
200.2 Applicability of regulations in this part.
200.3 Applicability of other Title I regulations.
200.4 Applicability of other statutes and regulations.
200.5 Definitions.
200.6 Acronyms that are frequently used.
200.7–200.9 [Reserved]

Subpart B—Allocation of Title I Funds

200.10 Amount of funds available for Title I grants.
200.11–200.19 [Reserved]

Subpart C—Documents a State Must Submit Before Receiving Title I Funds

200.20 State application.
200.21 State monitoring and enforcement plan (MEP).
200.22–200.29 [Reserved]

Subpart D—Program Requirements That Apply to All Agencies That Receive Title I Funds

Participation

200.30 Teacher and school board participation.
200.31 Parental participation.
200.32–200.39 [Reserved]

Consultation and Coordination

200.40 Coordination with other programs.
200.41 Coordination of health, nutrition, or social services.
200.42 Simultaneous use of Title I funds and other funds.
200.43 Jointly operated projects.
200.44–200.49 [Reserved]

Project Design

200.50 Use of evaluations in planning.
200.51 Sufficient size, scope, and quality of projects.
200.52 Prohibition against using Title I funds to provide general aid.
200.53 Minimum expenditure for a Title I project.
200.54 Sustaining educational gains.
200.55 Individualized educational plan.
200.56–200.59 [Reserved]

Personnel

200.60 Training education aides and volunteers.
Sec.
200.61 Noninstructional duties.
200.62–200.69 [Reserved]

Allowable Costs

200.70 Allowable costs under EDGAR.
200.71 Specific requirements concerning allowable costs under Title I.
200.72 Use of Title I funds for planning.
200.73 Use of Title I funds for State administration.
200.74 Use of Title I funds for health, nutrition, or social services.
200.75 Use of Title I funds for training eligible persons.
200.76 Use of Title I funds for bonus pay.
200.77 Use of Title I funds for evaluation.
200.78 LEA's use of Title I funds for selecting children to receive Title I services.
200.79 LEA's use of Title I funds for expenses related to advisory councils.
200.80 Use of Title I funds for construction.
200.81 Use of Title I funds for equipment.
200.82 Use of Title I funds for reimbursement of volunteers.
200.83 Control of funds.
200.84–200.89 [Reserved]

Subpart E—Fiscal Requirements That Apply to All Agencies That Receive Title I Funds

200.90 Maintenance of effort.
200.91 Waiver of the maintenance of effort requirement.
200.92 Supplement, not supplant.
200.93 Excess costs: introduction.
200.94 Excess costs: instructional services.
200.95 Excess costs: noninstructional services.
200.96–200.99 [Reserved]

Subpart F—State and Local Administrative Responsibilities

General

200.100 Applicability of the regulations in Subpart F.
200.101 Payments for State administration.
200.102 Payments by SEAs.
200.103–200.109 [Reserved]

Application Approval

200.110 SEA approval of applications from LEAs and State agencies.
200.111 Opportunity for a hearing on application disapproval.
200.112 Appeal to the secretary.
200.113 Amendments to the application.
200.114–200.119 [Reserved]

State Rulemaking

200.120 Authority for State rulemaking.
200.121 Limitations on State rulemaking authority.
200.122 Examples of State rulemaking.
200.123–200.129 [Reserved]

Evaluation

200.130 Evaluation Procedures.
200.131–200.139 [Reserved]

Recordkeeping

200.140 Recordkeeping requirements.
200.141 Access to information.
200.142 Access by State and Federal auditors.
200.143–200.149 [Reserved]

State Monitoring

200.150 Obligation to adopt standards for monitoring.

Sec.
200.151 Minimum standards for monitoring.
200.152–200.159 [Reserved]

Reporting

200.160 Reporting to the Secretary.
200.161 Reporting to the SEA.
200.162–200.169 [Reserved]

Technical Assistance and Dissemination of Information

200.170 Technical assistance provided by the SEA
200.171 Dissemination of information to LEAs and State agencies.
200.172 Dissemination of information to teachers and administrators.
200.173–200.179 [Reserved]

Complaint Review and Resolution

200.180 Contents of a complaint.
200.181 Who may file a complaint
200.182 Where to file a complaint.
200.183 Required procedures for resolution of complaints that are filed with LEAs or State agencies.
200.184 Time limit for resolution of complaints that are filed with LEAs or State agencies.
200.185 Appeals from resolutions by LEAs or State agencies.
200.186 Required procedures for resolution of appeals and complaints that are filed with SEAs.
200.187 Time limit for resolution of appeals and complaints that are filed with SEAs.
200.188 Contents of the final resolution by an SEA.
200.189 [Reserved]

State Audits, Resolution, and Repayment

200.190 State audits.
200.191 Audit resolution.
200.192 Audit appeals.
200.193 Appeal to the Secretary.
200.194 Repayment of Misspent Title I funds.
200.195 Use of Misspent funds that are repaid to SEAs.
200.196 Collection action by the Secretary.
200.197–200.199 [Reserved]

State Withholding of Payments

200.200 SEA withholding of Title I payments.
200.201 Notice to the public of SEA withholding.
200.202 Appeal to the Secretary.
200.203–200.209 [Reserved]

State Compliance Agreements

200.210 Use of a State compliance agreement.
200.211 Contents of a State compliance agreement.
200.212 Duration of a State compliance agreement.
200.213 Effect of expiration of a State compliance agreement.
200.214 Notice of a State compliance agreement.
200.215–200.219 [Reserved]

Subpart G—Federal Administrative Responsibilities

Application Approval

200.220 Approval of State applications and annual program plans.
200.221 Opportunity for a hearing on disapproval of a State application.
Sec.
200.222–200.229 [Reserved]

Evaluation

200.230 Secretary's evaluation procedures.
200.231–200.239 [Reserved]

Complaint Review and Resolution

200.240 Contents of a complaint.
200.241 Procedures for receiving direct complaints.
200.242 Procedures for handling direct complaints.
200.243 Appeals from final resolutions by SEAs.
200.244 Preliminary review of appeals.
200.245 The designated official's procedures for resolving direct complaints and appeals.
200.246 Administrative appeals from the designated official's resolution.
200.247 Preliminary review of administrative appeals.
200.248 The assistant secretary's procedures for resolving administrative appeals.
200.249 [Reserved]

Audits and Audit Resolution

200.250 Audits by the Secretary.
200.251 Audit resolution procedures.
200.252 Judicial review of audit resolutions.
200.253–200.259 [Reserved]

Withholding of Payments

200.260 Withholding of Title I payments.
200.261 Suspension of Title I payments pending completion of withholding proceedings.
200.262 Judicial review of withholding actions.
200.263 Notice to the public of the Secretary's withholding.
200.264–200.269 [Reserved]

Federal Compliance Agreements

200.270 Use of a Federal compliance agreement.
200.271 Contents of a Federal compliance agreement.
200.272 Time period for coming into compliance under a Federal compliance agreement.
200.273 Duration of a Federal compliance agreement.
200.274 Effect of expiration of a Federal compliance agreement.
200.275 Notice of a Federal compliance agreement.
200.276–200.279 [Reserved]

Cease and Desist Proceedings

200.280 Procedures for issuing cease and desist orders.
200.281 Judicial review of cease and desist orders.
200.282 Enforcement of cease and desist orders.
200.283–200.289 [Reserved]

Authority: Sec. 101–198 of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95–561 (20 U.S.C. 2701–2854), unless otherwise noted.

Subpart A—General

§ 200.1 Purpose.

The programs authorized by Title I of the Elementary and Secondary Education Act of 1965, as amended, provide financial assistance to—

(a) Local educational agencies (LEAs) to expand and improve their educational programs through projects designed to meet the special educational needs of—

(1) Educationally deprived children in areas with concentrations of children from low-income families; and

(2) Children in local institutions for neglected or delinquent children;

(b) State agencies for projects designed to meet the special educational needs of—

(1) Handicapped children; and

(2) Children in institutions for neglected or delinquent children, or in adult correctional institutions;

(c) State educational agencies (SEAs) for projects designed to meet the special educational needs of migratory children of migratory agricultural workers or fishers; and

(d) The Secretary of the Interior to meet the special educational needs of Indian children.

(Sec. 101, 20 U.S.C. 2701)

§ 200.2 Applicability of regulations in this part.

The regulations in this part apply to all programs authorized under Title I of the Elementary and Secondary Education Act of 1965, as amended.

(Sec. 101–198, 20 U.S.C. 2701–2854)

§ 200.3 Applicability of other Title I regulations.

The regulations in this part are supplemented by the regulations in 34 CFR Parts 201, 302, 203, and 204, which contain additional requirements relating to each of the categories of Title I programs:

(a) 34 CFR Part 201 applies to projects—

(1) Designed to meet the special educational needs of—

(i) Educationally deprived children in areas with concentrations of children from low-income families; and

(ii) Children in local institutions for neglected or delinquent children; and

(2) Operated by LEAs.

(b) 34 CFR Part 302 applies to projects—

(1) Designed to meet the special educational needs of handicapped children; and

(2) Operated by the State agencies directly responsible for providing free public education for those children.

(c) 34 CFR Part 203 applies to projects—

(1) Designed to meet the special educational needs of children in institutions for neglected or delinquent children, or in adult correctional institutions; and

(2) Operated by the State agencies directly responsible for providing free public education for those children.

(d) 34 CFR Part 204 applies to projects—

(1) Designed to meet the special educational needs of migratory children of migratory agricultural workers or fishers; and

(2) Operated by SEAs.

(Sec. 101–198, 20 U.S.C. 2701–2854)

§ 200.4 Applicability of other statutes and regulations.

In addition to the regulations in this part and in 34 CFR Parts 201, 302, 203, and 204, the following statutes and regulations apply to financial assistance provided under Title I of the Elementary and Secondary Education Act of 1965, as amended:

(a) General Education Provisions Act (GEPA) in 20 U.S.C. 1221 *et seq.*

(b) Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-administered programs), 34 CFR Part 77 (General), and 34 CFR Part 78 (Education Appeal Board).

(Sec. 101–198, 20 U.S.C. 2701–2854; 20 U.S.C. 1221 *et seq.*; 34 CFR Parts 76, 77, and 78)

§ 200.5 Definitions.

The following definitions apply to this part and to 34 CFR Parts 201, 302, 203, and 204:

"Applicant" means a party requesting a grant or subgrant under a program administered by the Department.

"Application" means a request for a grant or subgrant under a program administered by the Department.

"Assistant Secretary" means the Assistant Secretary for Elementary and Secondary Education within the Department.

"Average daily attendance" (ADA) means the average number of children in attendance in the schools of an LEA as determined under State law. However, if the LEA in which any child resides makes or contracts to make a tuition payment for the free public education of that child in a school situated in another LEA, that child shall be considered—

(1) To be in attendance at a school of the LEA that makes or contracts to make the tuition payment; and

(2) Not to be in attendance at a school of the LEA receiving the tuition payment or entitled to receive the tuition payment under the contract.

"Average daily membership" (ADM) means the average number of children enrolled in the schools of an LEA as determined under State law. However, if the LEA in which any child resides makes or contracts to make a tuition payment for the free public education of that child in a school situated in another LEA, that child shall be considered—

(1) To be enrolled in a school of the LEA that makes or contracts to make the tuition payment; and

(2) Not to be enrolled in a school of the LEA receiving the tuition payment or entitled to receive the tuition payment under the contract.

"Average per pupil expenditure"—

(1) In the case of a State or the United States, this term means the sum of (i) the aggregate current expenditures of all LEAs in the State or in the United States, as the case may be, and (ii) any direct current expenditures by the State or all of the States, as the case may be, for the operation of these LEAs; divided by (iii) the aggregate number of children in ADA to whom these LEAs provided free public education during the year preceding the one for which the computation is made.

(2) For purposes of this definition, aggregate current expenditures are—

(i) Aggregate expenditures during the third fiscal year preceding the fiscal year for which the computation is made; or

(ii) If satisfactory data for the third preceding fiscal year in paragraph (1)(i) of this section are not available at the time of computation, aggregate expenditures during the most recent preceding fiscal year of which satisfactory data are available.

(3) Direct current expenditures shall be computed without regard to the source of funds from which these expenditures are made.

(4) For purposes of this definition, the United States means the 50 States plus the District of Columbia.

"Cease and desist" means to discontinue a prohibited practice or to initiate a required practice.

"Children" means persons—

(1) Not above age 21 who are entitled to a free public education not above grade 12; or

(2) Who are of preschool age.

"Construction" includes any work needed for—

(1) The preparing of drawings and specifications for school facilities;

(2) The erection, building, acquiring, altering, remodeling, improving, or extending of school facilities; or

(3) The inspection and supervision of the construction of school facilities.

"County" means those divisions of a State that are used by the Secretary of Commerce in compiling and reporting data regarding counties.

"Current expenditures" means expenditures for free public education. The term—

(1) Includes expenditures for administration, instruction, attendance, health services, pupil transportation, plant operation and maintenance, fixed charges, and net expenditures to cover deficits for food services and student activities; and

(2) Does not include expenditures for community services, capital outlay, and debt service, or any expenditures made from funds granted under Title I or Part B (Instructional materials and school library resources) and Part C (Improvement in local educational practices) of Title IV of the Elementary and Secondary Education Act of 1965, as amended.

"Department" means the United States Department of Education.

"Elementary school" means a day or residential school that provides elementary education, as determined by State law.

"Equipment" means—

(1) Machinery, utilities, and building equipment;

(2) Any enclosures or structures necessary to house the items in paragraph (1) of this definition; and

(3) All other items necessary for the functioning of a facility that is used to provide educational services, including items like—

(i) Instructional equipment and necessary furniture;

(ii) Printed, published, and audio-visual instructional materials; and

(iii) Books, periodicals, documents, and other related materials.

"Fiscal year" means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30—or another twelve-month period normally used by the State educational agency for recordkeeping.

"Free public education"—

(1) Means education that is provided—

(i) At public expense, under public supervision and direction, and without tuition charge; and

(ii) As elementary or secondary school education in the applicable State; and

(2) Does not include any education provided beyond grade 12.

"Grant period" means the period for which grant funds have been awarded.

"Local educational agency" (LEA)—

(1) Means a public board of education or other public authority legally constituted within a State for either administrative control or direction of—or to perform a service function for—public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or a combination of school districts or counties recognized in a State as an admininstrative agency for

public elementary or secondary schools; and

(2) Includes any public institution or agency—other than those specified in paragraph (1) of this definition—having administrative control and direction of a public elementary or secondary school.

"Parent" means natural parent, step-parent, parent through adoption, legal guardian, or other persons acting in the place of a parent.

"Participating children" means children selected to receive Title I services during the current fiscal year.

"Preschool children" means children who are—

(1) Below the age and grade level at which the applicant agency provides free public education; and

(2) Of the age or grade level at which they can benefit from an organized instructional program provided in a school or instructional setting.

"Project" means the activity described in an application.

"Project period" means the period for which the SEA or the Secretary approves a project.

"Public," as applied to an agency, organization, or institution, means that the agency, organization, or institution is under the administrative supervision or control of a government other than the Federal Government.

"School facilities"—

(1) Means classrooms and related facilities, including initial equipment, for free public education, or interests in land, including site, grading, and improvements, on which the facilities are constructed; and

(2) Does not include those gymnasiums and similar facilities intended primarily for exhibitions for which admission is to be charged to the general public.

"Secondary school"—

(1) Means a day or residential school that provides secondary education, as determined by State law; and

(2) Does not include any education provided beyond grade 12.

"Secretary" means the United States Secretary of Education.

"State" means—

(1) A State of the United States; or

(2) Puerto Rico, Guam, the District of Columbia, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

"State agency" means—

(1) A State-operated agency directly responsible for providing free public education for handicapped children, as that term is defined in section 602(1) of the Education of the Handicapped Act (20 U.S.C. 1401(1));

(2) A State-operated agency directly responsible for providing free public education for children in institutions for neglected or delinquent children, or in adult correctional institutions; or

(3) A State educational agency in its capacity as an agency operating a program for migratory children of migratory agricultural workers or fishers. The term "State agency" does not include a State educational agency in its capacity as the agency carrying out State administrative responsibilities under Subpart F of this part.

"State educational agency" (SEA) means the State Board of Education or other agency or officer primarily responsible for the supervision of public elementary and secondary schools in the State. In the absence of this officer or agency, it is an officer or agency designated by the Governor or by State law.

"Suspension" means temporarily stopping payment of Federal funds to an agency receiving Title I assistance and stopping that agency's authority to charge costs to a Title I project, pending the outcome of a withholding hearing.

"Title I" means Title I of the Elementary and Secondary Education Act of 1965, as amended, dealing with financial assistance to meet the special educational needs of children.

"Title IV" means Title IV of the Elementary and Secondary Education Act of 1965, as amended, dealing with educational improvement, resources, and support.

"Title V" means Title V of the Elementary and Secondary Education Act of 1965, as amended, dealing with State leadership.

"Withholding" means stopping payment of Federal funds to an agency receiving Title I assistance and stopping that agency's authority to charge costs to a Title I project for the period of time the agency is in violation of a requirement.

(Sec. 101–198, 20 U.S.C. 2701–2854; Sec. 408(a)(1) of GEPA, 20 U.S.C. 1221e–3(a)(1))

§ 200.6 Acronyms that are frequently used.

The following acronyms are used frequently in this part and 34 CFR Parts 201, 302, 203, and 204:

"ADA" stands for average daily attendance.

"ADM" stands for average daily membership.

"EDGAR" stands for the Education Department General Administrative Regulations.

"ESEA" stands for the Elementary and Secondary Education Act of 1965, as amended.

"GEPA" stands for the General Education Provisions Act.

"LEA" stands for local educational agency.

"MEP" stands for monitoring and enforcement plan.

"SEA" stands for State educational agency.

(Sec. 101–198, 20 U.S.C. 2701–2854; Sec. 408(a)(1) of GEPA, 20 U.S.C. 1221e-3(a)(1))

§§ 200.7–200.9 [Reserved]

Subpart B—Allocation of Title I Funds

§ 200.10 Amount of funds available for Title I grants.

(a) *Grants to SEAs.* The Secretary annually notifies an SEA of the amount of funds the SEA is eligible to receive for the next fiscal year for—

(1) Allocation to State agencies under paragraph (b) of this section and to LEAs under paragraph (c) of this section;

(2) State administration of Title I programs; and

(3) If applicable, projects under 34 CFR Part 204 for migratory children of migratory agricultural workers or fishers.

(b) *Grants to State agencies.* The SEA shall annually notify each eligible State agency of the amount of Title I funds that the Secretary has determined the State agency is eligible to receive under 34 CFR Parts 302 or 203 for the next fiscal year.

(c) *Grants to LEAs.* The SEA, on the basis of State and county allocations provided the Secretary or, if necessary, on the basis of other data, shall annually—

(1) Determine the amount of Title I funds that each LEA is eligible to receive under 34 CFR Part 201 for the next fiscal year; and

(2) Notify each LEA of the amount determined under paragraph (c)(1) of this section.

(d) *Payments to the Department of the Interior.* The Secretary annually determines the amount of Title I funds allotted for payments to the Secretary of the Interior to meet the special educational needs of educationally deprived Indian children.

(Sec. 111, 20 U.S.C. 2711)

§§ 200.11–200.19 [Reserved]

Subpart C—Documents a State Must Submit Before Receiving Title I Funds

§ 200.20 State application.

(a) *Submission of the State application.* A State that wishes to receive Title I funds, except funds for a project for migratory children covered

by 34 CFR Part 204, shall have on file with the Secretary an application that—

(1) Has been properly submitted to the Secretary by the SEA of that State; and

(2) Meets the requirements in paragraph (b) of this section.

(b) *Contents of the State application.* The application required by paragraph (a) of this section must include—

(1) Satisfactory assurances that the SEA will comply with all applicable requirements of—

(i) The Title I statute and regulations;

(ii) EDGAR; and

(iii) GEPA (Section 435 of GEPA specifically requires that an application contain certain assurances); and

(2) Any additional information that the Secretary considers necessary to make the findings required under section 182 of Title I pertaining to approval of applications.

(Sec. 162, 20 U.S.C. 2802; Sec. 182, 20 U.S.C. 2832; Sec. 435 of GEPA, 20 U.S.C. 1232d)

§ 200.21 State monitoring and enforcement plan (MEP).

(a) *Submission of the MEP.* An SEA that receives Title I assistance shall submit to the Secretary—

(1) A single MEP that covers all Title I programs; or

(2) A separate MEP for each of the four categories of Title I programs described in § 200.3.

(b) *Frequency of submission.* (1) The SEA shall submit the MEP, or MEPs, required under paragraph (a) of this section at the times the Secretary prescribes.

(2) In any case, this shall be at least once every three years.

(c) *Contents of the MEP.* The MEP must include—

(1) A report of the Title I monitoring and enforcement activities that the SEA has conducted since submitting its previous MEP;

(2) A program of regular visits by SEA personnel to Title I projects that meets the requirements in § 200.151;

(3) A statement of the matters to be reviewed during the site visits that meets the requirements in § 200.151;

(4) A description of the SEA's procedures for verifying information provided by LEAs and State agencies, including the use of other sources available to the SEA to verify that information;

(5) A description of—

(i) The State's procedures required by § 200.190 for conducting regular audits of Title I expenditures made by LEAs and State agencies; and

(ii) The SEA's procedures for resolving audit findings and recommendations under §§ 200.191–200.196;

(6) A description of the SEA's procedures for resolving direct complaints and appeals under §§ 200.180–200.188; and

(7) A desscription of the SEA's methods for determining that LEAs are in compliance with the requirements in 34 CFR 201.80–201.82 and 34 CFR 201.90–201.97 concerning the equitable provision of services to children enrolled in private schools.

(d) *Amendments.* An SEA shall submit to the Secretary amendments to an MEP whenever the SEA has substantially changed a policy or procedure that is described in that MEP.

(e) *Copies of MEP.* Upon request, an SEA shall provide, without charge, a copy of its current MEP to any Title I advisory council or LEA.

(Sec. 171, 20 U.S.C. 2821)

§§ 200.22–200.29 [Reserved]

Subpart D—Program Requirements That Apply to All Agencies That Receive Title I Funds

Participation

§ 200.30 Teacher and school board participation.

An agency that receives Title I assistance shall—

(a) Involve the following persons in both planning for Title I projects and evaluating their effectiveness:

(1) Teachers in schools participating in the Title I project.

(2) School boards, or comparable authorities, that have jurisdiction over the schools participating in the Title I project and are responsible to the public; and

(b) Make available to the persons described in paragraph (a) of this section a copy of the Title I project evaluation required by § 200.130 so that those persons can use the evaluation in planning and improving projects to be carried out in subsequent years.

(Sec. 124(i), 20 U.S.C. 2743(i))

§ 200.31 Parental participation.

(a) *Required parental participation.* An agency that receives Title I assistance shall give the parents of children participating in Title I projects an opportunity to—

(1) Participate in establishing Title I projects;

(2) Make recommendations concerning the instructional goals of Title I projects; and

(3) Assist their children in achieving the instructional goals.

(b) *Information for parents.* In order to facilitate the parental participation described in paragraph (a) of this section, the agency that receives Title I assistance shall inform the parents of children participating in its Title I projects of—

(1) The instructional goals of the current Title I projects; and

(2) The progress that their children are making toward achieving the instructional goals.

(c) *Other applicable regulations on parental involvement.* Title 34 CFR Parts 201 and 204 contain additional requirements for parental involvement in the Title I projects covered by those parts.

(Sec. 124(j), 20 U.S.C. 2734(j))

§§ 200.32–200.39 [Reserved]

Consultation and Coordination

§ 200.40 Coordination with other programs.

(a) An agency that receives Title I assistance shall demonstrate in its Title I project application that—

(1) In developing its Title I project, it has taken into consideration the benefits and services that are or may be available, during the period covered by the application, through other public and private agencies, organizations, or individuals; and

(2) In order to avoid duplication of effort and to ensure that all projects complement each other, it has considered suggestions and offers of assistance made by other agencies that may aid in carrying out or making more effective the Title I project.

(b) The Secretary strongly encourages the agency to coordinate Title I instructional services with services provided under other programs, including the regular instructional program provided by the LEA.

(Sec. 124(f)(1), 20 U.S.C. 2734(f)(1))

§ 200.41 Coordination of health, nutrition, or social services.

(a) *Requests for assistance.* (1) Before an agency that receives Title I assistance may use Title I funds for health, nutrition, or social services, it must ask the SEA for assistance in locating and using other Federal and State programs that provide these services.

(2) In its request for the assistance described in paragraph (a)(1) of this section, the agency shall ask the SEA for information concerning—

(i) Other programs that provide the types of health, nutrition, or social services that the agency wishes to provide with Title I funds;

(ii) The types of services provided by these programs; and

(iii) The conditions and procedures for obtaining the services under these other programs, including where the services are available.

(b) *Approval by the SEA.* The SEA may approve the use of Title I funds for health, nutrition, or social services only if—

(1) The services are designed to address an identified need of the children who have been selected to participate in the Title I project; and

(2)(i) The funds and services available from other programs are being fully used and are inadequate to meet the identified needs of the children who have been selected to participate in the Title I project;

(ii) The services are not available at all; or

(iii) The conditions for receipt of the services cannot be met.

(Sec. 124(f)(2), 20 U.S.C. 2734(f)(2))

§ 200.42 Simultaneous use of Title I funds and other funds.

An agency that receives Title I assistance may simultaneously use Title I funds and funds from other sources to finance portions of a particular service or project if the agency—

(a)(1) Clearly and separately identifies the portion of the service or project supported with Title I funds, and the portion or portions supported by each other source of funds; and

(2) Maintains records that are adequate to document that all Title I funds are spent in compliance with all applicable Title I requirements; or

(b) Qualifies for an exception under § 200.140(c).

(Sec. 124(f), 20 U.S.C. 2734(f); Sec. 127(a), 20 U.S.C. 2737(a))

§ 200.43 Jointly operated projects

Two or more agencies may apply to operate a Title I project jointly if—

(a) The agencies have entered into an agreement for carrying out the jointly operated project; and

(b) The terms of the agreement are specified in a joint Title I project application.

(Sec. 124(o), 20 U.S.C. 2734(o))

§§ 200.44–200.49 [Reserved]

Project Design

§ 200.50 Use of evaluations in planning.

An agency that receives Title I assistance shall use the results of the evaluations required under § 200.130 in planning for and improving Title I projects.

(Sec. 124(g), 20 U.S.C. 2734(g))

§ 200.51 Sufficient size, scope and quality of projects.

An agency that receives Title I assistance may use Title I funds for a project only if—

(a) The educational objectives of the project are directly related to one or more of the special educational needs of the children participating in the project;

(b) The resources to be used in the project and the plans for their use are consistent with and show reasonable promise of substantial progress toward meeting the special educational needs of the children being served; and

(c) The project is concentrated on a sufficiently limited number of services and a sufficiently limited number of children to show reasonable promise of substantial progress toward meeting the special educational needs of the children being served.

(Sec. 124(d), 20 U.S.C. 2734(d))

§ 200.52 Prohibition against using Title I funds to provide general aid.

Except as provided in 34 CFR 201.71(d) and 34 CFR 201.72–201.74, an agency that receives Title I assistance—

(a) Shall use Title I funds only for projects that are designed to meet the special educational needs of the eligible children that are selected to participate in the project; and

(b) May not use Title I funds for a project that has been designed to meet, or will have the effect of meeting, the general needs of—

(1) A school;

(2) The agency;

(3) An entire grade; or

(4) The student body at large in a school.

(Sec. 124(a), 20 U.S.C. 2734(a))

§ 200.53 Minimum expenditure for a Title I project.

(a) Except as provided in paragraph (b) of this section, a Title I project must involve expenditures of at least $2,500 of Title I funds.

(b) An SEA may reduce the minimum expenditure requirement in paragraph (a) of this section if the SEA determines that it is impossible for the agency that is receiving Title I assistance to—

(1) Meet the requirement on its own; or

(2) Join with another agency or agencies for the purpose of meeting the requirement, for reasons such as—

(i) The distance between the agencies; or

(ii) The difficulty of travel between the agencies.

(Sec. 124(d), 20 U.S.C. 2734(d))

§ 200.54 Sustaining educational gains.

(a) In developing a project to be assisted with Title I funds, an agency shall consider including components designed to sustain the educational gains of children participating in the project beyond the school year during which the agency conducts the project.

(b) Examples of components the agency may consider in meeting the requirement in paragraph (a) of this section include, but are not limited to—

(1) Summer school projects;

(2) Projects at the intermediate level—for example, junior high or middle school projects; and

(3) Projects at the secondary school level.

(Sec. 124(k), 20 U.S.C. 2734(k))

§ 200.55 Individualized educational plan.

The Secretary encourages an agency that receives Title I assistance to develop, if feasible, an individualized educational plan for each child that participates in the Title I project. The plan shall be—

(a) Agreed to by a representative of the agency, the child's Title I teacher, a parent of the child and, if appropriate, the child; and

(b) Evaluated periodically and revised accordingly.

(Sec. 129, 20 U.S.C. 2739)

§§ 200.56–200.59 [Reserved]

Personnel

§ 200.60 Training education aides and volunteers.

An agency operating a Title I project that includes education aides or volunteers shall, under a well-developed plan, provide those education aides and volunteers with training that—

(a) Is directly related to a Title I service;

(b) Is provided as needed to ensure that the education aides and volunteers are adequately trained;

(c) Includes the participation of the professional staff who are, or will be, assisted by the education aides and volunteers; and

(d) Is coordinated with other training programs being provided by the agency.

(Sec. 124(l), 20 U.S.C. 2734(l))

§ 200.61 Noninstructional duties.

(a) *Conditions for assigning Title I personnel.* An agency that receives Title I assistance may assign personnel paid entirely with Title I funds to certain duties that are not related to classroom instruction and that do not benefit only the children participating in the Title I project, if—

(1) These noninstructional duties are limited, rotating, and supervisory;

(2) Personnel with functions similar to those of the Title I personnel, but who are not paid with Title I funds, are assigned to these noninstructional duties at the same school site;

(3) These noninstructional duties do not include substitute teaching of a non-Title I class or regular supervision of a homeroom;

(4) The Title I personnel do not perform any duties for pay that non-Title I personnel perform without pay; and

(5) The proportion of total work time that Title I personnel at the same school site spend performing these noninstructional duties does not exceed the lesser of either—

(i) The proportion of total work time that non-Title I personnel spend performing these noninstructional duties; or

(ii) Ten percent of the Title I person's total work time.

(b) *Examples.* Examples of the types of noninstructional duties that might meet the conditions in paragraph (a) of this section include hall duty, lunchroom supervision, playground supervision, and other tasks commonly shared among the staff in a school.

(Sec. 134, 20 U.S.C. 2754)

§§ 200.62–200.69 [Reserved]

Allowable Costs

§ 200.70 Allowable costs under EDGAR.

Subject to the requirements in § 200.71, an agency that receives Title I assistance may, in accordance with the requirements in Subpart F of 34 CFR Part 76 of EDGAR, use those funds to meet the direct costs of project activities and certain indirect costs of project activities.

(Sec. 101–198, 20 U.S.C. 2701–2854; Sec. 408(a)(1) of GEPA, 20 U.S.C. 1221e–3(a)(1))

§ 200.71 Specific requirements concerning allowable costs under Title I.

In addition to meeting the requirements concerning allowable costs in Subpart F of 34 CFR Part 76 of EDGAR, an agency that receives Title I assistance shall use those funds in compliance with the requirements in the Title I statute and Title I regulations, including the requirements in §§ 200.72–200.83. In no event may an agency that receives Title I assistance use those funds for expenditures that are imprudent, extravagant, excessive, or wasteful.

(Sec. 101–198, 20 U.S.C. 2701–2854; Sec. 408(a)(1) of GEPA, 20 U.S.C. 1221e–3(a)(1))

§ 200.72 Use of Title I funds for planning.

(a) Subject to the limitation on amount in paragraph (b) of this section, an agency may use Title I funds for planning if—

(1) The planning directly relates to a Title I project and results, or is reasonably likely to result, in a Title I project; and

(2) The Title I funds are needed for planning because—

(i) Of the innovative nature of the project; or

(ii) The agency lacks the resources that are required to plan adequately for the project.

(b) During a fiscal year, the amount of Title I funds that an agency may use for the planning described in paragraph (a) of this section may not exceed the larger of—

(1) One percent of the total amount of Title I funds received by that agency for that fiscal year; or

(2) $2,000.

(Sec. 124(a), 20 U.S.C. 2734(a); Sec. 124(c), 20 U.S.C. 2734(c))

§ 200.73 Use of Title I funds for State administration.

An SEA shall comply with the specific requirements in § 200.101 concerning the use of Title I funds for State administration.

(Sec. 194, 20 U.S.C. 2844; Sec. 510 of Title V, 20 U.S.C. 3150)

§ 200.74 Use of Title I funds for health, nutrition, or social services.

An agency may use Title I funds for health, nutrition, or social services only if the requirements in § 200.41 are met.

(Sec. 124(f)(2), 20 U.S.C. 2734(f)(2))

§ 200.75 Use of Title I funds for training eligible persons.

(a) *Eligible persons.* An agency may use Title I funds to train—

(1) Staff members paid with Title I funds, advisory council members, and volunteers who will perform services in a Title I project;

(2) Regular classroom teachers paid with non-Federal funds or staff specialists paid with non-Federal funds if those persons provide instructional services to participating children or children who will participate in the next school year; and

(3) Principals of schools in which children who participate in a Title I project or who will participate in the next school year are enrolled.

(b) *Scope of the training.* The training referred to in paragraph (a) of this section must be—

(1) Directly related to the Title I services to be provided during the school year in which the training is being provided or in the next school year;

(2) Directly related to the functions that the persons receiving the training provide for the children participating in the Title I project; and

(3) Necessary to meet the needs of the participating children.

(c) *Other requirements.* (1) The training for education aides and volunteers must also meet the requirements of § 200.60.

(2) The training of advisory council members must also meet the requirements of 34 CFR 201.161.

(Sec. 124(a), 20 U.S.C. 2734(a); Sec. 124(l), 20 U.S.C. 2734(l); Sec. 125(d), 20 U.S.C. 2735(d))

§ 200.76 Use of Title I funds for bonus pay.

An agency may use Title I funds to pay teachers amounts in excess of regular salaries as a bonus for services in Title I project areas and project schools.

(Sec. 124(a), 20 U.S.C. 2734(a))

§ 200.77 Use of Title I funds for evaluation.

An agency that receives Title I assistance may use Title I funds for evaluations in accordance with the requirements in § 200.130.

(Sec. 124(g), 20 U.S.C. 2734(g))

§ 200.78 LEA's use of Title I funds for selecting children to receive Title I services.

An LEA that receives Title I assistance may, in accordance with 34 CFR 201.103, use Title I funds for the cost of selecting children to receive Title I services from among children that the LEA has already identified as educationally deprived.

(Sec. 124(a), 20 U.S.C. 2734(a))

§ 200.79 LEA's use of Title I funds for expenses related to advisory councils.

To the extent permitted under 34 CFR § 201.162, an LEA that receives Title I assistance may use Title I funds for expenses related to advisory councils.

(Sec. 125, 20 U.S.C. 2735)

§ 200.80 Use of Title I funds for construction.

An agency that receives Title I assistance may use Title I funds for construction of school facilities, as defined in § 200.5, only if—

(a) The agency meets the construction requirements in 34 CFR 76.600 of EDGAR;

(b) The agency demonstrates in its Title I application that—

(1) The proposed construction is essential to the success of the Title I project; and

(2) It has made every reasonable effort to find other funds to pay for the construction before applying to use Title I funds for that purpose;

(c) The proposed construction is consistent with the overall State plan for the construction of school facilities;

(d) The proposed construction meets the labor standards in section 433 of GEPA;

(e) The plans for the proposed school facility meet any standards that the Secretary prescribes to ensure that school facilities constructed with Title I funds are—to the extent appropriate in view of the uses to be made of the facilities—accessible to and usable by handicapped persons; and

(f) In developing plans for the proposed school facility, the agency has given adequate consideration to—

(1) Excellence of architecture and design; and

(2) The inclusion of works of art, which may represent up to one percent of the cost of the facility.

(Sec. 124(a), 20 U.S.C. 2734(a); Sec. 124(n), 20 U.S.C. 2734(n))

§ 200.81 Use of Title I funds for equipment.

An agency that receives Title I assistance may use Title I funds to purchase equipment only if the agency demonstrates in its Title I application that—

(a) The equipment is needed to operate effectively the Title I project;

(b) In meeting the needs of the Title I project, it has made every reasonable effort to use equipment that it already has; and

(c) It has made every reasonable effort to find other funds to pay for the equipment before applying to use Title I funds for that purpose.

(Sec. 124(a), 20 U.S.C. 2734(a))

§ 200.82 Use of Title I funds for reimbursement of volunteers.

(a) An agency that receives Title I assistance may use Title I funds to reimburse a volunteer for the following expenses, if the expenses are directly related to the performance of the duties and functions of the volunteers in the Title I project and approved in advance by the LEA:

(1) Transportation.

(2) Travel in connection with an approved project activity or training.

(3) Babysitting.

(4) Meals during the period of volunteer service.

(b) An agency may not use Title I funds to reimburse a volunteer for—

(1) Salary lost because of that volunteer's participation in any Title I related activity; or

(2) The cost of membership in any organization or group.

(Sec. 124(a), 20 U.S.C. 2734(a)1; Sec. 124 (1), 20 U.S.C. 2734 (1))

§ 200.83 Control of funds.

An agency may receive Title I funds only if—

(a) Control of the Title I funds and title to property purchased with those funds is in a public agency; and

(b) A public agency will administer the Title I funds and property purchased with those funds.

(Sec. 124(m), 20 U.S.C. 2734(m))

§§ 200.84–200.89 [Reserved]

Subpart E—Fiscal Requirements That Apply to All Agencies That Receive Title I Funds

§ 200.90 Maintenance of effort.

(a) *Basic standard.* (1) Except as provided in § 200.91, an SEA may approve a Title I application from an LEA or State agency only if that agency demonstrates the following in the application: Its expenditures of State and local funds for the free public education of children—on an aggregate or per pupil basis—are not less for (i) the first fiscal year preceding the fiscal year in which the agency is applying for Title I funds than for (ii) the second preceding fiscal year.

(2) Except if the LEA or State agency did not participate in Title I in the preceding fiscal year, the agency may not use as a second preceding fiscal year a fiscal year that the agency did not use as a first preceding fiscal year on a previous application.

(b) *Meaning of "per pupil basis".* As used in this section, "per pupil basis" means per child included in either ADA or ADM.

(c) *Expenditures to be considered.* The expenditures the SEA shall consider in determining the LEA's or State agency's compliance with the basic standard in paragraph (a) of this section are—

(1) State and local expenditures for free public education. These include expenditures for administration, instruction, attendance, health services, pupil transportation, plant operation and maintenance, fixed charges, and net expenditures to cover deficits for food services and student activities; and

(2) Expenditures of Federal funds for free public education for which the LEA or State agency is not accountable to the Federal Government, such as expenditures of funds under the School Assistance in Federally Affected Areas program.

(d) *Expenditures not to be considered.* The SEA may not consider the following expenditures in determining the LEA's or State agency's compliance with the basic standard in paragraph (a) of this section:

(1) Any expenditures for community services, capital outlay, or debt services.

(2) Any expenditures of Federal funds for which the agency is accountable to the Federal Government. These include expenditures made from funds provided under Title I or Part B (Instructional materials and school library resources) and Part C (Improvement in local educational practices) of Title IV.

(e) *Rounding off expenditures.* For purposes of determining compliance with the basic standard in paragraph (a) of this section, expenditures may be rounded off in the following manner:

(1) Per pupil expenditures for each of the fiscal years being compared may be rounded to the nearest ten dollars.

(2) The aggregate expenditures for each of the fiscal years being compared may be rounded to the nearest 100 dollars.

(Sec. 126(a), 20 U.S.C. 2736(a))

§ 200.91 Waiver of the maintenance of effort requirement.

(a) *Waiver authority.* Under section 126(a)(2) of Title I (Waiver of maintenance of effort), the Secretary may waive the maintenance of effort requirements in § 200.90 for a particular LEA or State agency for one fiscal year if the Secretary determines that the waiver is equitable because of exceptional and unforeseen circumstances.

(b) *Waiver request.* An LEA or State agency that has not maintained its fiscal effort as required in § 200.90 may ask the Secretary to grant a waiver of that requirement by submitting a waiver request that includes—

(1) A statement of the expenditures for the two fiscal years being compared;

(2) A statement of the difference between (i) the agency's level of fiscal effort in the preceding fiscal year and (ii) the agency's level of fiscal effort in the second preceding fiscal year; and

(3) A description of the circumstances that the agency considers to be "exceptional and unforeseen."

(c) *Secretary's criteria.* The Secretary considers granting a waiver under paragraph (a) of this section only if the Secretary determines that—

(1) The agency requesting the waiver used every opportunity available under State and local laws to maintain the necessary level of expenditures; and

(2) The failure to maintain effort was due to—

(i) A natural disaster;

(ii) a major and unforeseen decline in State or local financial resources, such

as a major loss of tax base not due to public or governmental actions;

(iii) A major and unforeseen decline in Federal funds for free public education and for which the agency is not accountable to the Federal Government; or

(iv) Other exceptional and unforeseen circumstances, which may not include referenda or acts of State legislatures, school boards, or other governmental bodies.

(d) *Actions resulting from a waiver.* If the Secretary grants a waiver under paragraph (a) of this section—

(1) The SEA shall reduce the affected agency's Title I allocation for the fiscal year covered by the waiver in exact proportion to that agency's failure to maintain 100 percent of its level of expenditures of State and local funds for the free public education of children during the second preceding fiscal year;

(2) If the affected agency is an LEA, the State shall reallocate the reduction to other LEAs in the State in accordance with 34 CFR 201.38; and

(3) For the fiscal year immediately following the fiscal year for which the waiver was granted, the SEA shall determine the affected agency's compliance with the basic standard in § 200.90 on the basis of the level of fiscal effort that would have been required if the affected agency had not been granted the waiver.

(Sec. 126(a), 20 U.S.C. 2736(a))

§ 200.92 Supplement, not supplant.

(a) *Basic requirement for all Title I projects.* An agency that receives Title I Assistance—

(1) Shall use Title I funds to supplement and—to the extent practical—increase the level of funds that would, in the absence of Title I funds, be made available for the education of children participating in Title I projects from non-Federal sources for—

(i) Regular programs; and

(ii) The State phase-in programs described in 34 CFR 201.118(c); and

(2) May not use Title I funds to supplant the non-Federal funds referred to in paragraph (a)(1) of this section.

(b) *Additional requirement for LEAs.* In addition to meeting the basic requirement in paragraph (a) of this section, an LEA that receives Title I assistance must comply with the supplement, not supplant requirements in 34 CFR 201.130–201.143.

(Sec. 126(c), 20 U.S.C. 2736(c); Sec. 126(d), 20 U.S.C. 2736(d))

§ 200.93 Excess costs: introduction.

(a) *Basic standard.* (1) Except for the exemptions in 34 CFR 201.118, an agency that receives Title I assistance shall use Title I funds only for the excess costs of a Title I project.

(2) An agency uses Title I funds for the excess costs of a Title I project if both of the following conditions are met:

(i) The agency provides Title I instruction in accordance with § 200.94 (Excess costs: instructional services).

(ii) The agency uses Title I funds to provide noninstructional services in accordance with § 200.95 (Excess costs: noninstructional services).

(b) *Meaning of "excess costs."* As used in §§ 200.93–200.95, "excess costs" means average per pupil costs directly attributable to a Title I project over and above the agency's average per pupil expenditure, in the most recent year for which satisfactory data are available for pupils in the grade level or levels included in the agency's Title I project.

(Sec. 126(b), 20 U.S.C. 2736(b); Sec. 131, 20 U.S.C. 2751)

§ 200.94 Excess costs: instructional services.

(a) *Introduction.* (1) An agency satisfies the requirements of § 200.93(a)(2)(i) if it provides instructional services in accordance with the provisions of any one of paragraphs (b) through (g) of this section.

(2) For purposes of this section, "instructional services" means services provided, as part of a program of instruction, by teachers, teacher aides or other similar persons.

(b) *In class project.* (1) For purposes of this section, an "in class project" means a Title I project in which instructional services are provided to participating children in the same classroom setting and at the same time in which they would receive instructional services if they were not participating in the Title I project.

(2) An agency uses Title I funds for the excess costs of an in class project if—

(i) The project is particularly designed to meet participants' special educational needs;

(ii) The classroom teacher who would be responsible for the provision of instructional services to participating children in the absence of Title I remains responsible for and continues to perform those duties which that teacher would be required to perform in the absence of Title I, including planning the instructional program of participating children, providing them with instructional services, and evaluating their progress; and

(iii) Instructional staff paid for using Title I funds work under the supervision of the classroom teacher, who would be responsible for the provision of instructional services to participating children in the absence of Title I, so as to provide services which are particularly designed to meet participants' special educational needs.

Example. An agency wishes to provide a special program of remedial instruction using a teacher aide to ten high school juniors assigned to one business math class, and to five high school sophomores in a separate compensatory math class which meets at the same time. The teacher aide spends half of each class period in each class, working individually with Title I participants to provide tutorial assistance on an as-needed basis. Such a project satisfies the excess costs requirements of § 200.93(a)(2)(i) if the classroom teacher, who would be responsible for providing instruction to the participating children in each case, continues to be responsible for tasks such as lesson planning and basic instruction, and meets with the teacher aide on a regular basis to ensure that the Title I participants are receiving a program of instruction which meets their individual needs.

(c) *Limited pull out project.* (1) For purposes of this section, a "limited pull out project" means a Title I project in which—

(i) Instructional services are provided to participating children in a different setting or at a different time than would be the case if those children were not participating in the Title I project; and

(ii) Services are provided for a period that does not exceed 25 percent of the time—computed on a per day, per month, or per year basis—that a participating child would, in the absence of Title I funds, spend receiving from a particular teacher of required or elective subjects who is paid with non-Title I funds.

(2) An agency uses Title I funds for the excess costs of a limited pull out project if—

(i) The project is particularly designed to meet participants' special educational needs;

(ii) The classroom teacher, who would be responsible for the provision of instructional services to participating children in the absence of Title I, remains responsible for and continues to perform those duties which that teacher would be required to perform in the absence of Title I, including planning the instructional program of the participating children, providing them with instructional services, and evaluating their progress; and

(iii) Instructional staff paid for using Title I funds work under the supervision of the classroom teacher, who would be responsible for the provision of instructional services to participating children in the absence of Title I, so as to provide services which are

particularly designed to meet participants' special educational needs.

Example. Fifty third graders participate in a Title I project designed to help them improve their reading skills. All the children receive instruction in reading from their classroom teacher as part of their regular program of instruction. Under the Title I project, a special resource center is staffed by personnel paid with Title I funds; Title I participants are pulled out of class for one-half hour, five days per week, to receive special assistance at the resource center. The time spent in the resource center totals 2.5 hours, or 12.5 percent of the 20 hours of instructional time the fifty participating children spend with their classroom teacher as part of their regular program of instruction. This project does not violate the excess costs requirements of § 200.93(a)(2)(i) so long as the classroom teacher whose instruction the Title I project is designed to supplement continues to remain responsible for the program of instruction which is provided to the participating children and performs regular planning, instructional, and evaluative duties associated with those children. The classroom teacher must also work closely with the resource center personnel to ensure that a coordinated program of instruction is provided so as to meet the special needs of Title I participants.

(d) *Extended pull out project.* (1) For purposes of this section, an "extended pull out project" means a Title I project in which—

(i) Title I services are provided to participating children in a different classroom setting or at a different time than would be the case if those children were not participating in the Title I project; and

(ii) Title I services are provided for a period that exceeds 25 percent of the time—computed on a per day, per month, or per year basis—that a participating child would, in the absence of Title I funds, spend receiving from a particular teacher of required or elective subjects who is paid with non-Title I funds.

(2) An agency uses Title I funds for the excess costs of an extended pull out project if either of the following conditions are met:

(i) The agency—

(A) Allocates to the Title I project the full-time equivalent number of non-Title I staff that—in the absence of the Title I service—would have been used to provide the non-Title I funded instructional service that is replaced with the Title I funded service; or

(B) At its discretion, provides the number of full-time equivalent staff referred to in paragraph (d)(2)(i)(A) rounded to the nearest whole number.

(ii) The agency allocates to the Title I project an amount of non-Title I funds required to provide the number of non-Title I funded staff referred to in paragraph (d)(2)(i)(A) of this section.

(3) For purposes of paragraph (d)(2)(i) of this section, the agency calculates the number of full-time equivalent staff required for each Title I project by taking the following steps:

(i) *Step 1.* The agency calculates the number of children served, on the average, by a full-time equivalent staff member;

(ii) *Step 2.* The agency calculates the number of children served by the Title I project (reduced to the same base used in measuring teacher load in Step 1);

(iii) *Step 3.* The agency divides the number in Step 2 by the number in Step 1. This is the number of full-time equivalent staff.

Example. An LEA decides to provide some third and fourth graders with an intensive program in basic skills, using Title I funds. The program is to meet every day for two hours. Third and fourth graders ordinarily receive 5 hours of instructional services per day. The average pupil-teacher ratio for third and fourth graders is 24 to 1.

The LEA must provide either the full-time equivalent number of staff that would have been used in the absence of the Title I service to provide reading and mathematics, or the amount of non-Title I funds required to provide that number of staff.

To determine the number of full-time equivalent staff required to be provided, the LEA—

Determines that the number of children served by a full-time equivalent teacher is 24 children on a full-time basis.

Calculates the number of children served by the Title I project (80 children are served at 40 percent time; thus the project could serve 32 children on a full-time basis);

Divides the number of full-time equivalent children by the number of such children served by a full-time equivalent staff member (32 divided by 24 equals 1.33).

The LEA provides the appropriate number of non-Title I funded staff (1.33 full-time teachers), or the number of such staff rounded to the nearest whole number (1 full-time teacher). Alternatively, the LEA provides an amount of funds required to provide the number of staff (1.33 times the average salary for third and fourth grade teachers) as its allocation to the program.

(e) *Add on project.* (1) For purposes of this section, an "add on project" is one which is provided at a time in which participants would not otherwise be receiving non-Title I funded instructional services, including periods such as vacations, weekends, before or after regular school hours, or during noninstructional time.

(2) An agency uses Title I funds for the excess costs of an add-on project so long as the project is particularly designed to meet participants' special educational needs.

(f) *Replacement projects.* (1) For purposes of this section, a "replacement project" means a Title I project in which—

(i) Title I services are provided to participating children in a different classroom setting or at a different time than would be the case if these children were not participating in the Title I project; and

(ii) The Title I project provides services which replace all or part of the course of instruction regularly provided to Title I participants with a distinct, self-contained Title I program which is particularly designed to meet participants' special educational needs.

(2) An agency uses Title I funds for the excess costs of a replacement project if the conditions in either paragraphs (d)(2)(i) or (d)(2)(ii) are met.

Example. An LEA decides to provide 200 9th graders attending two different junior high schools (100 in each school) with a special, intensive remedial reading program using a very low pupil to teacher ratio for one period per day (5 periods per week), out of the usual 30 period week, in place of those students' regular English class. On the average, 9th grade English teachers teach five classes of 25 children each. The classes each meet for 5 periods per week.

The LEA must provide either the full-time equivalent number of staff that would have been used in the absence of the Title I service to provide instruction in English, or the amount of non-Title I funds required to provide that number of staff.

To determine the number of full-time equivalent staff required to be provided, the LEA—

Calculates the number of children served, on the average, by a full-time equivalent staff member (25 children multiplied by 5 classes equals 125 children served per day);

Calculates the number of children served, by the Title I project (200 children served per day);

Divides the number of children served by the Title I project by the number of children served by a full-time equivalent staff member (200 divided by 125 equals 1.6).

The LEA provides the appropriate number of non-Title I funded staff (1.6 full-time teachers or the number of staff rounded to the nearest whole number (2 full-time teachers). Alternatively, the LEA provides an amount of funds required to provide that number of staff (1.6 times the average salary paid to high school English teachers) as its allocation to the project.

(g) *Other projects.* An agency uses Title I funds for the excess costs of a project other than one of a type described in paragraph (b), (c), (d), (e), or (f) of this section, so long as it maintains records demonstrating that the average per pupil costs directly attributable to its Title I project exceed the agency's per pupil expenditure, by grade level or levels, for all pupils in the grades included in the agency's Title I project.

(h) *Graduation credits.* Compliance with the requirements of the excess cost provisions of § 200.93(a)(2)(i) is the responsibility of agencies receiving Title I assistance, and in no way affects the award of credits, for purposes of graduation, to students participating in Title I projects.

(Sec. 126(b), 20 U.S.C. 2736(b); Sec. 131, 20 U.S.C. 2751)

§ 200.95 Excess costs: noninstructional services.

(a) An agency satisfies the requirements of § 200.93(a)(2)(ii) if it provides noninstructional services in accordance with paragraph (b) of this section.

(b) An agency uses Title I funds for the excess costs of noninstructional services so long as—

(1) It provides noninstructional services consistent with the provisions of this part and 34 CFR Part 201; and

(2) It provides noninstructional services which would not, in the absence of Title I, be available to children at the grade level or levels of children participating in its Title I project.

(c) For purposes of this section, "noninstructional services" includes supplies, equipment, or other services which are not instructional services as defined in § 200.94(a)(2).

Example. An LEA plans to use Title I funds to provide services of a community-home aide to high school students participating in its Title I project. Use of Title I funds for this purpose would not be appropriate if such an aide is currently otherwise providing services to non-participating students, in the same grade or grades, using non-Title I funds.

(Sec. 126(b), 20 U.S.C. 2736(b); Sec. 131, 20 U.S.C. 2751)

§§ 200.96–200.99 [Reserved]

Subpart F—State and Local Administrative Responsibilities

General

§ 200.100 Applicability of the regulations in Subpart F.

(a) The regulations in this subpart interpret—

(1) Part C (State administration of projects) of Title I; and

(2) Part A (Administration of educational programs and duties of the SEA) of Title V.

(b) In any fiscal year in which the conditions in paragraph (c)(2) of this section are not met, Part C of Title I applies.

(c)(1) In any fiscal year in which the conditions in paragraph (c)(2) of this section are met, Part A of Title V applies, together with sections 162 (State applications), 171 (State MEPs), 172 (Reporting requirements), 173 (Recordkeeping, fiscal control, and fund accounting), and 174 (Prohibition of consideration of Federal aid in determining State aid) of Title I.

(2) The provisions in paragraph (a)(1) of this section apply for any fiscal year in which the funds appropriated under section 510 (Authorization of payments) of Title V are—

(i) Sufficient to pay the full amount each State is eligible to receive for State administration under section 510(a) (Authorization of payments) of Title V; and

(ii) Included in an act making appropriations for the fiscal year prior to the fiscal year in which those funds will be obligated, and are made available for expenditure prior to the beginning of that fiscal year.

(Sec. 161, 20 U.S.C. 2801; Sec. 510 of Title V, 20 U.S.C. 3150)

§ 200.101 Payments for State administration.

(a) Except when the conditions in § 200.100(c)(2) are met, the Secretary pays each State an amount equal to the amount spent by it for the proper and efficient performance of its duties under Title I, provided that the amount paid by the Secretary for any fiscal year does not exceed the greater of—

(1) 1.5 percent of the amount of Title I funds allocated to the State for that year, including payments to LEAs and State agencies; or

(2)(i) $225,000; or

(ii) $50,000 in the case of Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(b)(1) Paragraph (b)(2) of this section applies if, under paragraph (a) of this section, a State receives an amount in excess of the greater of—

(i) One percent of the amount of Title I funds available to the State; or

(ii)(A) $150,000; or

(B) $25,000 in the case of Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(2) If a State receives an amount in excess of the amount specified in paragraph (b)(1) of this section, the State shall use that excess—

(i) Exclusively for monitoring, audit resolution, or similar compliance activities related to the enforcement of Title I; and

(ii) To supplement, not supplant State and local funds otherwise available for compliance activities.

(c)(1) If the conditions in § 200.100(c)(2) are met, the Secretary pays each State an amount equal to the amount spent by the State for the proper and efficient performance of its duties under Title I and Title IV.

(2) However, the Secretary does not pay for any fiscal year more than the greater of—

(i) 1.75 percent of the amount of Title I and Title IV funds allocated to the State for that year; or

(ii)(A) $550,000; or

(B) $87,000 in the case of Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(3) In any case, however, the Secretary's payment is not less than the amount each State received for administration of Title I and Title IV projects for fiscal year 1978.

(d) If the conditions in § 200.100(c)(2) are met, the Secretary pays, in addition to the amount authorized under paragraph (c) of this section, an amount not to exceed 25 percent of the amount authorized for each State under paragraph (c) of this section if the SEA—

(1) Uses these funds solely for monitoring, audit resolution, or similar compliance activities related to the enforcement of Title I and Title IV;

(2) Applies to receive these funds and specifically describes in its application the intended uses of the funds; and

(3) Uses these funds to supplement, not supplant State and local funds already being used for compliance activities.

(Sec. 194, 20 U.S.C. 2844; Sec. 510 of Title V, 20 U.S.C. 3150)

§ 200.102 Payments by SEAs.

Except for payments for State administration described in § 200.101, an SEA shall make payments from Title I funds only for projects that it has approved under § 200.110.

(Sec. 164(b), 20 U.S.C. 2811(b))

§§ 200.103–200.109 [Reserved]

Application Approval

§ 200.110 SEA approval of applications from LEAs and State agencies.

(a) *Standards for approval.* An SEA shall approve the Title I application of an LEA or State agency if the SEA determines, after considering the factors in paragraph (b) of this section, that the agency—

(1) Will use the Title I funds received under the application in compliance with the requirements of—

(i) The Title I statute;

(ii) The Title I regulations;

(iii) GEPA, including the assurances in section 436;

(iv) EDGAR; and

(v) Applicable State rules, regulations, procedures, guidelines, and criteria adopted in compliance with §§ 200.120–200.122;

(2) Will use the Title I funds in accordance with its approved Title I application; and

(3) Is not out of compliance with—

(i) A determination by the SEA or the Secretary that the agency repay misspent Title I funds; or

(ii) A compliance agreement under §§ 200.210–200.214 or §§ 200.270–200.275.

(b) *Factors to be considered.* An SEA may approve an application under paragraph (a) of this section only after the SEA has considered where pertinent—

(1) The results of Federal and State audits of the LEA or State agency submitting the application;

(2) The results of Federal and State monitoring reports of the LEA or State agency submitting the application;

(3) Complaints made by parents or other persons concerning the agency's compliance with Title I requirements; and

(4) Evaluations under section 124(g) of Title I.

(c) *Effective date of approved application.* An SEA shall consider a project approved under paragraph (a) of this section to be approved as of the date on which the application was submitted in approvable form. In no event shall this date be earlier than the first day on which the funds being applied for become available for obligation, or the effective date of the SEA's Title I application submitted and approved under § 200.20.

(d) *Effect of SEA approval.* SEA approval of an application under paragraph (a) of this section does not relieve the LEA or State agency of its responsibility to comply with all applicable requirements.

(Sec. 164(a), 20 U.S.C. 2811; Sec. 508(a) of Title V, 20 U.S.C. 3143(a))

§ 200.111 Opportunity for a hearing on application disapproval.

(a) An SEA shall provide reasonable notice and opportunity for a hearing to any LEA or State agency prior to disapproving, in whole or in part, that LEA's or State agency's application for Title I funds under 34 CFR Parts 201, 302, or 203.

(b) An LEA or State agency that is aggrieved by the SEA's intended disapproval of its application may, within 30 days of receiving notice of the SEA's intent to disapprove its application, request a hearing.

(c) Within 30 days after it receives a request for a hearing from an LEA or State agency, the SEA shall hold the hearing, on the record, to review its intended disapproval of the agency's application.

(d) Within 10 days after the hearing, the Sea shall issue a written ruling that includes—

(1) The reasons for the SEA's ruling; and

(2) Notice of the LEA's or State agency's right to appeal to the Secretary under § 200.112.

(Sec. 164(c), 20 U.S.C. 2811(c); Sec. 503(c) of Title V, 20 U.S.C. 3143(c); Sec. 425 of GEPA, 20 U.S.C. 1231b–2)

§ 200.112 Appeal to the Secretary.

An LEA or State agency that is aggrieved by the final action of an SEA under § 200.111 may appeal the SEA's action to the Secretary. In order to appeal, the LEA or State agency shall, within 20 days after the agency receives notice of the SEA's final action, file a notice of its intent to appeal with the Secretary.

(Sec. 164(c), 20 U.S.C. 2811(c); Sec. 503(c) of Title V, 20 U.S.C. 3143(c); Sec. 425(b) of GEPA, 20 U.S.C. 1231b–2(b))

§ 200.113 Amendments to the application.

(a) *Annual updating of information in Title I application.* An LEA or State agency shall annually update its Title I project application by submitting to its SEA—

(1) Data showing that the LEA or State agency has maintained its fiscal effort as required by § 200.90;

(2) A statement of the amount of Title I funds carried over from the preceding fiscal year, and the amount requested from the agency's current Title I application; and

(3) A budget for the expenditure of Title I funds.

(b) Other amendments to an application. An LEA or State agency shall submit to its SEA amendments to its Title I application and secure the SEA's approval whenever it seeks to make any significant changes (particularly changes resulting from Federal or State audits and monitoring) in activities to be conducted under the agency's application, including changes in—

(1) Services, construction, or purchases of equipment;

(2) Criteria for the selection of children to receive a Title I service;

(3) The number of public and private school children, identified by subject area and grade level, who will participate in the Title I project;

(4) The number and type of staff to be employed;

(5) The amounts of Title I funds to be spent for participating public school children and participating private school children;

(6) The agency's list of school attendance areas or schools designated for Title I projects; and

(7) The grade level or levels of children who will receive a previously approved service.

(Sec. 121–134, 20 U.S.C. 2731–2754)

§§ 200.114–200.119 [Reserved]

State Rulemaking

§ 200.120 Authority for State rulemaking.

Except as provided in § 200.121, an SEA may adopt reasonable rules, regulations, procedures, guidelines, criteria, or other requirements that apply to Title I projects.

(Sec. 165, 20 U.S.C. 2812; Sec. 504 of Title V, 20 U.S.C. 3144)

§ 200.121 Limitations on State rulemaking authority.

(a) All rules, regulations, procedures, guidelines, criteria, or other requirements that an SEA adopts under § 200.120 must conform to all applicable Federal laws, including all requirements in the Title I statute and regulations;

(b) Except as provided in 34 CFR 201.90(a)(2) (General standards for by-pass actions), the SEA may not, under the authority in § 200.120, prohibit any practice that is authorized under Title I.

(Sec. 165, U.S.C. 2812; Sec. 504 of Title V, 20 U.S.C. 3144)

§ 200.122 Examples of State rulemaking.

(a) An SEA may adopt reasonable rules concerning the size, scope, and quality of Title I projects.

(b) For example, the SEA may adopt reasonable rules concerning—

(1) The pupil-to-staff ratio to ensure that Title I services are sufficiently concentrated;

(2) The number of hours per day that a child may be removed from a regular class to receive a Title I service; or

(3) The number or categories of curriculum areas that may be included in a Title I project.

(c) LEAs, however, retain the authority to determine—

(1) The grade levels that will be included in their Title I projects; and

(2) The curriculum areas that will be included in their Title I projects, if those curriculum areas meet all Title I requirements.

(Sec. 165, 20 U.S.C. 2812; Sec. 504 of Title V, 20 U.S.C. 3144)

§§ 200.123–200.129 [Reserved]

Evaluation

§ 200.130 Evaluation procedures.

(a) *Other applicable requirements.* To evaluate the effectiveness of a Title I project, an agency that receives Title I assistance shall adopt and use effective procedures that meet the requirements in 34 CFR 201.170–201.177, and in 34 CFR Parts 302, 203, or 204, as applicable.

(b) *Required evaluations.* The agency that receives Title I assistance shall, at least once every three years, conduct an evaluation or series of evaluations that—

(1) Addresses the purposes of the Title I project;

(2) Includes collection and analysis of data concerning the degree to which the Title I project has achieved its goals, including the requirements in section 130 (Participation of children enrolled in private schools) of Title I; and

(3) Includes objective measurements of educational achievement in basic skills over at least a twelve-month period in order to determine whether the effects of programs conducted during the regular school year have been sustained over the summer.

(c) *Use of evaluation results.* The agency that receives Title I assistance shall use the results of its evaluations of its Title I project in planning for and improving Title I projects to be carried out in the following years.

(Sec. 124(g), 20 U.S.C. 2734(g))

§§ 200.131–200.139 [Reserved]

Recordkeeping

§ 200.140 Recordkeeping requirements.

(a) *General standards for SEAs.* An SEA that receives Title I assistance shall—

(1) Use fiscal control and fund accounting procedures that will ensure proper disbursement of and accounting for Title I funds;

(2) Keep records that show—

(i) The amount and disposition of all Title I funds;

(ii) The total cost of each Title I project; and

(iii) The share of the cost provided from non-Title I sources; and

(3) Keep other records that are needed to facilitate an effective audit of each Title I project.

(b) *General standards for agencies operating a Title I project.* An agency that receives Title I assistance shall keep all records that the SEA requires. These must include—

(1) Records of Title I funds that show—

(i) The amount of Title I funds received;

(ii) How the agency uses the funds;

(iii) The total cost of the project; and

(iv) The share of that cost provided from other sources;

(2) Other records that are needed to facilitate an effective audit of the Title I project;

(3) Records that show the agency's compliance with Title I requirements; and

(4) Records of significant project experiences and results.

(c) *Exception for certain projects.* The SEA need not require an LEA to account separately for Title I funds if the LEA—

(1) Conducts a single compensatory education project that—

(i) Meets all Title I requirements; and

(ii) Is paid for out of Title I funds, as well as out of State and local funds; and

(2) Excludes, under 34 CFR 201.118, State and local expenditures for that compensatory education project in determining compliance with the excess costs and comparability requirements.

(d) *Retention of Records.* All records required under this section must be retained—

(1) For five years after the close of the fiscal year in which the funds were spent;

(2) Until any pending audits concerning the Title I project have been completed; and

(3) Until all findings and recommendations arising out of any audits concerning the Title I project have been finally resolved.

(Sec. 127(a), 20 U.S.C. 2737(a); Sec. 173, 20 U.S.C. 2823; Sec. 437 of GEPA, 20 U.S.C. 1232f)

§ 200.141 Access to information.

(a) *Access provided by the SEA.* Except as provided in paragraph (d) of this section, an SEA shall provide any person with access to documents related to the Title I program in that State if that person has specifically requested information or documents in a written request.

(b) *Access provided by LEAs and State agencies.* Except as provided in paragraph (d) of this section, an LEA or State agency that applies for or receives Title I funds shall provide parents, teachers, or other persons with access to its Title I project application, amendments, prior applications, evaluations of the agency's Title I project, and other documents related to the agency's Title I project.

(c) *Definition of access.* As used in this section, "access" means—

(1) Inspection of the documents at a reasonable time and place; and

(2) (i) Reproduction, on request, of the documents free of charge or at reasonable costs; or

(ii) Provision of the documents for their reproduction by the person who requests them.

(d) *Limitations on access.* An agency may not provide access to documents or records that—

(1) Individually identify children and teachers without the permission of the person so identified; or

(2) The agency is prohibited from releasing under any applicable laws.

(Sec. 127(c), 20 U.S.C. 2737(c); Sec. 173, 20 U.S.C. 2823)

§ 200.142 Access by State and Federal auditors.

An agency that receives Title I assistance shall make all records, documents, and personnel that relate in any way to a Title I project available to State and Federal auditors at the request of those auditors.

(Sec. 127, 20 U.S.C. 2737; Sec. 173, 20 U.S.C. 2823)

§§ 200.143–200.149 [Reserved]

State Monitoring

§ 200.150 Obligation to adopt standards for monitoring.

An SEA shall adopt standards for monitoring the effectiveness of the Title I projects operated by LEAs and State agencies. These standards must meet the standards in § 200.151 and be consistent with the MEP that the SEA submitted under § 200.21.

(Sec. 167, 20 U.S.C. 2814; Sec. 171, 20 U.S.C. 2821; Sec. 506 of Title V, 20 U.S.C. 3146)

§ 200.151 Minimum standards for monitoring.

(a) *Purpose and scope of monitoring.* In monitoring the effectiveness of Title I projects in its State, as SEA shall—

(1) Determine whether the Title I projects comply with applicable Title I requirements;

(2) Determine whether the Title I projects are being implemented in accordance with approved project applications;

(3) Evaluate the LEA's or State agency's efforts to assess and improve the quality and effectiveness of the Title I services being provided; and

(4) Provide technical assistance, if appropriate.

(b) *Frequency of on-site visits.* Representatives of the SEA shall—

(1) Visit, at least once every three years, each LEA and State agency that operates a Title I project; and

(2) Visit, at least once every two years, those LEAs and State agencies that receive the largest amounts of Title

I funds or have a history of noncompliance with applicable Title I requirements.

(c) *Issuing monitoring reports.* Within 60 days of completing each visit that it conducts under paragraph (b) of this section, the SEA shall issue a written monitoring report to the agency that was visited. The SEA shall include in the report its findings and recommendations concerning—

(1) The agency's compliance with applicable Title I requirements;

(2) The LEA's or State agency's efforts to assess and improve the quality and effectiveness of the Title I project; and

(3) The need for corrective action, if any.

(d) *Responding to monitoring reports.* Within 45 days of receiving an SEA monitoring report that recommends improvements or requires corrective action, the monitored agency shall submit a written response to the SEA. The agency shall include in its response—

(1) A description of all steps that it has taken, or will take, in response to the SEA's recommendation for improvements or requirement for corrective action; and

(2) If appropriate, a statement of the agency's reasons for not making the improvements or taking all or a part of the corrective action that was required by the SEA.

(e) *Follow-up on recommendations or corrective action.* (1) Within 45 days of receiving the response required under paragraph (d) of this section, the SEA shall review that response to determine whether follow-up action is appropriate.)

(2) Follow-up action may include one or more of the following compliance procedures:

(i) A follow-up visit.

(ii) An audit under §§ 200.190–200.193.

(iii) A withholding action under §§ 200.200–200.201.

(iv) A compliance agreement under §§ 200.210–200.214.

(f) *Making monitoring reports available.* The SEA shall—

(1) Notify the monitored agency of any follow-up action that the SEA plans to take under paragraph (e) of this section;

(2) Send a copy of the monitoring report, any response by the LEA or State agency, and a statement of any follow-up action that the SEA plans to take to the following:

(i) The district advisory council that has been established for the agency that was monitored.

(ii) State and local auditors; and

(3) Provide access, under § 200.141, to the monitoring report, any response by the LEA or State agency, and a statement of any follow-up action that the SEA plans to take.

(Sec. 167, 20 U.S.C. 2814; Sec. 506 of Title V, 20 U.S.C. 3146)

§ 200.152–200.159 [Reserved]

Reporting

§ 200.160 Reporting to the Secretary.

An SEA shall submit to the Secretary—

(a) A written report (including the results of objective measurements required by section 124(g) (Evaluations of Title I)) evaluating the effectiveness of its Title I projects in improving the educational attainment of participating children. The SEA shall submit this report according to the following schedule:

(1) For projects covered by 34 CFR Part 201, this report is due on February 1, 1981, and February 1 of every second year thereafter.

(2) For projects covered by 34 CFR Parts 302, 203, or 204, this report is due on February 1 of each year;

(b) Any reports the Secretary may require—at such times as the secretary may require—to determine the amount of funds that the SEA is eligible to receive for any fiscal year; and

(c) All reports specifically required in 34 CFR Parts 201, 302, 203, and 204, as applicable.

(Sec. 172, 20 U.S.C. 2822)

§ 200.161 Reporting to the SEA

An LEA or State agency that receives Title I assistance shall submit to the SEA—

(a) An annual report that contains information reasonably necessary to enable the SEA to perform its Title I duties; and

(b) Any other reports that the SEA may require to carry out its Title I responsibilities, including information (which in the case of reports relating to performance must be based on specific performance criteria related to program objectives) relating to the educational achievement of students participating in Title I projects.

(Sec. 127(b), 20 U.S.C. 2737(b))

§§ 200.162–200.169 [Reserved]

Technical Assistance and Dissemination of Information

§ 200.170 Technical assistance provided by the SEA.

(a) An SEA shall develop and implement a comprehensive program to provide technical assistance to LEAs and State agencies concerning the use of Title I funds.

(b) The program required by paragraph (a) of this section must include—

(1) Technical assistance for—

(i) Preparation of applications;

(ii) Planning, development, implementation, and evaluation of programs; and

(iii) Management of projects; and

(2) Other forms of technical assistance needed by LEAs and State agencies.

(Sec. 166, 20 U.S.C. 2813; Sec. 505 of Title V, 20 U.S.C. 3145)

§ 200.171 Dissemination of information to LEAs and State agencies.

An SEA shall adopt effective procedures for disseminating to LEAs and State agencies—

(a) Significant information derived from educational research;

(b) Information about successful compensatory education projects;

(c) Information about other federally-funded and State-funded programs that may provide needed health, social, and nutrition services to eligible Title I children; and

(d) Any other information that will assist LEAs and State agencies in planning, developing, implementing, and evaluating Title I projects.

(Sec. 166, 20 U.S.C. 2813; Sec. 505 of Title V, 20 U.S.C. 3145)

§ 200.172 Dissemination of information to teachers and administrators.

(a) An agency that receives Title I assistance shall—

(1) Adopt effective procedures for acquiring and disseminating significant information concerning educational practices to teachers and administrators; and

(2) Develop methods for adopting, where appropriate, promising educational practices into its Title I project.

(b) Possible sources of the information referred to in paragraph (a) of this section may include, but are not limited to—

(1) Educational research;

(2) Demonstration projects;

(3) Other programs; and

(4) Evaluations of Title I projects.

(Sec. 124(h), 20 U.S.C. 2734(h))

§§ 200.173–200.179 [Reserved]

Complaint Review and Resolution

§ 200.180 Contents of a complaint.

For purposes of this part, a complaint is a signed statement that includes—

(a) An allegation that an agency has violated a Title I requirement that is found in the Title I statute, Title I regulations, Title I interpretive rules, GEPA, or EDGAR; and

(b) Information that supports the allegation.

(Sec. 128, 20 U.S.C. 2738; Sec. 168, 20 U.S.C. 2815; Sec. 507 of Title V, 20 U.S.C. 3147)

§ 200.181 Who may file a complaint.

Any parent, teacher, Title I advisory council, or other concerned individual or organization may file a complaint.

(Sec. 128, 20 U.S.C. 2738)

§ 200.182 Where to file a complaint.

Unless a complaint meets the standards for direct complaints in § 200.186(a)(2) or § 200.242(a), the complainant must comply with the following procedures:

(a) If the complaint relates to a Title I project operated by an LEA, the complaint must be filed, according to the procedures in § 200.183, with that LEA.

(b) If the complaint relates to a Title I project operated by a State agency for the benefit of handicapped children or neglected or delinquent children, the complaint must be filed, according to the procedures in § 200.183, with the State agency that receives Title I funds to operate that Title I project.

(c) If the complaint relates to a Title I project for the benefit of migratory children of migratory agricultural workers or fishers, or the SEA's administration of the Title I project, the complaint must be filed, according to the procedures in § 200.186, with the SEA that receives Title I funds to operate that Title I project.

(Sec. 128, 20 U.S.C. 2738)

§ 200.183 Required procedures for resolution of complaints that are filed with LEAs or State agencies.

(a) An LEA or State agency that receives Title I assistance shall develop and implement written procedures for resolving complaints.

(b) The procedures referred to in paragraph (a) of this section must provide—

(1) A specific time limit as provided by § 200.184 for investigating and resolving complaints;

(2) An opportunity for the complainant or the complainant's representative, or both, to present relevant evidence, including an opportunity to question the parties involved;

(3) The right to appeal the final resolution of the LEA or State agency to the SEA under § 200.185;

(4) For the dissemination of information about these procedures to interested persons, including all of the agency's Title I advisory councils; and

(5) For an on-site investigation, if necessary.

(Sec. 128, 20 U.S.C. 2738)

§ 200.184 Time limit for resolution of complaints that are filed with LEAs or State agencies.

(a) An LEA or State agency that receives Title I assistance shall resolve each complaint that it receives under § 200.183 within 30 days after it receives the complaint. However, on request of the LEA or State agency, the SEA may provide additional time for the resolution of a complaint because of exceptional circumstances.

(b) Examples of factors that the SEA may consider in determining the existence of exceptional circumstances include—

(1) The need for an extended investigation or audit to determine whether the allegation in the complaint is accurate; and

(2) The fact that complex issues are raised by the complaint.

(Sec. 128, 20 U.S.C. 2738)

§ 200.185 Appeals from resolutions by LEAs or State agencies.

(a) *Who may appeal.* Any person, agency, or organization that has filed a complaint and is dissatisfied with the resolution of the complaint by an LEA or State agency may appeal that resolution to the SEA.

(b) *When to file an appeal.* An appeal under this section must be postmarked within 30 days after the complainant receives a copy of the resolution of the complaint.

(Sec. 128, 20 U.S.C. 2738)

§ 200.186 Required procedures for resolution of appeals and complaints that are filed with SEAs.

(a) An SEA shall develop and implement written procedures for—

(1) Reviewing appeals from resolutions that have been made by LEAs or State agencies under § 200.183; and

(2) Investigating and resolving complaints filed directly with the SEA, including developing standards for what kind of direct complaints are acceptable.

(b) All procedures developed under paragraph (a) of this section must provide—

(1) A specific time limit, as provided by § 200.187, for resolving appeals or complaints;

(2) The right to appeal the final resolution of the SEA to the Assistant Secretary within 30 days after receiving the SEA's written decision; and

(3) For the dissemination of information, free of charge, about those procedures to interested persons, including all Title I advisory councils of the appropriate LEA or State agency.

(c) In addition to meeting the requirements in paragraph (b) of this section, the complaint resolution procedures developed under paragraph (a)(2) of this section must provide—

(1) That if a complaint filed with the SEA relates to a Title I project operated by an LEA or State agency, the SEA may either resolve the complaint or refer it to the appropriate LEA or State agency;

(2) For investigation of complaints that are accepted for resolution by the SEA, including an on-site investigation if the SEA determines that it is necessary; and

(3) An opportunity for the complainant or the complainant's representative, or both, and the agency that is operating the Title I project to present relevant evidence, including the opportunity to question parties and any of their witnesses.

(Sec. 168, 20 U.S.C. 2815; Sec. 507 of Title V, 20 U.S.C. 3147)

§ 200.187 Time limit for resolution of appeals and complaints that are filed with SEAs.

(a) Except as provided in paragraph (b) of this section, an SEA that receives an appeal or complaint under § 200.186(a) shall—

(1) Within 60 days of receiving the appeal or complaint, resolve it; or

(2) Within 30 days of receiving a complaint, refer it to the appropriate LEA or State agency for resolution. In that case, the LEA or State agency shall follow the time limit established under § 200.184.

(b)(1) The SEA may determine that the existence of exceptional circumstances justifies the SEA's taking additional time to resolve the complaint or appeal.

(2) Examples of factors that the SEA may consider in determining the existence of exceptional circumstances include—

(i) The need for an extended investigation or audit to determine whether the allegation in the complaint is accurate; and

(ii) The fact that complex issues are raised by the complaint.

(Sec. 168, 20 U.S.C. 2815; Sec. 507 of Title V, 20 U.S.C. 3147)

§ 200.188 Contents of the final resolution by an SEA.

An SEA shall include in its final resolution of an appeal or complaint under § 200.186(a)—

(a) A summary of the facts on which the appeal or complaint is based;

(b) A statement of the Title I requirements that the appeal or complaint alleges to have been violated;

(c) The SEA's findings of fact and a summary of the evidence that the SEA considered in making these findings;

(d) The SEA's conclusions regarding the merits of each allegation in the complaint, and a summary of its reasons for each conclusion;

(e) The SEA's directive for any corrective action that the LEA or State agency must take and when that action must be taken; and

(f) Notice of the procedures through which each dissatisfied party may exercise its right to appeal the SEA's final resolution to the Assistant Secretary under § 200.243.

(Sec. 168, 20 U.S.C. 2815; Sec. 507 of Title V, 20 U.S.C. 3147)

Note.—Additional procedures for complaint reviews and resolutions are contained in §§ 200.240–200.248 of Subpart G (Federal Administrative Responsibilities) of this part.

§ 200.189 [Reserved]

State Audits, Resolution, and Repayment

§ 200.190 State audits.

(a) Scope of State audits. A State shall provide for audits of each agency in that State that receives Title I assistance. At a minimum, these audits must determine—

(1) The fiscal integrity of the agency's financial transactions and reports that relate to the agency's use of Title I funds; and

(2) The agency's compliance with Title I requirements, including, if applicable, a review of—

(i) The selection of schools and school attendance areas for Title I projects;

(ii) The selection of children to receive Title I services;

(iii) Conformity with the approved project application;

(iv) The use of title I funds to supplement, not supplant, non-Federal funds that would have otherwise been available;

(v) The use of Title I funds for services to children for whom the project was designed and not for general aid;

(vi) The equitable provision of Title I services for children attending private schools;

(vii) The comparability of instructional services;

(viii) The maintenance of fiscal effort; and

(ix) The use of Title I funds for excess costs.

(b) *Frequency of audits.* (1) Except as provided in paragraph (b)(2) of this section, the SEA shall schedule, at least once every three years, an audit of each agency that receives Title I assistance. However, the SEA may determine, on the basis of one or more of the following factors, that an agency or agencies may be audited less frequently:

(i) A shortage of Title I funds available for State administration of the Title I program.

(ii) The existence of large, complex Title I projects.

(iii) The geographic isolation of the agencies to be audited.

(iv) A large number of agencies to be audited.

(2) If the conditions of section 510(b) (Authorization of payments) of Title V are met, the SEA shall schedule an annual audit of each agency that receives Title I assistance. However, the SEA may determine, on the basis of the factors in paragraph (b)(1) of this section, that any agency or agencies may be audited once every two years.

(c) *Independence of auditors.* The audits required by this section must be performed by auditors who are—

(1) Employed by the State but are independent of the organizational unit that administers Title I in that State; or

(2) Employed by a private audit firm under State supervision.

(Sec. 170(a), 20 U.S.C. 2817(a); Sec. 509(a) of Title V, 20 U.S.C. 3149(a); H. Rept. 1137, 95th Cong., 2d Sess. 62 (1978); S. Rept. 856, 95th Cong., 2d Sess. 46–47 (1978))

§ 200.191 Audit resolution.

(a) An SEA shall develop and implement written procedures for resolving all findings and recommendation resulting from the audits conducted under § 200.190.

(b) The procedures referred to in paragraph (a) of this section must provide that—

(1) Within 30 days of receiving or completing a final audit report, the SEA shall send a copy of the report to the agency that was audited and that agency's district advisory council;

(2) Within 60 days of receiving a copy of the final audit report, the agency that was audited shall send a written response to the SEA concerning any findings of violations or recommendations for corrective action;

(3) Within 60 days of receiving a written response under paragraph (b)(2) of this section, the SEA shall—

(i) Send the agency that was audited and that agency's district advisory council its final determination concerning the findings and recommendations in the final audit report; and

(ii) Notify the agency that was audited of its opportunity, within 30 days of receiving the final determination, to appeal an adverse final determination to the SEA for further review under the procedures required by § 200.192.

(Sec. 170(b), 20 U.S.C. 2817(b); Sec. 509(b) of Title V, 20 U.S.C. 3149(b))

§ 200.192 Audit appeals.

(a) An SEA shall develop and implement procedures for receiving and hearing appeals from final audit determinations that the SEA makes under § 200.191.

(b) The procedures referred to in paragraph (a) of this section must include procedures for—

(1) Informing the audited agency whether its appeal from the SEA's final determination meets reasonable filing requirements imposed by the SEA and, therefore, is accepted by the SEA for further review;

(2) Conducting hearings on the appeal;

(3) Receiving evidence and maintaining a complete record of the evidence and arguments that are presented during the appeal proceedings;

(4) Recording the SEA's final resolution of the appeal and the reason for that resolution;

(5) Notifying the agency that was audited of the SEA's final action on the appeal and any corrective action that the audited agency must take; and

(6) Notifying each agency that is ordered—as part of the SEA's final resolution of an audit appeal—to repay misspent Title I funds of its right, under section 425(b) of GEPA (relating to appeals of final SEA decisions), to appeal that order to the Secretary under § 200.193.

(c) The procedures referred to in paragraph (a) of this section must specify reasonable time limits for each step.

(Sec. 170(b), 20 U.S.C. 2817(b); Sec. 509(b) of Title V, 20 U.S.C. 3149(b))

§ 200.193 Appeal to the Secretary.

An agency that is aggrieved by the final action of an SEA under § 200.192 may appeal the SEA's action to the Secretary. In order to appeal, the agency shall, within 20 days after the agency receives notice of the SEA's final action, file notice of its intent to appeal with the Secretary.

(Sec. 170(d), 20 U.S.C. 2817(d); Sec. 509(d) of Title V, 20 U.S.C. 3149(d); Sec. 425(b) of GEPA, 20 U.S.C. 1231b–2(b))

§ 200.194 Repayment of misspent Title I funds.

(a) An LEA or State agency that is found under §§ 200.191–200.193 to have misspent Title I funds shall repay those funds to—

(1) The SEA, if the Title I funds are still available for obligation under the terms of section 412(b) of GEPA (relating to the availabilitiy of appropriations); or

(2) The Department, if the Title I funds are no longer available for obligation

under the terms of section 412(b) of GEPA.

(b) In determining the amount of Title I funds that were misspent by an LEA that, under § 200.140(c), was not required to account separately for its Title I funds, the amount of funds that are considered to be Title I funds is equal to the percentage of Title I funds used, or intended for use, for the project.

(c) The LEA or State agency shall repay the misspent funds from—

(1) Non-Federal sources; or

(2) Federal funds for which the Federal Government does not require accountablility.

(d) The LEA or State agency shall repay the misspent funds in—

(1) A single payment; or

(2) Installments over a period not more than three years from the date on which—

(i) The SEA issues its final resolution under § 200.192; or

(ii) The Secretary issues the final resolution of an appeal, if the LEA or State agency files an appeal under § 200.193.

(e) The SEA shall promptly notify the Secretary of any LEA's or State agency's refusal to repay the misspent funds.

(Sec. 170(b), 20 U.S.C. 2817(b); Sec. 509(b) of Title V, 20 U.S.C. 3149(b); Sec. 412(b) of GEPA, 20 U.S.C. 1225(b))

§ 200.195 Use of misspent funds that are repaid to SEAs.

(a) If the SEA recovers funds under § 200.194 during the period in which the misspent Title I funds are still available for obligation under the terms of section 412(b) of GEPA (relating to the availability of appropriations), the SEA shall treat the recovered funds as Title I funds and—

(1) If the agency repaying is an LEA—

(i) Reallocate those funds to eligible LEAs—other than the agency that was found to have misspent the funds—under the procedures in 34 CFR 201.38; or

(ii) Return the funds for proper use to the LEA from which they were received; or

(2) If the agency repaying is a State agency—

(i) Return the funds for proper use to the agency from which they were recovered; or

(ii) Return the funds to the Department.

(b) If the Title I funds that an SEA recovers under § 200.194 are no longer available for obligation under the terms of section 412(b) of GEPA, the SEA shall return those funds to the Department.

(Sec. 170(b), 20 U.S.C. 2817(b); Sec. 193(b), 20 U.S.C. 2843(b); Sec. 509(b) of Title V, 20 U.S.C. 3149(b); Sec. 412(b) of GEPA, 20 U.S.C. 1225(b))

§ 200.196 Collection action by the Secretary.

(a) The Secretary initiates an action to compel repayment of funds that are found under §§ 200.191–200.193 to have been misspent if—

(1) The LEA or State agency refuses to repay misspent Title I funds under the procedures in § 200.194;

(2) The SEA has taken every reasonable action to compel repayment; and

(3) The SEA notifies the Secretary of the agency's refusal to repay.

(b) Any funds that the Secretary recovers under this section will, at the Secretary's option—

(1) Revert to the United States Treasury;

(2) Be returned to an SEA for distribution under § 200.195; or

(3) Be paid back, if appropriate, under section 456 of GEPA (Repayment to the agency of recovered funds).

(Sec. 170(e), 20 U.S.C. 2817(e); Sec. 509(e) of Title V, 20 U.S.C. 3149(e))

§§ 200.197–200.199 [Reserved]

State Withholding of Payments

§ 200.200 SEA withholding of Title I payments.

(a) *General Standard.* If an SEA determines that an LEA or State agency is not in substantial compliance with the requirements in this part or in 34 CFR Parts 201, 302, or 203, as applicable, the SEA shall—

(1) Withhold further Title I payments, in whole or in part, under the procedures outlined in paragraph (b) of this section; or

(2) Enter into a compliance agreement under §§ 200.210–200.214.

(b) *Procedures for withholding payment.* (1) Before initiating a proceeding to withhold Title I payments to an LEA or State agency, the SEA shall determine, on a case-by-case basis, that the agency is not in substantial compliance with the applicable Title I requirements.

(2) Before withholding funds, the SEA shall provide the LEA or State agency with—

(i) Reasonable notice of the reasons why the SEA believes that a withholding is appropriate; and

(ii) An opportunity for a hearing before an impartial decisionmaker who did not participate in the SEA's decision to initiate the withholding action.

(3) If the impartial decisionmaker finds that the LEA or State agency is not in substantial compliance with the requirements in this part or in 34 CFR Parts 201, 302, or 203, the SEA shall—

(i) Withhold all or merely a part of the LEA's or State agency's Title I payments. In deciding what amount to withhold, the SEA shall consider the following factors:

(A) The seriousness of the noncompliance.

(B) The amount of Title I funds involved.

(C) The effect of withholding on participating children:

(ii) Notify the agency that further Title I payments, in whole or in part, will be withheld; and

(iii) Specify a date on which the withheld funds will be reallocated under 34 CFR 201.38, unless the SEA determines that the agency is in substantial compliance.

(4) Unless the SEA enters into a compliance agreement with the LEA or State agency under §§ 200.210–200.214, the SEA shall continue to withhold Title I payments until it determines that the agency is in substantial compliance.

(c) *Suspension pending completion of withholding proceedings.* (1) If an SEA has reason to believe that an LEA or State agency is not in substantial compliance with the requirements in this part or in 34 CFR Parts 201, 302, or 203, the SEA may, after giving the LEA or State agency reasonable notice and an opportunity to show cause why suspension action should not be taken, suspend Title I payments—in whole or in part— to that agency pending completion of a withholding proceeding.

(2) In deciding whether to take suspension action, the SEA shall consider factors such as—

(i) The degree of certainty that the agency is not in substantial compliance;

(ii) The magnitude of the noncompliance;

(iii) The need to take suspension action to prevent the misuse of Title I funds; and

(iv) The harm that may result to Title I projects as a result of the suspension.

(d) *Use of withheld funds.* An SEA that withholds funds under this section shall—

(1) Pay the withheld funds to the agency from which they were withheld if that agency comes into substantial compliance within the period of time specified by the SEA; or

(2) Treat the withheld funds as excess funds for reallocation under the procedures in 34 CFR 201.38, if the agency from which they were withheld does not come into substantial compliance within the period of time specified by the SEA.

(Sec. 169(a), 20 U.S.C. 2816(a); Sec. 508(a) of Title V, 20 U.S.C 3148(a); Sec. 434(b) of GEPA, 20 U.S.C. 1232c(b))

§ 200.201 Notice of the public of SEA withholding.

If an SEA notifies an LEA or State agency that the SEA is withholding payments under § 200.200, the LEA shall, upon submission of a notice of withholding to the LEA under § 200.200(b)(2)(i), take appropriate action to inform—

(a) The district advisory council of the LEA against which the action was taken; and

(b) The general public.

(Sec. 169(b), 20 U.S.C. 2816(b); Sec. 508(b) of Title V, 20 U.S.C 3148(b))

§ 200.202 Appeal to the Secretary.

An LEA or State agency that is aggrieved by the final action of an SEA under § 200.200 may appeal the SEA's action to the Secretary. In order to appeal, the LEA or State agency shall, within 20 days after the agency receives notice of the SEA's final action, file notice of its intent to appeal with the Secretary.

(Sec. 169(b), 20 U.S.C. 2816(b); Sec. 508(b) of Title V, 20 U.S.C 3148(d); Sec. 425(b) of GEPA, 20 U.S.C. 1231b–2(b))

§§ 200.203–200.209 [Reserved]

State Compliance Agreements

§ 200.210 Use of a State compliance agreement.

(a) An SEA may enter into a compliance agreement with an LEA or State agency instead of initiating or continuing a withholding action under § 200.200.

(b) The SEA may enter into the compliance agreement—

(1) Before taking any action to begin a withholding action under § 200.200; or

(2) At any stage of a withholding action under § 200.200, including—

(i) Before providing the LEA or State agency with an opportunity for the hearing required under § 200.200(b);

(ii) During the hearing provided under § 200.200(b);

(iii) After a finding under § 200.200(b)(3) that the LEA or State agency is not in substantial compliance with the requirements of this part or of 34 CFR Parts 201, 302, or 203; or

(iv) During the course of withholding of Title I funds by the SEA.

(c) A compliance agreement entered into under this section—

(1) Applies only to current violations;

(2) Relieves the LEA or State agency that enters into the agreement of any liability for repayment of funds that are spent—

(i) In violation of a requirement that is covered by the agreement; and

(ii) During the period of time that is covered by the agreement; and

(3) May be used to specify—

(i) The amount of funds that has been misspent by an LEA or State agency; and

(ii) A schedule for repaying those misspent funds under § 200.194.

(d) However, a compliance agreement entered into under this section may not be used to reduce or forgive liability for repaying funds that were misspent prior to the date on which the agreement was entered into, including funds that were spent in violation of the maintenance of effort requirements in § 200.90.

(Sec. 169(c), 20 U.S.C. 2816(c); Sec. 508(c) of Title V, 20 U.S.C 3148(c))

§ 200.211 Contents of a State compliance agreement.

A compliance agreement entered into under § 200.210 must—

(a) Be a written agreement signed by authorized representatives of the SEA and authorized representatives of the LEA or State agency;

(b) Include a statement of each applicable requirement that the LEA or State agency is violating;

(c) Describe the activity that is in violation of each applicable requirement;

(d) Describe the steps that the LEA or State agency agrees to take in order to come into full compliance with each applicable requirement;

(e) Address all matters that formed the basis for the initiation of a withholding action under § 200.200, if the SEA has begun a withholding action under that section;

(f) Consist of a single agreement or a series of agreements that, taken together, will result in full compliance by the LEA or State agency; and

(g) Specify a time period of not more than 90 days during which the LEA or State agency shall take steps that will result in full compliance with the requirements involved.

(Sec. 169(c), 20 U.S.C. 2816(c); Sec. 508(c) of Title V, 20 U.S.C. 3148(c))

§ 200.212 Duration of a State compliance agreement.

(a) Except as provided in paragraph (b) of this section, a compliance agreement entered into under § 200.210 remains in effect for the period of time that is specified in the agreement. In any case, however, that time may not exceed 90 days after the agreement is entered into.

(b) If the LEA or State agency that has entered into a compliance agreement under § 200.210 fails to comply with the terms of the agreement, the agreement expires immediately.

(Sec. 169(c), 20 U.S.C. 2816(c); Sec. 508(c) of Title V, 20 U.S.C. 3148(c))

§ 200.213 Effect of expiration of a State compliance agreement.

(a) If a compliance agreement has expired under § 200.212(b), an SEA may not enter into another compliance agreement with the same LEA or State agency for any violations that were addressed in the first compliance agreement.

(b) If a compliance agreement has expired under § 200.212(b) and the LEA or State agency continues to be out of compliance, the withholding procedures in § 200.200 apply. However, in taking any withholding action under § 200.200, the SEA shall take into account any partial compliance that was achieved by the LEA or State agency under the compliance agreement.

(Sec. 169(c), 20 U.S.C. 2816(c); Sec. 508(c) of Title V, 20 U.S.C. 3148(c))

§ 200.214 Notice of a State compliance agreement.

Within 15 days of entering into a compliance agreement under § 200.210, the SEA shall send a copy of the compliance agreement to—

(a) The Assistant Secretary;

(b) The district advisory council of the agency that entered into the compliance agreement with the SEA, if that agency has a district advisory council; and

(c) Each person, agency, or organization that filed a complaint with the LEA, State agency, or SEA concerning a violation covered by the compliance agreement.

(Sec. 169(c), 20 U.S.C. 2816(c); Sec. 508(c) of Title V, 20 U.S.C. 3148(c))

§§ 200.215–200.219 [Reserved]

Subpart G—Federal Administrative Responsibilities

Application Approval

§ 200.220 Approval of State applications and annual program plans.

(a) *Approval of State applications.* The Secretary approves the payment of Title I funds by an SEA to LEAs and State agencies if the Secretary has made specific findings, in writing, that—

(1) The application that the SEA has submitted under § 200.20 complies with—

(i) The requirements in § 200.20;

(ii) The Title I statute and regulations;

(iii) All applicable requirements in GEPA; and

(iv) All applicable requirements in EDGAR;

(2) The SEA will comply with the assurances in its application and those submitted by the SEA under section 435(b) of GEPA (containing specific assurances required in the SEA's application); and

(3) The SEA's monitoring and enforcement plan meets the requirements in § 200.21.

(b) *Approval of SEA annual program plans for programs serving migratory children.* The Secretary approves the payment of Title I funds to an SEA for a project for migratory children of migratory agricultural workers of fishers only if the Secretary has, under the procedures in 34 CFR 204.14, approved the SEA's annual program plan.

(Sec. 142, 20 U.S.C. 2762; Sec. 182, 20 U.S.C. 2832)

§ 200.221 Opportunity for a hearing on disapproval of a State application.

(a) If the Secretary determines that an SEA's application does not comply with the requirements in § 200.220(a), the Secretary—

(1) Notifies the SEA, in writing, of the facts on which the Secretary bases that determination; and

(2) Provides the SEA with the opportunity for a hearing to be held at least 30 days after the SEA receives notice.

(b) A hearing conducted under paragraph (a) of this section is held before the Education Appeal Board in accordance with—

(1) The requirements in section 451(e) of GEPA (relating to the Board's proceedings); and

(2) The Board's procedures in 34 CFR Part 78.

(c) The Education Appeal Board issues an initial decision that the Board Chairperson—

(1) Submits to the Secretary; and

(2) Sends to each party by certified mail with a return receipt requested.

(d) The decision by the Education Appeal Board becomes final unless, within 60 days after the SEA receives written notice of the decision—

(1) The Secretary, for good cause shown, modifies or sets aside the decision, in whole or in part. In that case, the modified decision becomes final 60 days after the Secretary's action; or

(2) The SEA files a petition for judicial review under section 455 of GEPA (Judicial review provision).

(Sec.182(b), 20 U.S.C. 2832(b); Sec. 453(b) of GEPA, 20 U.S.C. 1234b(b))

§§ 200.222–200.229 [Reserved]

Evaluation

§ 200.230 Secretary's evaluation procedures.

Under section 183 (Program evaluation) of Title I, the Secretary—

(a) Provides for independent evaluations of Title I projects;

(b) Develops evaluation standards and a schedule for conducting evaluations;

(c) Consults with LEAs and State agencies concerning jointly sponsored objective evaluation programs;

(d) Provides SEAs with models for the evaluation of Title I projects for use by LEAs and State agencies;

(e) Reports to the Congress concerning the results of evaluations of Title I projects;

(f) Provides technical assistance to SEAs to enable them to assist LEAs and State agencies in conducting evaluations of Title I projects; and

(g) Develops a system for—

(1) Gathering and disseminating the results of evaluations of Title I projects;

(2) Identifying exemplary Title I projects and particularly effective elements of Title I projects; and

(3) Disseminating information concerning the exemplary Title I projects and particularly effective elements of Title I projects to—

(i) LEAs and State agencies responsible for designing and operating Title I projects;

(ii) The education profession; and

(ii) The general public.

(Sec.183, 20 U.S.C. 2833)

§§ 200.231–200.239 [Reserved]

Complaint Review and Resolution

§ 200.240 Contents of a complaint.

The required contents of a complaint are described in § 200.180.

(Sec.128, 20 U.S.C. 2738; Sec. 168, 20 U.S.C. 2813; Sec. 507 of Title V, 20 U.S.C. 3147)

§ 200.241 Procedures for receiving direct complaints.

A direct complaint is a complaint that—

(a) Has not been resolved by an LEA, State agency, or SEA under the procedures in §§ 200.180–200.188; and

(b) Is filed with the Assistant Secretary for Elementary and Secondary Education.

(Sec.184, 20 U.S.C. 2834)

§ 200.242 Procedures for handling direct complaints.

(a) *Standards for resolving direct complaints.* The Assistant Secretary designates an official of the Department to take action under paragraph (b) of this section to resolve a direct complaint. The designated official takes this action only if one or more of the following conditions exists:

(1) The information contained in the direct complaint shows that—

(i) Delayed resolution of the direct complaint will result in serious and immediate harm to the complainant or to the program beneficiaries; and

(ii) The complainant will probably succeed on the merits of the complaint.

(2) The direct complaint has previously been filed with an LEA, State agency, or SEA and that agency has failed to resolve the complaint within the time specified in § 200.184 or § 200.187.

(3) The SEA or LEA has implemented a policy or practice that violates a Title I requirement and the LEA, the SEA, or both has acknowledged this fact, but refuses or fails to correct the noncompliant practice.

(4) The designated official determines that Federal resolution of the complaint is appropriate for any other reason.

(b) *Procedures for resolving direct complaints.* If the designated official determines that the direct complaint meets the standards in paragraph (a) of this section, the designated official resolves the complaint under the procedures in §200.245.

(c) *Referral to an SEA.* If the designated official determines that the direct complaint does not meet the standards in paragraph (a) of this section, and the complaint has not already been filed with an LEA, State agency, or SEA, the designated official within 30 days after receiving the direct complaint, refers it to the appropriate SEA for resolution under the procedures in §§ 200.180–200.188.

(d) *Deferral pending resolution by another agency.* (1) If the designated official determines that the direct complaint does not meet the standards in paragraph (a) of this section, and if the complaint has been filed with and is pending before an LEA, State agency, or SEA, the designated official defers taking any action on the direct complaint pending resolution of the complaint by the LEA, State agency, or SEA.

(2) However, if the LEA, State agency, or SEA fails to resolve the complaint within the time specified in § 200.184 or § 200.187, the complainant may file with the designated official an amended direct complaint that specifically shows that failure.

(Sec. 184, 20 U.S.C. 2834)

§ 200.243 Appeals from final resolutions by SEAs.

(a) *Who may appeal.* Any person, agency, or organization that has filed an appeal or complaint with an SEA and is dissatisfied with the SEA's final resolution of that appeal or complaint under § 200.188 may appeal the SEA's final resolution to the Assistant Secretary for review.

(b) *When to file an appeal.* An appeal under this section must be postmarked within 30 days after the party that files the appeal receives a copy of the SEA's final resolution.

(c) *Where to file an appeal.* The appeal must be—

(1) Designated "Title I Appeal"; and

(2) Sent to the Assistant Secretary for Elementary and Secondary Education.

(d) *Contents of an appeal.* The appeal must—

(1) Be written and signed;

(2) Include a copy of the complaint, the resolution of the complaint, the appeal to the SEA, the SEA's final resolution, and any other documents that the appellant relies on in the appeal;

(3) Identify those parts of the SEA's final resolution with which the party that files the appeal disagrees and indicate why that party disagrees; and

(4) Indicate what remedy the party that files the appeal is seeking from the Assistant Secretary.

(Sec. 168, 20 U.S.C. 2815; Sec. 184, 20 U.S.C. 2834; Sec. 507 of Title V, 20 U.S.C. 3147)

§ 200.244 Preliminary review of appeals.

(a) *Review of appeals.* The Assistant Secretary designates an official of the Department to review an appeal filed under § 200.243 to determine whether the appeal meets the requirements in that section.

(b) *Dismissal of appeals.* (1) If the designated official determines that the appeal does not meet the requirements in § 200.243, the designated official notifies the appellant, the SEA, and any other agency or organization defending the appeal that the appeal is dismissed.

(2) Each notice of dismissal includes reasons why the designated official determined that the appeal did not meet the requirements in § 200.243.

(3) Dismissal does not preclude other efforts to investigate or resolve the concerns raised by the appeal, including submission of a revised appeal. However, if the appellant submits a revised appeal, the time limits in § 200.245 begin upon receipt of that revised appeal.

(c) Acceptance of appeals. If the designated official determines that the appeal meets the requirements of § 200.243, the designated official—

(1) Notifies the appellant, the SEA, and any other agency or organization defending the appeal that the appeal has been accepted for review; and

(2) Resolves the appeal under the procedures in § 200.245.

(Sec. 184, 20 U.S.C. 2834)

§ 200.245 The designated official's procedures for resolving direct complaints and appeals.

(a) *Gathering of information by the designated official.* If a direct complaint is accepted for review under § 200.242 or if an appeal is accepted for review under § 200.244, the designated official—

(1) Notifies the complainant or the appellant, the SEA, and any other agency or organization defending the complaint or appeal that each has 20 days from the date on which the notice is postmarked to submit any relevant written evidence or argument;

(2) Provides an opportunity for the complainant or the complainant's representative, or both, to present relevant oral evidence, including an opportunity to question the parties and their witnesses, if the designated official determines that this presentation is appropriate; and

(3) Conducts whatever research and investigations that the designated official considers to be appropriate. These may include an on-site investigation.

(b) *Resolution by the designated official.* (1) *Time period for resolution.* The designated offical issues a written resolution of each complaint or appeal within 60 days of receiving the complaint or appeal, unless there are exceptional circumstances that justify additional time. Examples of the types of factors that the designated official may consider in determining the existence of exceptional circumstances include—

(i) The need to conduct a major on-site investigation;

(ii) The need to conduct a comprehensive audit; or

(iii) The complexity of the issues raised by the complaint or appeal.

(2) *Contents of the resolution.* Each resolution that the designated official issues under this section includes—

(i) A statement of the resolution and the reasons for that resolution; and

(ii) Notice of the right of the complainant or appellant, the SEA, or any other agency or organization defending the complaint or appeal to appeal that resolution for review by the Assistant Secretary under §200.246.

(3) *Notice of the resolution.* Within 10 days of issuing a resolution to the complainant or appellant, the designated official sends a copy of the resolution to the complainant's or appellant's representative and, if appropriate, the LEA, the State agency, the SEA, the district advisory council, and project area and project school advisory councils.

(Sec. 184, 20 U.S.C. 2834)

§ 200.246 Administrative appeals from the designated official's resolution.

(a) *Who may file an administrative appeal.* Any complainant or appellant, or other party to a complaint or an appeal, who is dissatisfied with the designated official's resolution of that complaint or appeal under § 200.245 may file an administrative appeal with the Assistant Secretary.

(b) *When to file an administrative appeal.* The administrative appeal must be postmarked within 30 days after the party that files the appeal receives a copy of the designated official's resolution.

(c) *Where to file an administrative appeal.* The administrative appeal must be—

(1) Designated "Title I Administrative Appeal"; and

(2) Sent to the Assistant Secretary for Elementary and Secondary Education.

(d) *Contents of an administrative appeal.* The administrative appeal must—

(1) Be written and signed;

(2) Identify those parts of the designated official's resolution with which the party that files the appeal disagrees and indicate why that party disagrees; and

(3) Indicate what remedy the party who files the appeal is seeking from the Assistant Secretary.

(Sec. 184, 20 U.S.C 2834)

§ 200.247 Preliminary review of administrative appeals.

(a) *Review of administrative appeals.* The Assistant Secretary reviews an administrative appeal filed under § 200.246 to determine whether the appeal meets the requirements in that section.

(b) *Dismissal of administrative appeals.* (1) If the Assistant Secretary determines that the administrative appeal does not meet the requirements of § 200.246, the Assistant Secretary notifies the appellant, the SEA, and any other agency or organization defending the appeal that the administrative appeal is dismissed.

(2) Each notice of dismissal includes reasons by the Assistant Secretary determined that the administrative appeal did not meet the requirements of § 200.246.

(3) Dismissal does not preclude other efforts to investigate or resolve the concerns raised by the appeal, including submission of a revised appeal. However, if the appellant submits a revised appeal, the time limits in § 200.248 begin upon receipt of that revised appeal.

(c) *Acceptance of administrative appeals.* If the Assistant Secretary determines that the administrative appeal meets the requirements of § 200.246, the Assistant Secretary—

(1) Notifies the appellant, the SEA, and any other agency or organization defending the appeal that the administrative appeal has been accepted for review; and

(2) Resolves the administrative appeal under the procedures in § 200.248.

(Sec. 184, 20 U.S.C. 2834)

§ 200.248 The Assistant Secretary's procedures for resolving administrative appeals.

(a) *Procedures for considering the administrative appeal.* If an administrative appeal is accepted for review under § 200.247, the Assistant Secretary—

(1) Notifies the appellant, the SEA, and any other agency or organization defending the appeal that the appeal is accepted; and

(2) May provide the opportunity for additional arguments concerning the administrative appeal.

(b) *Resolution by the Assistant Secretary.* (1) *Time period for resolution.* (i) Unless exceptional circumstances exist, the Assistant Secretary issues a written resolution of an administrative appeal within 60 days.

(ii) Exceptional circumstances may include—

(A) The need to conduct a major on-site investigation;

(B) The need to conduct a comprehensive audit; or

(C) The need to gather additional information.

(2) *Contents of the resolution.* The resolution that the Assistant Secretary issues under this section includes a statement of the resolution and the reasons for the resolution.

(3) *Notice of the resolution.* Within 10 days of issuing a resolution to the appellant, the Assistant Secretary sends a copy of the resolution to the appellant's representative and, if appropriate, the LEA, the State agency, the SEA, the district advisory council, and project area and project school advisory councils.

(4) *Final action of the Department.* The Assistant Secretary's final resolution under paragraph (b) of this section is the Department's final action concerning the appeal.

(Sec. 184, 20 U.S.C. 2834)

§ 200.249 [Reserved]

Audits and Audit Resolution

§ 200.250 Audits by the Inspector General.

The Inspector General provides for audits of grants or subgrants made under Title I to determine, at a minimum—

(a) The fiscal integrity of the audited agency's financial transactions and reports; and

(b) The audited agency's compliance with applicable statutes, regulations, and terms and conditions of the grant or subgrant.

(Sec. 185(a), 20 U.S.C. 2835(a))

§ 200.251 Audit resolution procedures.

The Secretary's procedures for resolving findings and recommendations that result from audits conducted under § 200.250 provide for—

(a) Submission of a draft audit report by the auditors to the audited agency;

(b) Opportunity for the audited agency to comment to the auditors on the findings and recommendations in the draft audit report;

(c) Submission of the final audit report by the auditors to the audited agency;

(d) Opportunity for the Assistant Secretary, at his discretion, to request additional information from the audited agency;

(e) Issuance of final audit determinations by the Assistant Secretary to the audited agency in a final determination letter that—

(1) Identifies the improper expenditures;

(2) Indicates the reasons for the final audit determination in sufficient detail—for example, by referring to the relevant parts of a separate document such as the audit report—to allow the audited agency to respond in an appeal under paragraph (e)(3)(ii) of this section;

(3) Advises the audited agency that it shall—

(i) Repay the misspent funds to the department; or

(ii) Within 30 calendar days of receiving the final determination letter, file an appeal for review by the Education Appeal Board under the procedures in 34 CFR Part 78; and

(4) Is sent by certified mail with a return receipt requested; and

(f) Review by the Secretary of the Education Appeal Board's initial decision.

(Sec. 185(b), 20 U.S.C. 2835(b))

§ 200.252 Judicial review of audit resolutions.

If a State is dissatisfied with the Secretary's final action under § 200.251, the State may, within 60 days of receiving notice of that action, file a petition for review with the United States court of appeals for the circuit in which the State is located.

(Sec. 195, 20 U.S.C. 2851)

§§ 200.253–200.259 [Reserved]

Withholding of Payments

§ 200.260 Withholding of Title I payments.

(a) *General standard.* If the Secretary determines that an SEA is not in substantial compliance with the assurances it made in its application for Title I funds, the Secretary—

(1) Withholds further Title I payments, in whole or in part, under the procedures outlined in paragraph (b) of this section; or

(2) Enters into a compliance agreement with the SEA under §§ 200.270–200.275.

(b) *Secretary's procedures for withholding payments.* (1) Before initiating a proceeding to withhold Title I payments to an SEA, the Secretary determines, on a case-by-case basis, that the SEA is not in substantial compliance with the applicable Title I requirements.

(2) Before withholding Title I funds, the Secretary provides the SEA with—

(i) Written notice of the Secretary's intent to withhold funds. The written notice—

(A) States the reasons why the SEA is not in substantial compliance with the assurances in its application;

(B) Cites the Title I requirements that are the basis for the alleged failure to comply;

(C) Notifies the SEA of the opportunity for a hearing on the record; and

(D) Is sent by certified mail with a return receipt requested; and

(ii) The opportunity for a hearing on the record.

(3) (i) Following the hearing referred to in paragraph (b)(2)(ii) of this section, the hearing officer issues a decision that the hearing officer—

(A) Submits to the Secretary; and

(B) Sends to each party by certified mail with a return receipt requested;

(ii) Unless the Secretary, for good cause shown, modifies or sets aside that decision, in whole or in part, within 60 days after the SEA receives written notice of the decision, it becomes the final decision of the Department.

(iii) If the Secretary modifies or sets aside the hearing officer's decision, the

decision, as modified or set aside, becomes the final decision of the Department 60 days after the Secretary's action.

(4) If, under the procedures in this section or § 200.262, the SEA is not found to be in substantial compliance with the assurances in its application, the Secretary notifies the SEA that—

(i) Further Title I payments will not be made to the State;

(ii) The SEA shall limit Title I payments to those LEAs and State agencies that were not involved in the failure to comply; or

(iii) The SEA shall reduce Title I payments to particular LEAs or State agencies contributing to the SEA's noncompliance. In that case, the partial payments are subject to additional conditions that the Secretary considers appropriate in light of the noncompliance.

(5) If the Secretary does not enter into a compliance agreement with the SEA under §§ 200.270–200.275, the Secretary continues to withhold Title I payments until the Secretary determines that the SEA is in substantial compliance.

(Sec. 186(a), 20 U.S.C. 2836(a); Sec. 453(d) of GEPA, 20 U.S.C. 1234b(d))

§ 200.261 Suspension of Title I payments pending completion of withholding proceedings.

(a) The Secretary may suspend Title I payments to an SEA pending completion of a withholding action under § 200.260(b) if—

(1) The SEA is in substantial and continuing noncompliance with the assurances it made in its application for Title I funds; and

(2) The Secretary follows the procedures in paragraph (b) of this section.

(b) Before suspending Title I payments to an SEA, the Secretary provides the SEA with—

(1) Written notice of the intent to suspend payments during the course of the witholding proceedings. The notice—

(i) Indicates the reasons for the suspension;

(ii) Notifies the SEA that the suspension will be effective 10 days after the SEA receives the written notice, unless within those 10 days the SEA submits a written request to the Secretary for an opportunity to show cause why the suspension action should not be taken; and

(iii) Is sent by certified mail with a return receipt requested; and

(2) An opportunity to appear at a hearing to show cause why the proposed suspension action should not be taken, including an opportunity to present arguments concerning—

(i) The lack of necessity for the suspension of payments;

(ii) Possible factual errors in the Secretary's written notice of intent to withhold funds under § 200.260(b);

(iii) The nature of the violation charged in the written notice of intent to withhold; and

(iv) Hardship that may result from the proposed suspension.

(Sec. 186(a), 20 U.S.C. 2836(a); 34 CFR Part 78)

§ 200.262 Judicial review of withholding actions.

If an SEA is dissatisfied with the Secretary's final action under § 200.260(b), the SEA may, within 60 days after receiving notice of that action, file a petition for review with the United States court of appeals for the circuit in which the State is located.

(Sec. 195, 20 U.S.C. 2851)

§ 200.263 Notice to the public of the Secretary's withholding.

If the Secretary notifies an SEA that the Secretary is withholding Title I payments under § 200.260, the Secretary takes appropriate action to inform the public within that State of the withholding.

(Sec. 186(b), 20 U.S.C. 2836(b))

§§ 200.264–200.269 [Reserved]

Federal Compliance Agreements

§ 200.270 Use of a Federal compliance agreement.

(a) The Secretary may enter into a compliance agreement with an SEA instead of initiating or continuing a withholding action under § 200.260.

(b) The Secretary may enter into a compliance agreement—

(1) Before taking any action to begin a withholding action under § 200.260; or

(2) At any stage during a withholding action under § 200.260, including—

(i) Before providing the SEA with an opportunity for the hearing on the record that is required under § 200.260;

(ii) During the hearing on the record provided under § 200.260;

(iii) After a decision by the hearing officer or the Secretary under § 200.260 that the SEA is in substantial noncompliance with the assurances in its Title I application; or

(iv) During the course of a withholding of Title I funds by the Secretary.

(c) A compliance agreement entered into under this section—

(1) Applies only to current noncompliance;

(2) Relieves the SEA that enters into the agreement of any liability for repayment of funds that are spent by the SEA—

(i) In violation of a Title I requirement that is covered by the agreement; and

(ii) During the period of time that is covered by the agreement; and

(3) May be used to specify—

(i) The amount of funds that has been misspent by the SEA; and

(ii) A schedule for repaying those misspent funds.

(d) However, a compliance agreement entered into under this section may not be used to reduce or forgive liability for repaying funds that were misspent before the date on which the compliance agreement was entered into, including funds that were spent in violation of the maintenance of effort requirement in § 200.90.

(Sec. 186(c), 20 U.S.C. 2836(c))

§ 200.271 Contents of a Federal compliance agreement.

A compliance agreement that is entered into under § 200.270 must—

(a) Be a written agreement signed by an authorized representative of the SEA;

(b) Include a statement of each requirement that is covered by the agreement;

(c) Summarize the activity that is in violation of each requirement;

(d) Describe the steps that the SEA—and, if applicable, the LEA or State agency—agrees to take in order to come into full compliance with each requirement that is involved;

(e) Address all matters that formed the basis for the initiation of a withholding action under § 200.260, if the Secretary has begun a withholding action under that section;

(f) Consist of a single agreement or a series of agreements that, taken together, will result in full compliance with the Title I requirements involved; and

(g) Specify a time period, determined by the Secretary under § 200.272, during which the SEA—and, if applicable, the LEA or State agency—shall take steps that will result in full compliance.

(Sec. 186(c), 20 U.S.C. 2836(c))

§ 200.272 Time period for coming into compliance under a Federal compliance agreement.

(a) Except as provided in paragraphs (b) through (d) of this section, each compliance agreement entered into under § 200.270 must require steps that result in immediate full compliance with all Title I requirements. For purposes of this section, "immediate" means within 90 days after entering into the agreement.

(b) If an SEA that desires to enter into a compliance agreement under § 200.270

submits a written allegation that immediate full compliance is not feasible, the Secretary's designee holds a hearing concerning the feasibility of immediate full compliance and the time required to achieve full compliance.

(c) At each hearing conducted under paragraph (b) of this section—

(1) The SEA has the burden of showing that it is not feasible for the SEA to come into full compliance with all Title I requirements until a future date;

(2) Parents, their representatives, and other interested persons or organizations have an opportunity to participate.

(d) After a hearing has been conducted under paragraph (c) of this section, the Secretary may enter into a compliance agreement under § 200.270 that specifies a period of more than 90 days for the SEA to achieve full compliance with the Title I requirements involved if—

(1) Before entering into a compliance agreement that specifies a period of more than 90 days for the SEA's coming into compliance, the Secretary makes written findings that it is not genuinely feasible for the SEA to come into immediate compliance with the Title I requirements involved; and

(2) The compliance agreement specifies, for coming into full compliance with the Title I requirements involved, a period of time that the Secretary has determined to be reasonable.

(Sec. 186(c), 20 U.S.C. 2836(c))

§ 200.273 Duration of a Federal compliance agreement.

(a) Except as provided in paragraph (b) of this section, a compliance agreement entered into under § 200.270 remains in effect for the time period determined under § 200.272 and specified in the agreement for the SEA to come into full compliance.

(b) If the SEA that has entered into a compliance agreement under § 200.270 fails to comply with the terms of that agreement, the agreement expires immediately.

(Sec. 186(c), 20 U.S.C. 2836(c))

§ 200.274 Effect of expiration of a Federal compliance agreement.

(a) If a compliance agreement has expired under § 200.273, an SEA may not enter into another compliance agreement with the Secretary for any violations that were covered in the first compliance agreement.

(b) If a compliance agreement has expired under § 200.273(b) and the SEA continues to be out of compliance, the withholding procedures in § 200.260 apply. However, in taking any withholding action under § 200.260, the Secretary takes into account any partial compliance that was achieved by the SEA under the compliance agreement.

(Sec. 186(c), 20 U.S.C. 2836(c))

§ 200.275 Notice of a Federal compliance agreement.

(a) Within 15 days of entering into a compliance agreement under § 200.270, the Secretary sends a copy of the agreement to each organization or person that has filed a complaint with the Department concerning any noncompliance covered by that agreement.

(b) A compliance agreement that is entered into under § 200.270 is subject to disclosure under 5 U.S.C. 552.

(Sec. 186(c)(3), 20 U.S.C. 2836(c)(3))

§§ 200.276–200.279 [Reserved]

Cease and Desist Proceedings

§ 200.280 Procedures for issuing cease and desist orders.

(a) If the Secretary has reason to believe that a State or LEA is not in substantial compliance with any applicable Title I requirements, the Secretary may issue and serve upon the State or LEA a complaint that—

(1) States the charges indicating that the State or LEA is not in substantial compliance;

(2) Cites the requirements that are the basis for the alleged noncompliance; and

(3) Contains a notice of a hearing to be held before the Education Appeal Board at least 30 days after the agency receives the complaint.

(b) Each State or LEA that receives a complaint under paragraph (a) of this section has the right to appear before a Panel of the Education Appeal Board on the specified date to show cause why the Board should not, under the procedures in 34 CFR Part 78, issue an order that requires the State or LEA to cease and desist from the violation charged in the complaint.

(c) If, after the hearing referred to in paragraph (b) of this section, the Panel of the Education Appeal Board decides that the State or LEA has violated a legal requirement charged in the complaint, the Panel—

(1) Makes a written report stating its findings of fact; and

(2) Issues an order to cease and desist from the practice, policy or procedure that resulted in the violation.

(d) The report and order of the Education Appeal Board are final 60 days after the State or LEA receives copies of them unless the State or LEA files a petition for judicial review under § 200.281.

(Sec. 454 of GEPA, 20 U.S.C. 1234c; 34 CFR Part 78)

§ 200.281 Judicial review of cease and desist orders.

If a State or LEA is dissatisfied with the Education Appeal Board's final report and order under § 200.280, the State or LEA may, within 60 days after receiving copies of them, file a petition for review with the United States court of appeals for the circuit in which the State or LEA is located within that 60 day period.

(Sec. 455 of GEPA, 20 U.S.C. 1234d)

§ 200.282 Enforcement of cease and desist orders.

The Secretary may enforce the cease and desist order by—

(a) Withholding any portion of the Title I payments including payments for State administrative costs, to the State or LEA against which the final order has been issued; or

(b) Certifying the facts to the Attorney General who initiates appropriate proceedings to enforce the order.

(Sec. 454(e) of GEPA, 20 U.S.C. 1234(c)(e))

§§ 200.283–200.289 [Reserved]

The Secretary revises Part 201 of Title 34 of the Code of Federal Regulations to read as follows:

PART 201—FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES FOR CHILDREN WITH SPECIAL EDUCATIONAL NEEDS

Subpart A—General

Sec.

201.1 Purpose of Title I grants to LEAs.
201.2 Applicability of the regulations in Part 201.
201.3 Applicability of other statutes and regulations.
201.4 Definitions.
201.5–201.9 [Reserved]

Subpart B—Allocation of Title I Funds for Grants to Local Educational Agencies

Basic Grants

201.10 Eligibility of LEAs for basic grants.
201.11 Determination by the Secretary of basic grants.
201.12 Allocation of county aggregate amounts by SEAs.
201.13 Exceptions to county aggregate amounts.
201.14 Distribution of an additional amount based on the survey of income and education.
201.15 Allocation of Title I funds among project areas and project schools.
201.16–201.19 [Reserved]

Special Incentive Grants

201.20 Eligibility for special incentive grants.

Sec.
201.21 State entitlements.
201.22 LEA entitlements.
201.23 Method of making special incentive grants.
201.24 Use of special incentive grant funds.
201.25–201.29 [Reserved]

Concentration Grants

201.30 States entitled to receive concentration grant funds.
201.31 Amount of concentration grant funds that each State receives.
201.32 Allocation of concentration grant funds to counties within a State in which at least one county meets the statutory eligibility criteria.
201.33 Allocation of concentration grant funds to counties within a State in which no county meets the statutory eligibility criteria.
201.34 Submission of allocation plans.
201.35 Secretary's standards for approval of allocation plans.
201.36 Method of awarding concentration grant funds.
201.37 Use of concentration grant funds.

Reallocation

201.38 Reallocation of Title I funds by SEAs.
201.39 Reallocation of Title I funds by the Secretary.

Subpart C—Applying to the State for Title I Funds

201.40 LEAs that may receive Title I assistance.
201.41 Submission of Title I project applications to the SEA.
201.42–201.49 [Reserved]

Subpart D—Designating Schools and School Attendance Areas for Title I Projects

Identifying Eligible Schools and School Attendance Areas

201.50 Overview of the regulations in this subpart.
201.51 Identifying eligible schools attendance areas.
201.52 Identifying eligible schools.
201.53–201.59 [Reserved]

Selecting Schools and School Attendance Areas for Title I Projects

201.60 Overview of the process of selecting school attendance areas and schools for Title I projects.
201.61 Selecting project areas by ranking the eligible school attendance areas according to their concentration of children from low-income families.
201.62 Selecting project schools from among the schools that the LEA identified as eligible schools.
201.63 Selecting a limited number of lower ranked eligible school attendance areas or eligible schools having substantially greater incidences of educational deprivation than higher ranked eligible school attendance areas or eligible schools.
201.64 Continuation of eligibility for certain school attendance areas or schools.
201.65 Skipping higher-ranked school attendance areas and schools receiving services of the same nature and scope from non-Federal sources.
201.66 Selecting a limited number of project areas through the use of alternative rankings of school attendance areas according to their concentration of children from low-income families and the incidence of educational deprivation.
201.67–201.69 [Reserved]

Subpart E—Identifying and Selecting Children To Be Served

201.70 General rules for identifying eligible children and selecting children to be served.
201.71 Special rules for identifying and selecting children to be served.
201.72 Use of Title I funds for a schoolwide project.
201.73 Required plan for each school selected for a schoolwide project.
201.74 Financial requirements for a schoolwide project.
201.75 Serving children in local institutions for neglected or delinquent children.
201.76–201.79 [Reserved]

Subpart F—Participation of Children Enrolled in Private Schools

General Requirements

201.80 Required opportunity for participation of private school children in Title I projects.
201.81 Determining the eligibility of private school children.
201.82 Prohibition concerning noninstructional duties.
201.83–201.89 [Reserved]

By-Pass Provisions

201.90 General standard for by-pass actions.
201.91 Secretary's procedures for by-pass actions.
201.92–201.93 [Reserved]
201.94 Judicial review of by-pass actions.
201.95 Effect of a by-pass action.
201.96 Withholding funds pending final resolution of a by-pass action.
201.97 Continuation of the by-pass until the LEA complies.
201.98–201.99 [Reserved]

Subpart G—Needs Assessment

201.100 Purposes of the required assessment of educational need.
201.101 Identification of educationally deprived children.
201.102 Identification of general instructional areas and needs.
201.103 Selection of children to participate in a project.
201.104 Determination of the special educational needs of participating children.
201.105 Establishment of educational objectives and instructional strategies.
201.106–201.109 [Reserved]

Subpart H—Fiscal Requirements

Maintenance of Effort

201.110 Maintenance of effort requirement.

Excess Costs

201.111 Excess costs requirement.

Comparability

201.112 Basic standards for determining comparability of services.
201.113 Submission of comparability report.
201.114 Data to be included in a comparability report.
201.115 The date on which the data included in the comparability of services.
201.116 Criteria for determining comparability report must be collected.
201.117 Grouping schools by corresponding grade levels.
201.118 Exclusions from the excess costs and comparability requirements.
201.119 Required annual assurance.
201.120 Maintaining comparability.
201.121 Comparability data must be for the same date.
201.122 Retention of records concerning comparability.
201.123 Actions to be taken by an SEA if an LEA violates the comparability requirements.
201.124 Amount of funds that an SEA shall refund for a violation of the comparability requirement.
201.125 SEA reports to the Secretary.
201.126–201.129 [Reserved]

Supplement, Not Supplant: General

201.130 Introduction.
201.131 Definitions.
201.132 Assurance of equal opportunity.

Supplement, Not Supplant: Regular State and Local Funds and State and Local Funds for State Phase-In Programs

201.133 Introduction.
201.134 Equitable distribution: Regular funds and funds for State phase-in programs.
201.135 Provision of services required by law: Regular funds and funds for State phase-in programs.

Supplement, Not Supplant: Special State and Local Programs

201.136 Introduction.
201.137 Equitable distribution: Special State and local programs.
201.138 Procedures for determining proportionate share.
201.139 Provision of services required by law: Special State and local funds (General).
201.140 Provision of services required by law: Special State and local funds (Handicapped children).
201.141 Provision of services required by law: Special State and local funds (Children whose primary or home language is other than English).
201.142 Provision of services required by law: Special State and local funds (Compensatory education or other services required by State or local law).
201.143 Coordination.
201.144 Prohibition against considering Title I funds in determining State aid.
201.145–201.149 [Reserved]

Subpart I—Parental Involvement

201.150 Purpose of advisory councils.
201.151 Advisory councils that an LEA shall establish.
201.152 Composition of membership on district advisory councils.
201.153 Models for nominating and electing district advisory councils.

Sec.

201.154 Procedures for electing district advisory councils.
201.155 Required project area advisory councils and project school advisory councils.
201.156 Membership of project area advisory councils and project school advisory councils.
201.157 Procedures for electing project area advisory councils and project school advisory councils.
201.158 An LEA may not impose additional restrictions on the rights of parents to elect advisory council members.
201.159 Participation by advisory councils.
201.160 Information that an LEA shall provide to advisory councils.
201.161 Training for members of advisory councils.
201.162 Allowable expenditures for advisory councils.
201.163–201.169 [Reserved]

Subpart J—Evaluations by Local Educational Agencies

201.170 General evaluation requirements.
201.171 Standards for evaluation by an LEA.
201.172 Use of models by an LEA.
201.173 Model requirements.
201.174 Alternative models.
201.175 Frequency of LEA evaluations.
201.176 Reports of evaluation results.
201.177 Allowable costs for evaluation.
201.178–201.179 [Reserved]

Authority: Sec. 101–198 of the Elementary and Secondary Education Act of 1965, as amended by Public Law 95–561 (20 U.S.C. 2701–2854), unless otherwise noted.

Subpart A—General

§ 201.1 Purpose of Title I grants to LEAs.

Under Title I of the Elementary and Secondary Education Act of 1965, as amended, the Secretary provides financial assistance to local educational agencies (LEAs) for projects designed to meet the special educational needs of—

(a) Educationally deprived children in areas with concentrations of children from low-income families; and

(b) Children in local institutions for neglected or delinquent children.

(Sec. 111, 20 U.S.C. 2711)

§ 201.2 Applicability of the regulations in Part 201.

The regulations in this part apply to projects for which the Secretary provides financial assistance to LEAs under Title I.

(Sec. 101–198, 20 U.S.C. 2701–2854)

201.3 Applicability of other statutes and regulations.

In addition to the regulations in this part, the following statutes and regulations apply to projects for which the Secretary provides financial assistance to LEAs under Title I:

(a) The Title I statute in 20 U.S.C. 2701 et seq.

(b) The Title I regulations in 34 CFR Part 200 that apply to all programs authorized under Title I.

(c) The General Education Provisions Act (GEPA) in 20 U.S.C. 1221 *et seq.*

(d) The Education Department General Administrative Regulations (EDGAR) in—

(1) 34 CFR Part 76 (State-Administered programs);

(2) 34 CFR Part 77 (General); and

(3) 34 CFR Part 78 (Education Appeal Board).

(Sec. 101–198, 20 U.S.C. 2701–2854; 20 U.S.C. 1221 *et seq.*; 34 CFR Parts 76, 77, 78)

201.4 Definitions.

(a) The following terms that are used in this part are defined in 45 CFR Part 200:

Applicant
Application
Assistant Secretary
Average daily attendance
Average daily membership
Average per pupil expenditure
Cease and desist
Children
Construction
County
Current expenditures
Department
Elementary school
Equipment
Fiscal Year
Free public education
Grant period
Local educational agency
Parent
Participating children
Preschool children
Project
Project period
Public
School facilities
Secondary school
Secretary
State
State agency
State educational agency
Suspension
Title I
Title IV
Title V
Withholding

(b) In addition to the definitions referred to in paragraph (a) of this section, the following definitions apply to this part:

"Educationally deprived children" means children whose educational attainment is below the level that is appropriate for children of their age.

"Eligible school" means a school in which a sufficiently high concentration of children from low-income families is enrolled so that, under the procedure in § 201.52, the school is eligible for services supported with Title I funds.

"Eligible school attendance area" means a school attendance area in which a sufficiently high concentration of children from low-income families resides so that, under the procedures in § 201.51, the school attendance area is eligible for services supported with Title I funds.

"Institution for delinquent children" means a public or private residential facility that is operated primarily for the care of at least 10 children who have been adjudicated delinquent or in need of supervision. The term also includes an adult correctional institution in which at least 10 children reside.

"Institution for neglected children" means a public or private residential facility—other than a foster home—that is operated primarily for the care of at least 10 children who have been committed to the institution—or voluntarily placed in the institution under applicable State law—because of the abandonment by, or neglect by, or death of, parents.

"Instructional staff"—

(1) Means staff members who provide instruction to children or who assist or supervise those staff members who provide instruction;

(2) Includes teachers, principals, consultants, supervisors of instruction, librarians, guidance, and psychological personnel; and

(3) Includes aides, clerical personnel, and other para-professionals who are employed to assist other instructional staff members providing instructional services.

"Participating school" means a "project school" as defined in this section.

"Project area" means a school attendance area in which a high concentration of children from low-income families resides, and that is selected by an LEA, under the procedures in § 201.61 and §§ 201.63–201.66, without regard to the locality of the project itself, as an area from which children are to be selected to participate in a Title I project.

"Project school" means an eligible school that is selected by an LEA, under the procedures in §§ 201.62–201.65, as a school in which children are to be selected to participate in a Title I project and to receive services supported with Title I funds.

"School attendance area" means, in relation to a particular public school, the geographical area in which the children who are normally served by that school reside. However, if a child's school attendance area cannot be determined on a geographical basis, the child is considered to be in the school attendance area of the school to which

the child is assigned or would be assigned if the child were not attending a private school or another public school on a voluntary basis.

(Sec. 101–198, 20 U.S.C. 2701–2854; Sec. 408(a)(1) of GEPA, 20 U.S.C. 1221e–3(a)(1))

§§ 201.5–201.9 [Reserved]

Subpart B—Allocation of Title I Funds for Grants to Local Educational Agencies

Basic Grants

§ 201.10 Eligibility of LEAs for basic grants.

(a) Each LEA in a State—other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands—is eligible for a basic Title I grant for a fiscal year if—

(1) The Secretary determines, on the basis of satisfactory available data, that there are at least 10 children counted under section 111(c) (Children to be counted) of Title I in the school district of the LEA; or

(2) The Secretary does not have available satisfactory data on a school district basis, but the school district served by the LEA is located, in whole or in part, in a county in which the Secretary determines there are at least 10 children counted under section 111(c) of Title I.

(b) The Secretary allocates Title I funds appropriated under section 111(a)(1) (relating to authorized appropriations) of Title I among Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands on the basis of their respective needs for Title I funds.

(Sec. 111(a), 20 U.S.C. 2711(a); Sec. 111(b), 20 U.S.C. 2711(b); Sec. 111(c), 20 U.S.C. 2711(c))

§ 201.11 Determination by the Secretary of basic grants.

(a) If satisfactory census data are available from the Department of Commerce, the Secretary determines the amount of the basic Title I grant that each LEA in a State—other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands—is eligible to receive for a fiscal year under the method in sections 111(a)(2)(A) (relating to amounts when data are available) and 111(c) of Title I.

(b)(1) If satisfactory census data are not available from the Department of Commerce for LEAs, the Secretary determines the "county aggregate" amount of Title I basic grant funds that all LEAs in a county are eligible to receive under the method in sections 111(a)(2)(B) (relating to amounts when data are not available) and 111(c) of Title I.

(2) The "county aggregate" amount referred to in paragraph (b)(1) of this section includes an amount based on the number of children aged 5 through 17 who—under the criteria in section 111(c)(2)(B) (relating to determining numbers of children) of Title I—are living in institutions for neglected or delinquent children, or being supported in foster homes with public funds, but who are not counted under Subpart 3 of Part B (Programs for neglected or delinquent children operated by State agencies) of Title I for purposes of a grant to a State agency.

(c) If the funds appropriated by Congress for any fiscal year are not sufficient to pay the full amount that all LEAs are eligible to receive under Title I basic grants, the Secretary ratably reduces, using the procedures in section 193 (Adjustments where necessitated by appropriations) of Title I, the amount available to each LEA or county.

(Sec. 111, 20 U.S.C. 2711; Sec. 193, 20 U.S.C. 2843)

§ 201.12 Allocation of county aggregate amounts by SEAs.

Except as provided in § 201.13, an SEA shall allocate the county aggregate amounts, determined by the Secretary under § 201.11, by using the following procedures:

(a) *Allocations based on children in local institutions for neglected or delinquent children.* (1) Except as provided in paragraphs (a)(2) and (a)(4) of this section the SEA shall first allocate to a particular LEA that portion, if any, of the county aggregate amount that is based—

(i) On the number of children, aged 5 through 17, in the LEA's district who resided in a local institution for neglected or delinquent children—and were not counted under Subpart 3 of Part B (Programs for neglected or delinquent children operated by State agencies) of Title I—for at least 30 consecutive days, at least one of which was in the month of October of the preceding fiscal year; or

(ii) To the extent that the data referred to in paragraph (a)(1)(i) of this section are not available before January of the calendar year in which the Secretary's determination under § 201.11 is made, on the most recent reliable data available at the time of the determination.

(2) If the SEA determines that the LEA is unable or unwilling to provide for the special educational needs of the children referred to in paragraph (a)(1) of this section, the SEA shall—

(i) Reduce the LEA's allocation by the amount that is based on children in local institutions for neglected or delinquent children; and

(ii) Assign that portion of the LEA's grant to—

(A) The SEA if the SEA assumes educational responsibility for those children; or

(B) Another State or local public agency if that agency agrees to assume educational responsibility for those children.

(3) If no public agency is willing to assume educational responsibility for the children referred to in paragraph (a)(1) of this section, the SEA may not reallocate that portion of the LEA's grant that is based on children in local institutions for neglected or delinquent children to any other agency.

(4) If a local institution for neglected or delinquent children closes and the children are transferred to an institution in the school district of another LEA, the SEA shall adjust the allocations of the two LEAs to reflect that transfer.

(b) *Allocations based on the distribution of children from low-income families.* (1) *General rule.* After following the procedures in paragraph (a) of this section, the SEA shall allocate the remaining county aggregate amount to LEAs in the county on the basis of the best available data on the number of children from low-income families in the school districts of those LEAs.

(2) *Special circumstances.* The SEA shall adjust the allocations that it makes under paragraph (b)(1) of this section to reflect the following special circumstances:

(i) *LEAs in more than one county.* If a school district of an LEA overlaps a county boundary, the SEA shall make, on a proportionate basis, a separate allocation to that LEA from the county aggregate amount for each county in which that district is located provided the aggregate number of children in the LEA is 10 or more.

(ii) *LEAs serving children from another LEA.* If an LEA serves a substantial number of children from the school district of another LEA or serves different children within the same geographical area as another LEA, the SEA may adjust the allocations of those LEAs, among them, in a manner as it determines will best carry out the purposes of Title I.

(iii) *Changes in LEAs.* If an LEA's school district is merged or consolidated, or a portion of the district is transferred to another LEA, the SEA shall—

(A) Adjust the allocations of those LEAs to reflect the number of children from low-income families for whom

each surviving LEA is providing a free public education; or

(B) Permit an LEA that submitted a previously approved project application to carry out the approved project, by itself or in cooperation with another LEA, during the remainder of the fiscal year.

(iv) *Minimum allocation.* The SEA is not required to allocate to an LEA a basic grant of Title I funds generated by fewer than 10 children.

(Sec. 111, 20 U.S.C. 2711)

§ 201.13 Exceptions to county aggregate amounts.

(a) If a large number of LEAs overlap county boundaries, the SEA may apply to the Secretary for authority in any fiscal year to make, directly to LEAs without regard to the county aggregate amounts, the basic grant allocations under § 201.12 and the special incentive grant allocations under §§ 201.20–201.24.

(b) If the Secretary approves the SEA's request for a particular fiscal year under paragraph (a) of this section, the SEA shall provide assurances that it will—

(1) Make these allocations using the same factors as the Secretary uses in determining the amount of grants under section 111(a) (Grants—amount and eligibility) of Title I; and

(2) Establish procedures through which LEAs dissatisfied with the determinations made by the SEA may appeal directly to the Secretary for a final determination.

(Sec. 111(a)(3)(C), 20 U.S.C. 2711(a)(3)(C))

§ 201.14 Distribution of an additional amount based on the survey of income and education.

(a) If the amount appropriated for basic grants for any other fiscal year exceeds the amount appropriated for basic grants in fiscal year 1979, the Secretary—under section 111(a)(3)(D) (relating to allocating amounts over the amounts available for fiscal year 1979)—allocates one half of the excess amount to SEAs on the basis of data from the 1975 survey of income and education conducted by the Bureau of the Census.

(b) An SEA shall allocate to LEAs within the State any additional amounts available under paragraph (a) of this section in exact proportion to the amounts allocated to the LEAs for Title I basic grants.

(Sec. 111(a)(3)(D), 20 U.S.C. 2711(a)(3)(D))

§ 201.15 Allocation of Title I funds among project areas and project schools.

(a) Except as provided in paragraph (c) of this section, an LEA shall allocate Title I funds among project areas and project schools on the basis of the number and needs of the children to be served, as determined under §§ 201.100–201.105.

(b) In meeting the requirement in paragraph (a) of this section, the LEA shall use common criteria to—

(1) Determine the number and needs of the children to be served; and

(2) Allocate Title I funds to each project area or project school.

(c) An LEA may adjust the allocation for a project area or project school, if that adjustment is necessary to meet the fiscal requirements in § 201.51(d) concerning project areas or project schools for which the concentration of children from low-income families is at least 25 percent.

(Sec. 124(e), 20 U.S.C. 2734(e))

§§ 201.16–201.19 [Reserved]

Special Incentive Grants

§ 201.20 Eligibility for special incentive grants.

(a) An LEA that is eligible to receive a payment under section 111 (relating to basic grants) of Title I for any fiscal year shall be entitled to an additional grant under section 116 (relating to special incentive grants) of Title I if the LEA is located in a State that has in effect for that fiscal year a State program meeting the following requirements:

(1) The program is similar to Title I in the following characteristics:

(i) It provides financial assistance to meet the special educational needs of educationally deprived children.

(ii) All participating children are educationally deprived.

(iii) The SEA bases the program on performance objectives related to educational achievement and evaluates the program in a manner consistent with those performance objectives.

(iv) The program provides supplementary services designed to meet the special educational needs of participating children.

(v) The LEA keeps whatever records are necessary to ensure that the requirements in paragraphs (a)(1)(i) through (a)(1)(iv) of this section are met and provides access to those records for the purpose of verification.

(vi) The SEA monitors performance under the program to ensure that all requirements are met.

(2) Not less than 50 percent of the funds expended under the State program in any LEA in the State, in the fiscal year preceding the fiscal year in which the State is to receive a payment for an additional grant under section 116 of Title I, is expended in school attendance areas that have high concentrations of children from low-income families of such LEAs.

(b)(1) A State that desires to have its LEAs be eligible to receive an additional grant shall develop a system for determining—

(i) The data required by paragraph (a)(2) of this section; and

(ii) The amount of State funds expended under the State program referred to in § 201.20(a).

(2) The State shall submit to the Secretary information on the system developed in paragraph (b)(1) of this section.

(Sec. 116(a), 20 U.S.C. 2721(a); Sec. 116(b), 20 U.S.C. 2721(b))

§ 201.21 State entitlements.

(a) Except as provided in paragraph (c) of this section, the aggregate amount of special incentive grants to which the LEAs in a State are entitled for any fiscal year is 50 percent of the amount of State funds expended, in the most recent fiscal year for which data are available, under a State program meeting the requirements in § 201.20(a).

(b)(1) If the sums appropriated for a fiscal year are not sufficient to pay the total amounts to which all LEAs are entitled under this section, the SEA shall ratably reduce the amounts to be paid those agencies to the extent necessary to bring the payments within the limits of the amounts appropriated.

(2) If additional funds become available for making payments under this section for that year, the SEA shall increase the reduced amounts referred to in paragraph (b)(1) of this section on the same basis that they were reduced.

(c) The aggregate amount of special incentive grants that the LEAs in a State are eligible to receive for any fiscal year may not exceed 10 percent of the aggregate amount that LEAs in the State are eligible to receive for basic grants under section 111 of Title I for that fiscal year.

(d)(1) If, in any fiscal year, the expenditures made by a State under a program meeting the requirements of § 201.20(a) equal or exceed expenditures under that program in the preceding fiscal year, the amount paid to the State under this section is not less than the amount paid to the State under this section in the preceding fiscal year.

(2)(i) The total of any increases required under paragraph (d)(1) of this section is derived by proportionately reducing the amount paid to States that were not entitled to a payment under this section in the preceding fiscal year.

(ii) However, the amount paid to a State under this section for any fiscal year does not exceed the maximum amount to which the State is entitled for that fiscal year for basic grants under section 111 of Title I.

(Sec. 116(b), 20 U.S.C. 2721(b); Sec. 116(c), 20 U.S.C. 2721(c); Sec 116(d), 20 U.S.C. 2721(d))

§ 201.22 LEA entitlements.

For any fiscal year, (a) the amount of the additional grant for each LEA in a State under § 201.21 shall bear the same ratio to (b) the amount allocated to the State under § 201.21 as (c) the amount allocated to the LEA for that fiscal year under section 111 (referring to basic grants) of Title I bears to (d) the aggregate amount allocated to all LEAs in the State for that fiscal year under section 111.

(Sec. 116(b)(2), 20 U.S.C. 2721(b)(2))

§ 201.23 Method of making special incentive grants.

The Secretary includes that amount of special incentive grant funds that a State is entitled to receive during a particular fiscal year, as determined under § 201.21, in the amount paid to that State for that fiscal year under section 191 (Payment methods) of Title I.

(Sec. 116(c)(2), 20 U.S.C. 2721(c)(2))

§ 201.24 Use of special incentive grant funds.

An LEA that receives special incentive grant funds shall use those funds—

To carry out activities described in an approved project application for Title I funds that the LEA submits under section 121 (relating to the local program application for a basic grant) of Title I; and

(b) In accordance with the program requirements in Subpart 3 (Program requirements and applications) of Title I.

(Sec. 116(c)(4), 20 U.S.C. 2721(c)(4))

§§ 201.25–201.29 [Reserved]

Concentration Grants

§ 201.30 States entitled to receive concentration grant funds.

Section 117(b) (relating to eligibility for and amount of special concentration grants) of Title I provides that a State—other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands—that is eligible for a grant under Title I for any fiscal year is entitled to concentration grants funds from the amount appropriated for that fiscal year under section 117(d) (relating to appropriations for concentration grants) of Title I.

(Sec. 117(b)(1), 20 U.S.C. 2722(b)(1))

§ 201.31 Amount of concentration grant funds that each State receives.

(a) The Secretary determines the amount of concentration grant funds a State receives under section 117 (relating to the amount of the concentration grant) of Title I.

(b) However, each State that is entitled to concentration grant funds receives at least one-quarter of one percent of the total funds appropriated for the fiscal year under section 117(d) of Title I.

(c) The Secretary determines the minimum amount of concentration grant funds that each State is entitled to receive before setting aside any amounts for State administrative costs and evaluation.

(Sec. 117(b)(1), 20 U.S.C. 2722(b)(1); Sec. 117(b)(2), 20 U.S.C. 2722(b)(2); Sec. 117(b)(3), 20 U.S.C. 2722(b)(3))

§ 201.32 Allocation of concentration grant funds to counties within a State in which at least one county meets the statutory eligibility criteria.

(a) *General rule.* (1) Except as provided in paragraph (b) of this section, concentration grant funds that are awarded to a State in which at least one county meets the eligibility criteria in section 117(b)(1) (relating to the eligibility for a concentration grant) of Title I are allocated to the eligible counties within the State by the Secretary in accordance with the formula in section 117(b)(3) of Title I.

(2) Under the formula referred to in paragraph (a)(1) of this section, a county that meets the statutory eligibility criteria and is located in a State that receives the minimum allocation of concentration grant funds is allocated the same proportion of the total concentration grant appropriation as an eligible county that is located in a State that receives more than the minimum allocation.

(b) *Exceptions.* (1) Except as provided in paragraph (b)(3) of this section, after all the eligible counties in a State that received the minimum grant have been allocated the amount of concentration grant funds to which they are entitled under the statutory formula, the Secretary, according to an approved allocation plan submitted by the SEA, allocates to counties within that State any concentration grant funds that remain unallocated.

(2) The allocation plan referred to in paragraph (b)(1) of this section must—

(i) Be submitted to the Secretary by the SEA according to the procedures described in § 201.34; and

(ii) Have the approval of the Secretary, using the standards described in § 201.35.

(3)(i) If the SEA does not submit an allocation plan, or the Secretary disapproves the plan that has been submitted and notifies the SEA of the reasons for disapproving the plan, the Secretary allocates the remaining concentration grant funds within the State to those counties that are receiving a basic grant under Part A of Title I.

(ii) The Secretary makes this allocation according to the basic grant allocation method in section 111(a) (relating to the amount of basic grants) of Title I.

(Sec. 117(a), 20 U.S.C. 2722(a); Sec. 117(b), 20 U.S.C. 2722(b))

§ 201.33 Allocation of concentration grant funds to counties within a State in which no county meets the statutory eligibility criteria.

(a) *General rule.* (1) Except as provided in paragraph (b) of this section, if no county in a State meets the eligibility criteria in section 117(b)(1) of Title I, the Secretary, according to an approved allocation plan submitted by the SEA, allocates to counties within the State concentration grant funds that are awarded to that State.

(2) The allocation plan referred to in paragraph (a)(1) of this section must—

(i) Be submitted to the Secretary by the SEA according to procedures described in § 201.34; and

(ii) Have the approval of the Secretary, using the standards described in § 201.35

(b) *Exception.* (1) If the SEA does not submit an allocation plan or if the Secretary disapproves the plan that has been submitted an notifies the SEA of the reasons for disapproving the plan, the Secretary allocates the concentration grant funds within the State to those counties that are receiving a basic grant under Part A of Title I.

(2) The Secretary makes this allocation on the basis of the basic grant allocation method in section 111(a) of Title I.

(Sec. 117(a), 20 U.S.C. 2722(a); Sec. 117(b), 20 U.S.C. 2722(b))

§ 201.34 Submission of allocation plans.

(a) *States that may submit an allocation plan.* (1) If a State's concentration grant funds remain unallocated after all the eligible counties in that State have been allocated the amount of concentration grant funds to which they are entitled under the statutory formula, the State may submit, for the Secretary's consideration, a plan for allocation of these unallocated funds to eligible counties within the State.

(2) Only counties that are eligible to receive basic grants under Part A of Title I may receive concentration grant funds.

(b) *Submission through SEA.* A State that chooses to submit an allocation plan shall submit the plan through its SEA.

(c) *Elements of an allocation plan.* In order to be assured of consideration by the Secretary, an allocation plan must include—

(1)(i) A list of all counties in the State that meet the eligibility criteria in section 117(b)(1) of Title I; and

(ii) The amount of concentration grant funds that each of those counties receives under the formula in section 117(b)(3) of Title I;

(2)(i) A list of all counties in the State; and

(ii) The amount of concentration grant funds, if any, that each county would receive under the proposed allocation plan; and

(3) A description of the proposed method for allocating the concentration grant funds to the counties in the State. This description must include—

(i) The reasons why this method is being proposed;

(ii) How this method meets the statutory purpose of providing concentration grant funds to those counties with especially high concentrations of children from low-income families; and

(iii) The reasons why this method is reasonable in terms of local circumstances including the distribution of children from low-income families within counties.

(Sec. 117(a), 20 U.S.C. 2722(a); Sec. 117(b), 20 U.S.C. 2722(b))

§ 201.35 Secretary's standards for approval of allocation plans.

In deciding whether to approve a proposed allocation plan, the Secretary considers the extent to which the proposed plan—

(a) Meets the requirements in § 201.34;

(b) Would result in an allocation of concentration grant funds that meets the statutory purpose of providing concentration grant funds to those counties with especially high concentrations of children from low-income families; and

(c) Is reasonable in terms of local circumstances, including the distribution of children from low-income families within counties.

(Sec. 117(a), 20 U.S.C. 2722(a); Sec. 117(b), 20 U.S.C. 2722(b))

§ 201.36 Method of awarding concentration grant funds.

(a) The Secretary includes the amount of concentration grant funds that a State is entitled to receive during a particular fiscal year, as determined under § 201.31, in the amount paid to that State for that fiscal year under section 191 (Payment methods) of Title I.

(b) Under § 201.32 or § 201.33, the Secretary allocates those concentration grant funds to eligible counties within a State that receives concentration grant funds.

(c)(1) The SEA shall distribute concentration grant funds—

(i) Among the LEAs in each county that is entitled to receive those funds; and

(ii) On the basis of the current distribution within each of those counties of children aged 5 through 17.

(2) In making this distribution, the State shall use either of the following procedures, as applicable:

(i) Each LEA in which 20 percent or more of the children are counted as being from low-income families under the Title I basic grant formula receives a portion of the county's concentration grant allocation based on the number of children counted under that basic grant formula.

(ii) Each LEA in which less than 20 percent of the children are counted as being from low-income families under the basic grant formula receives a portion of the county's concentration grant allocation based on (A) the number of children counted under the Title I basic grant formula multiplied by (B) a fraction in which the numerator is the percentage of children in the LEA that are counted under the basic grant formula and the denominator is 20.

(Sec. 117(b)(5), 20 U.S.C. 2722(b)(5); Sec. 117(c)(1), 20 U.S.C. 2722(c)(1))

§ 201.37 Used of concentration grant funds.

An LEA that receives concentration grant funds under section 117 of Title I shall use those funds—

(a) To carry out activities that are described in an approved project application for Title I funds that the LEA submits under section 121 (relating to the local project application for a basic grant) of Title I; and

(b) In accordance with the Title I program requirements in Subpart 3 of Part A of Title I.

(Sec. 117(c)(2), 20 U.S.C. 2722(c)(2))

Reallocation

§201.38 Reallocation of Title I funds by SEAs.

(a) By February 1 of each fiscal year, an SEA shall—

(1) Determine which, if any, LEAs have received allocations of Title I funds that exceed the amount required to—

(i) Operate their Title I projects effectively during the current fiscal year; and

(ii) Provide a prudent and justifiable reserve of Title I funds for operating their Title I projects effectively during the next fiscal year.

(2) Consider, in making the determination required in paragraph (a)(1) of this section, factors such as:

(i) The number of children being served;

(ii) The special educational needs of the children being served;

(iii) The rate of inflation;

(iv) Increases in the salaries of Title I staff; and

(v) The future availability of Title I funds.

(3) Notify each LEA identified under paragraph (a)(1) of this section and the district advisory council established for the LEA of—

(i) The amount of that LEA's Title I funds that the SEA is considering reallocating to other LEAs under paragraph (b) of this section; and

(ii) The opportunity for that LEA to amend its Title I application to include approvable proposals for use of the excess funds.

(b)(1) If the LEA fails to properly amend its Title I application in response to the opportunity provided under paragraph (a) of this section, the SEA shall, by March 31 of the current fiscal year, reallocate the excess Title I funds to LEAs that have the greatest need for the purpose of, where appropriate, redressing inequities inherent in, or mitigating hardships caused by, the application of the allocation provisions in section 111(a) of Title I as a result of factors like population shifts and changing economic circumstances.

(2) The SEA shall notify the Secretary of those reallocations.

(Sec. 111, 20 U.S.C. 2711; Sec. 193, 20 U.S.C. 2843)

§ 201.39 Reallocation of Title I funds by the Secretary.

If excess amounts of Title I funds remain after an SEA has completed the process in § 201.38, the Secretary distributes those excess funds among other States on the basis of need.

(Sec. 111, 20 U.S.C. 2711; Sec. 193, 20 U.S.C. 2843)

Subpart C—Applying to the State for Title I Funds

§ 201.40 LEAs that may receive Title I assistance.

An LEA that is allocated Title I funds for a fiscal year under Subpart B of this part may receive those funds through a grant from the SEA, if the LEA has on file with the SEA a current Title I project application that—

(a) Describes the projects to be conducted with the Title I funds; and

(b) Has been approved by the SEA.

(Sec. 121; 20 U.S.C. 2731)

§ 201.41 Submission of Title I project applications to the SEA.

(a) *Frequency of submission.* An LEA shall submit a Title I project application to the SEA for a period of not more than three fiscal years, including the first fiscal year for which a grant is made under that application.

(b) *Contents of the application.* The Title I project application that is submitted under this subpart by the LEA must include—

(1) The information requested in the application forms and instructions provided by the SEA; and

(2) Any other information the SEA needs in order to determine whether the application meets the standards for approval in 34 CFR 200.110.

(c) *Amendments to the application.* The LEA shall update and amend its Title I project application as required by 34 CFR 200.113.

(Sec. 121, 20 U.S.C. 2731)

§§ 201.42-201.49 [Reserved]

Subpart D—Designating Schools and School Attendance Areas for Title I Projects

Identifying Eligible Schools and School Attendance Areas

§ 201.50 Overview of the regulations in this subpart.

(a) Sections 122 and 123 of Title I require an LEA to concentrate the services funded under Title I on the educationally deprived children residing in school attendance areas with high concentrations of children from low-income families.

(b) The regulations in this subpart contain requirements for—

(1) Identifying school attendance areas and schools as being eligible to receive Title I assistance; and

(2) Selecting those eligible school attendance areas and schools that are to be project areas and project schools to receive Title I assistance.

(Sec. 122, 20 U.S.C. 2732; Sec. 123, 20 U.S.C. 2733)

§ 201.51 Identifying eligible school attendance areas.

(a) *General rule.* Except as provided in §§ 201.63–201.66, and LEA may use Title I funds only in school attendance areas that the LEA has identified—using the procedures in this section—as having sufficiently high concentrations of children from low-income families to be eligible for Title I services.

(b) *Measures of low-income status.* (1) For purposes of making the eligibility determinations discussed in this subpart, the LEA shall select and use the best available measure—which may be a composite of several indicators—for determining what is a low-income family.

(2) Examples of the best available measures of low-income status may include—

(i) Data on children from families receiving Aid to Families with Dependent Children (AFDC); or

(ii) Data on families whose children are eligible to receive benefits under the National School Lunch Program.

(3) Regardless of the measure of low-income status that the LEA selects, the LEA shall use that same measure for purposes of determining the eligibility of all its school attendance areas and schools under this subpart.

(c) *Use of grade span groupings.* (1) The LEA may identify its eligible school attendance areas and eligible schools by—

(i) Applying the methods in paragraph (d) of this section to each school attendance area and school; or

(ii) Groupings its school attendance areas and schools according to the grade spans by those schools and applying the methods described in paragraph (d) of this section to each attendance area and school within each grouping.

(2) If an LEA uses grade span groupings for purposes of this subpart, the groupings must be consistent with the grade spans served by the LEA's schools. For example, common groupings include grades K–6, 7–9, and 10–12.

(3) The LEA may not use more grade span groupings for purposes of this subpart than the number of groupings permitted for the purpose of determining comparability under § 201.117.

(d) *Methods for identifying eligible school attendance areas.* (1) *Percentage method.* (i) *General rule.* A school attendance area is eligible to receive Title I assistance if the percentage of children from low-income families in that school attendance area is at least equal to the percentage of children from low-income families in the LEA as a whole.

(ii) *25 percent rule.* (A) Even if the percentage of children from low-income families in the LEA as a whole exceeds 25 percent, the LEA may—subject to the conditions in paragraph (d)(1)(ii)(B) of this section—identify as eligible each school attendance area in which at least 25 percent of the children are from low-income families.

(B) An LEA may use the 25 percent rule in paragraph (d)(1)(ii)(A) of this section only if the aggregate per pupil amount of Title I funds and funds from a State program that meets the requirements in section 131(c) (State and local compensatory education programs similar to Title I programs) of Title I that are spent during the current fiscal year—in each school attendance area of the LEA in which Title I projects were carried out during the preceding fiscal year—equal or exceed the aggregate per pupil amounts spent from those sources in each of those areas in the preceding fiscal year.

(C) *Calculation of 25 percent rule.* In order to determine whether it has met the requirements for using the 25 percent rule in paragraph (d)(1)(ii)(B) of this section, the LEA may take the following steps:

(*1*) *Step 1.* For each school attendance are of the LEA in which Title I projects were carried out during the preceding fiscal year, the LEA lists—

(*i*) The aggregate amount of funds the LEA is spending in the attendance area during the current fiscal year for both Title I and for a State compensatory education program meeting the requirements of section 131(c) (State and local compensatory education programs similar to Title I programs) of Title I; and

(*ii*) The total number of children receiving services under either Title I or the State compensatory education program during the current fiscal year. (For purposes of this section, if a child receives services under more than one program, the child shall be counted as receiving services under each program.)

(*2*) *Step 2.* The LEA divides the number of children listed under (b) of Step 1 into the aggregate amount of funds listed under (a) of Step 1.

(*3*) *Step 3.* For each school attendance area referred to in Step 1, the LEA lists—

(*i*) The aggregate amount of funds the LEA spent during the preceding fiscal year for both Title I and for a State compensatory education program meeting the requirements of section 131(c) of Title I; and

(*ii*) The total number of children who received services during the preceding fiscal year from either Title I or the State compensatory education program.

(*4*) *Step 4.* The LEA divides the number of children listed under (b) of Step 3 into the aggregate amount of funds listed under (a) of Step 3.

(*5*) *Step 5.* The LEA compares the amount calculated in Step 2 with the amount calculated in Step 4. If the amount calculated in Step 2 equals or exceeds the amount calculated in Step 4, the LEA meets the requirements in paragraph (d)(1)(ii)(B) of this section for using the 25 percent rule.

(iii) *Special requirement if grade span groupings are used.* If the LEA groups its

school attendance areas by grade spans under § 201.51(c), the LEA shall determine the percentage of children from low-income families in the LEA as a whole for each grade span grouping. The LEA may use the 25 percent rule in paragraph (d)(1)(ii)(A) of this section for any or all of those groupings.

(2) *Numerical method.* (i) *General rule.* A school attendance area is eligible to receive Title I assistance if the number of children from low-income families in that school attendance area is at least equal to the average number of children from low-income families per school attendance area in the LEA as a whole.

(ii) *Special requirement if grade span groupings are used.* If the LEA groups its school attendance areas by grade spans under § 201.51(c), the LEA shall determine an average number of children from low-income families per school attendance area in the LEA as a whole for each grade span grouping.

(3) *Combination of percentage and numerical method.* (i) Subject to the requirement in paragraph (d)(3)(ii) of this section, the LEA may identify some school attendance areas as eligible by using the percentage method and some by using the numerical method.

(ii) The total number of school attendance areas that the LEA indentifies as eligible by using the combination method may not be more than the maximum number of school attendance areas, or school attendance areas plus schools, that the LEA would have identified if it has used one of the methods in paragraph (d)(1) or (d)(2) of this section.

(4) *Special rule if there is no wide variance in percentages of children from low-income families.* An LEA may identify all of the school attendance areas in the district or in a grade span grouping as eligible to receive Title I assistance if the variation between (i) the percentage of children from low-income families in the school attendance area with the highest concentration of children from low-income families and (ii) the percentage of children from low-income families in the school attendance area with the lowest concentration of children from low-income families is not more than the greater of—

(A) Five percent; or

(B) One-third of the percentage of children from low-income families in the LEA's district as a whole.

(Sec. 122(a)(1), 20 U.S.C. 2732(a)(1))

§ 201.52 Identifying eligible schools.

(a) *Method for identifying eligible schools.* An LEA may identify a school as an eligible school if that school meets one or more of the conditions in paragraph (b) of this section and—

(1) Is located in an ineligible school attendance area; or

(2) Serves children from more than one school attendance area.

(b) *Conditions.* The LEA may identify a school as eligible under paragraph (a) of this section if the school meets one or more of the following conditions:

(1) The percentage of children from low-income families in ADA at the school is at least substantially the same as the percentage of children from low-income families in the LEA as a whole.

(2) The percentage of children from low-income families in ADA at the school is at least equal to 25 percent of the total number of children in ADA at the school and—

(i) The LEA has identified one or more school attendance areas as eligible under § 201.51(d)(1)(ii); and

(ii) The schools identified as eligible schools under the procedures in this paragraph meet the requirements in § 201.51(d)(1)(ii).

(3) The number of children from low-income families in ADA at the school is at least substantially the same as the average number of children from low-income families per school attendance area in the LEA as a whole.

(c) *Grade span groupings.* The LEA may use grade span groupings to identify eligible schools, if those groupings comply with the requirements in § 201.51(c).

(Sec. 122(b), 20 U.S.C. 2732(b))

§§ 201.53–201.59 [Reserved]

Selecting Schools and School Attendance Areas for Title I Projects

§ 201.60 Overview of the process of selecting school attendance areas and schools for Title I projects.

(a) After an LEA determines which school attendance areas and schools are eligible under the procedures in §§ 201.51–201.52, the LEA determines how many eligible areas and schools it will select as Title I project areas and project schools to receive Title I services during a fiscal year. The LEA makes this determination on the basis of—

(1) The amount of Title I funds available; and

(2) The amount of Title I funds required to—

(i) Operate a Title I project that is of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children to be served, as required by 34 CFR 200.51; and

(ii) Provide Title I services to all children who satisfy the criteria developed under §§ 201.70–201.71 for selecting children to be served.

(b) In selecting school attendance areas and schools for Title I project areas and project schools under the procedures in §§ 201.60–201.66, the LEA shall use the same measure of low-income status as it used in identifying eligible school attendance areas and eligible schools under the procedures in §§ 201.50–201.52.

(c) If Title I funds are not sufficient to serve all educationally deprived children in all eligible school attendance areas and schools, the LEA—using the methods in §§ 201.60–201.66—shall select which of the eligible school attendance areas and schools will receive Title I services.

(Sec. 122, 20 U.S.C. 2732)

§ 201.61 Selecting project areas by ranking the eligible school attendance areas according to their concentration of children from low-income families.

(a) If the LEA does not select all eligible school attendance areas as Title I project areas, the LEA shall—

(1) Annually rank its eligible attendance areas from highest to lowest, according to their relative degree of concentration of children from low-income families; and

(2) Except as provided in §§ 201.63–201.66, select eligible school attendance areas as Title I project areas, in rank order, beginning with the highest ranking eligible school attendance area, until the LEA lacks sufficient Title I funds to serve any additional school attendance areas.

(b) If an LEA used grade span groupings that complied with § 201.51(c) for purposes of identifying eligible school attendance areas and schools, it may continue to use those groupings for purposes of ranking and selecting school attendance areas and schools.

(Sec. 122(a)(1), 20 U.S.C. 2732(a)(1))

§ 201.62 Selecting project schools from among the schools that the LEA identified as eligible schools.

(a) If an LEA identifies a school or schools as eligible under the procedure in § 201.52, the LEA may use the methods in § 201.61 to rank its eligible schools.

(b) After ranking its eligible schools using the methods in § 201.61, the LEA shall—

(1) Consolidate into a single ranking its rankings of eligible schools with its rankings of eligible school attendance areas; and

(2) Except as provided in §§ 201.63–201.66, select eligible schools and school attendance areas to receive Title I services, in rank order, beginning with

the highest ranking eligible school or school attendance area until the LEA lacks sufficient funds to serve any additional schools or school attendance areas.

(Sec. 122, 20 U.S.C. 2732)

§ 201.63 Selecting a limited number of lower ranked eligible school attendance areas or eligible schools having substantially greater incidences of educational deprivation than higher ranked eligible school attendance areas or eligible schools.

After ranking its eligible school attendance areas and eligible schools, according to the procedures in §§ 201.61–201.62, an LEA may select—as a project area or project school—a lower ranked eligible school attendance area or eligible school, instead of a higher ranked eligible school attendance area or eligible school, if—

(a) The lower ranked eligible school attendance area or eligible school has an incidence of educationally deprived children—as determined under § 201.66(a)(2)—that is 1.2 times the percentage or number of educationally deprived children in the higher ranked eligible school attendance area or eligible school; and

(b) The LEA that uses the alternative selection procedures in this section does not provide Title I services in more eligible school attendance areas or eligible schools than the number that would have received Title I services under the ranking and selection procedures in §§ 201.61–201.62.

(Sec. 122(d), 20 U.S.C. 2732(d))

§ 201.64 Continuation of eligibility for certain school attendance areas or schools.

(a) Except as provided in paragraphs (c) and (d) of this section, an LEA may select a school attendance area or a school to receive Title I services—even though that area or school does not qualify under the procedures in §§ 201.61–201.63—if the area or school qualified and was selected as a Title I project area or project school in either of the two fiscal years preceding the fiscal year for which the funds will be granted.

(b) The eligibility conferred by paragraph (a) of this section is valid for not more than two fiscal years.

(c) If a school attendance area or school that was selected as a project area or project school in either of the two preceding years is substantially different from what it was during those years, the LEA may not select that school attendance area or school as a project area or project school on the basis of this section.

(d) If the LEA changes its method of ranking eligible school attendance areas and schools from the method it used during the preceding fiscal year, the LEA may not use the provisions in this section to provide Title I services in more school attendance areas or schools than the number that could have received Title I services under the method of ranking used by the LEA during the current fiscal year.

(Sec. 122(c), 20 U.S.C. 2732(c))

§ 201.65 Skipping higher-ranked school attendance areas and schools receiving services of the same nature and scope from non-Federal sources.

(a) Subject to the requirements in this section, an LEA may skip an eligible school attendance area or school that ranks higher under the procedures in §§ 201.61–201.62 and select a lower-ranked eligible attendance area or school to be a project area or project school to receive Title I services. The LEA may do this if the higher-ranked school attendance area or school is already receiving, from non-Federal funds, services of the same nature and scope as the services that would otherwise be provided with Title I funds.

(b) As used in paragraph (a) of this section, the term "services of the same nature and scope" means non-federally funded services that—

(1) Meet the requirements in 34 CFR 200.51 concerning size, scope, and quality;

(2) Are provided under a special program that meets the requirements in section 131(c) (State and local compensatory education programs similar to Title I programs) of Title I; and

(3) When measured on a per pupil basis by an objective measure such as per pupil expenditures, are provided at a level that is at least equal to the level of services that would otherwise be provided with Title I funds.

(c) If an LEA skips an eligible attendance area under this section, the LEA shall—

(1) Ensure that the eligible attendance area that is skipped receives State and locally funded services comparable to the State and locally funded services provided to ineligible school attendance areas in the LEA, as required by §§ 201.112–201.123; and

(2) Comply with section 122(e) of Title I which contains requirements concerning services that must be provided to children attending private schools.

(Sec. 122(e), 20 U.S.C. 2732(e))

§ 201.66 Selecting a limited number of project areas through the use of alternative rankings of school attendance areas according to their concentration of children from low-income families and the incidence of educational deprivation.

(a) Subject to the conditions in paragraph (d) of this section, an LEA may rank all its school attendance areas according to both—

(1) Their relative degree of concentration of children from low-income families, as required by §§ 201.61–201.62; and

(2) Their relative incidence of educational deprivation. The incidence of educational deprivation is determined by the percentage or number of children in each school attendance area or school that are identified as educationally deprived through the use of objective measures of educational deprivation—such as standardized achievement tests or other objective tests—that the LEA uniformly applies in all of the school attendance areas.

(b) Except as provided in paragraph (c) of this section, the LEA shall select school attendance areas to be project areas, in rank order according to their relative degree of concentration of children from low-income families, as required by §§ 201.61–201.62.

(c) The LEA may select, as a Title I project area, a school attendance area that ranks lower than another school attendance area on the basis of its relative concentration of children from low-income families if—

(1) The lower-ranking school attendance area has an incidence of educationally deprived children, as determined under paragraph (a)(2) of this section, that is 1.2 times the percentage or number of educationally deprived children in the higher-ranked school attendance area; and

(2) The LEA that uses this alternative ranking and selection procedure does not provide Title I services in more school attendance areas than the number that would have received Title I services under the procedures in §§ 201.61–201.62.

(d) (1) An LEA that desires to use the alternative ranking procedures in this section for selecting school attendance areas shall, with the prior consent of the Title I district advisory council, apply to the SEA for permission to use the alternative ranking procedures.

(2) The SEA shall approve an application that is filed under paragraph (d)(1) of this section only if the SEA determines that the LEA's use of the alternative ranking procedures will not substantially impair the delivery of compensatory education to educationally deprived children from

low-income families in the school attendance areas and schools that were selected to receive Title I services under the procedures in §§ 201.61–201.62.

(3) For the purpose of making the determination referred to in paragraph (d)(2) of this section, the following terms are defined:

(i) The term "not substantially impair the delivery"—

(A) Means that the total number of children from low-income families in the school attendance areas selected for Title I services under the alternative ranking procedures in this section is not less than 90 percent of the number of children from low-income families in the school attendance areas and schools that otherwise would be selected to receive Title I services under the procedures in §§ 201.61–201.62; or

(B) Is determined by an alternative standard developed by the SEA and approved by the Secretary as a more accurate measure.

(ii) The term "compensatory education" means Title I services and services provided under State compensatory education programs that meet the requirements of section 131(c) (State and local compensatory education programs similar to Title I programs) of Title I.

(e) If an LEA uses the alternative ranking procedure in this section, and provides Title I services in one or more school attendance areas that would not have been eligible under the ranking procedures in § 201.61, none of the school attendance areas that are designated as eligible under the alternative ranking—but not served—may be considered to be eligible school attendance areas under 34 CFR Parts 200 or 201.

(Sec. 122(a)(2), 20 U.S.C. 2732(a)(2))

§§ 201.67–201.69 [Reserved]

Subpart E—Identifying and Selecting Children To Be Served

§ 201.70 General rules for identifying eligible children and selecting children to be served.

Except as provided in §§ 201.71–201.72, an LEA shall use Title I funds to serve children who—

(a) Reside in school attendance areas that the LEA selected as project areas or attend schools that the LEA selected as project schools;

(b) Are identified by the current annual assessment of educational needs, conducted by the LEA under §§ 201.100–201.105, as educationally deprived children; and

(c) Are identified and selected by the LEA, under the procedures in §§ 201.101–201.103, as currently having the greatest need of special assistance.

(Sec. 123(a), 20 U.S.C. 2733(a))

§ 201.71 Special rules for identifying and selecting children to be served.

(a) *Continuation of eligibility for educationally deprived children who are no longer in greatest need of special assistance.* An LEA may use Title I funds, during the current fiscal year, to serve children not currently in greatest need of special assistance, as required in § 201.70(c), if those children—

(1) Were in greatest need of special assistance in any previous fiscal year under the criteria that were used by the LEA for that year;

(2) Are currently in a school attendance area that the LEA selected as a project area or attending a school that the LEA selected as a project school under §§ 201.60–201.66; and

(3) Are identified, by the current annual assessment of educational need conducted by the LEA under §§ 201.100–201.105, as educationally deprived children.

(b) *Continuation of eligibility for educationally deprived children who are transferred to school attendance areas or schools that are not selected as project areas or project schools.* (1) If it meets the conditions in paragraph (b)(2) of this section, an LEA may use Title I funds during the current fiscal year to continue to serve children—

(i) Whom the LEA identified as eligible children under § 201.101 and selected to serve under § 201.103; and

(ii) Who begin to participate in the LEA's Title I project; but

(iii) Who, during the same school year, are transferred—either voluntarily or involuntarily—to a school attendance area or school that is not receiving Title I services under §§ 201.60–201.66.

(2) At the LEA's discretion, the children referred to in paragraph (b)(1) of this section may continue to participate in the LEA's Title I project for the duration of the current school year, which may include a summer school program.

(c) *Skipping children determined to be in greatest need of special assistance but who are receiving services of the same nature and scope paid from non-Federal sources.* (1) If the educationally deprived children in greatest need of special assistance—as determined by an LEA under § 201.103—are already receiving, from non-Federal funds, services of the same nature and scope as the services that would otherwise be provided with Title I funds, the LEA—

(i) May decide not to provide Title I services to those children; and

(ii) May select other educationally deprived children in the project areas or project schools to receive the Title I services.

(2) As used in paragraph (c)(1) of this section, the term "services of the same nature and scope" means non-federally funded services that—

(i) Meet the requirements in 34 CFR 200.51 concerning size, scope and quality;

(ii) Are provided under a special program that meets the requirements in section 131(c) (State and local compensatory education programs similar to Title I programs) of Title I; and

(iii) When measured on a per pupil basis by an objective measure such as per pupil expenditures, are provided at a level that is at least equal to the level of services that would otherwise be provided with Title I funds.

(Sec. 123(b), 20 U.S.C. 2733(b); Sec. 123(c), 20 U.S.C. 2733(c); Sec. 123(d), 20 U.S.C. 2733(d))

(d) *Infrequent participation by a limited number of children who are not in greatest need of assistance or who have not been identified as educationally deprived.* An LEA may provide, on an incidental basis, a particular Title I service to children who have not been selected to participate in the LEA's Title I project under §§ 201.70–201.71 and §§ 201.101–201.103, if—

(1) The Title I service is designed to meet the special educational needs of children who have been selected under §§ 201.70–201.71 and § 201.103 and is focused on those children;

(2) It is impractical to exclude the children who have not been selected to participate in the LEA's Title I project from the particular Title I service, at the time that the service is provided;

(3) The children who have not been selected are in the same grade level as the children who have been selected;

(4) The inclusion in the group being served of the children who have not been selected does not—

(i) Decrease the effectiveness or quality of the Title I service received by the children who have been selected;

(ii) Increase the cost of providing the service; or

(iii) Result in the exclusion of children who have been selected and would otherwise receive the Title I service;

(5) The LEA indicates in its project application—

(i) The estimated number of children who have not been selected who may receive a particular Title I service;

(ii) The reasons why the inclusion of these children who have not been selected would not decrease the quality

of Title I services received by the children who have been selected; and

(iii) The reasons why the inclusion of these children who have not been selected would not increase the cost of providing the service; and

(6) The number of children in each school of the LEA who have not been selected but who will receive a Title I service does not constitute more than 5 percent of the total number of children who are receiving that particular Title I service in that school.

(Sec. 101–198, 20 U.S.C. 2701–2854; Sec. 408(a)(1) of GEPA, 20 U.S.C. 1221e–3(a)(1))

§ 201.72 Use of Title I funds for a schoolwide project.

(a) *Eligibility of a school for a schoolwide project.* In order to upgrade the entire educational program in a school, an LEA may select that school for a schoolwide project during a fiscal year if—

(1) The school serves a school attendance area that the LEA has identified under § 201.51 as eligible to receive Title I services during that fiscal year;

(2) At least 75 percent of the children in ADA at the school are from low-income families, as determined by using the measure of low income that the LEA uses during the fiscal year to identify eligible school attendance areas under § 201.51;

(3) The LEA develops for the school a plan that meets the requirements in § 201.73 and is approved by the SEA; and

(4) The LEA meets the financial requirements in § 201.74.

(b) *Effect of selection of a school for a schoolwide project.* For each school that is selected for a schoolwide project in compliance with the requirements in paragraph (a) of this section, the LEA is not required to—

(1) Comply with the requirements in section 124(f) (Coordination with other programs) and 173 (Recordkeeping, fiscal control, and fund accounting) of Title I and 34 CFR 200.42 and 200.140, concerning the commingling of Title I funds with funds available for regular programs;

(2) Comply with the requirements in sections 123 (Children to be served) and 124(b) (Assessment of educational need) of Title I and §§ 201.70–201.71 and §§ 201.101–201.103, concerning the identification and selection of particular children to participate in Title I projects; and

(3) Demonstrate that the particular *services* paid for with Title I funds supplement the *services* regularly provided in that school. (However, *see* § 201.74(d), which requires that Title I *funds supplement the amount of non-Federal funds* that are provided to the school).

(Sec. 133, 20 U.S.C. 2753)

§ 201.73 Required plan for each school selected for a schoolwide project.

(a) *Development and approval of the plan.* (1) An LEA may select a school for a schoolwide project only if the LEA develops for that school a plan that meets the requirements in paragraph (b) of this section and has been approved by the SEA.

(2) The SEA shall approve the plan referred to in paragraph (a)(1) of this section if the plan meets the requirements in paragraph (b) of this section.

(b) *Required plans.* The plan referred to in paragraph (a) of this section must—

(1) Provide for a comprehensive assessment of the educational needs of all students in the school—in particular the special needs of educationally deprived children;

(2) Provide for an instructional program designed to meet the special needs of all students in the school;

(3) Be developed with the involvement of those individuals who will be involved in carrying out the plan, including parents, teachers, teacher aides, administrators, and secondary students if the plan relates to a secondary school;

(4) Provide for periodic consultation among the individuals referred to in paragraph (b)(3) of this section concerning the educational progress of all students in the school;

(5) Be approved by the project area advisory council that was established under §§ 201.155–201.157 for the school attendance area served by the school;

(6) Provide for appropriate training to enable teachers and teacher aides to carry out the plan effectively;

(7) Include procedures that the LEA will use to evaluate the effectiveness of the schoolwide project and that will involve in the evaluation the participation of the individuals referred to in paragraph (b)(3) of this section; and

(8) Include opportunities for periodic improvements in the plan based on the results of the evaluations referred to in paragraph (b)(7) of this section.

(Sec. 133(b), 20 U.S.C. 2753(b); Sec. 133(c), 20 U.S.C. 2753(c))

§ 201.74 Financial requirements for a schoolwide project.

An LEA that selects a school for a schoolwide project under §§ 201.72–201.73 shall meet the following financial requirements:

(a) *Equitable distribution of Title I funds for educationally deprived children.* In each school selected for a schoolwide project, the LEA shall provide, per educationally deprived child served in that school, an amount of Title I funds that is at least equal to the amount of title I funds that the LEA provides per educationally deprived child served in schools, if any, that serve project areas.

(b) *Special supplemental State and local funds required.* In each school selected for a schoolwide project, the LEA shall provide, per child served by the schoolwide project in that school who is not educationally deprived, an amount of special supplementary State and local funds that is at least equal to the amount of Title I funds that the LEA provides per educationally deprived child served in that school.

(c) *Maintenance of State and local effort.* During the fiscal year in which the plan approved under § 201.73 is carried out, the LEA shall, in each school selected for a schoolwide project, spend per child an amount of State and local funds—excluding amounts spent under a State compensatory education program—that is at least equal to the amount of State and local funds that the LEA spent per child in that school during the preceding fiscal year.

(d) *Title I funds must supplement non-Federal funds that would otherwise be provided to the school.* In order to meet the requirements in section 126(c) (Federal funds to supplement, not supplant regular non-Federal funds) of Title I, 34 CFR 200.92, and §§ 201.130–201.143, each school that is selected for a schoolwide project must receive all non-Federal funds that it would have received had it not been selected for a schoolwide project.

(Sec. 133(b), 20 U.S.C. 2753(b))

§ 201.75 Serving children in local institutions for neglected or delinquent children.

(a) An LEA whose allocation under § 201.12 is based in part on the number of children residing within the LEA in local institutions for neglected or delinquent children—as defined in § 201.4(b)—shall provide Title I services to meet the special educational needs of children currently residing in those institutions.

(b) In providing the services referred to in paragraph (a) of this section, the LEA shall comply with all requirements in the Title I statute and 34 CFR Parts 200 and 201, except for the requirements contained in the following subparts of Part 201 and the statutory provisions on which they are based:

(1) Subpart D—Designating Schools and School Attendance Areas for Title I Projects.

(2) Subpart E—Identifying and Selecting Children To Be Served (except for the requirements in this section).

(3) Subpart F—Participation of Children Enrolled in Private Schools (except for the prohibition concerning noninstructional duties in § 201.82).

(4) Subpart G—Needs Assessment.

(5) Subpart I—Parental Involvement.

(6) Subpart J—Evaluations by Local Educational Agencies.

(c) The LEA may provide the services referred to in paragraph (a) of this section at the local institution or at any location under the LEA's administration and control.

(d) The LEA that is required to provide the services referred to in paragraph (a) of this section shall include the following information in its application for Title I funds:

(1) The number of children to be served.

(2) A description of its methods for assessing the special educational needs of institutionalized children.

(3) A description of the special educational needs of those children.

(4) A description of the services that will be provided to meet those special educational needs.

(5) A description of its performance objectives and plans for evaluating the effectiveness of the project.

(e) The LEA shall, in reports required by the SEA under 34 CFR 200.161, include specific information on the services provided and the effectiveness of those services in meeting the special educational needs of the institutionalized children.

(Sec. 111, 20 U.S.C. 2711)

§§ 201.76–201.79 [Reserved]

Subpart F—Participation of Children Enrolled in Private Schools

General Requirements

§ 201.80 Required opportunity for participation of private school children in Title I projects.

(a) An LEA shall meet the requirements for participation of students enrolled in private schools contained in Subpart F of 34 CFR Part 76, and the additional requirements contained in §§ 201.81–201.82 and §§ 201.90–201.97.

(b) In fulfilling the requirements referred to in paragraph (a) of this section, the LEA shall comply with—

(1) Section 122 (Designating school attendance areas) of Title I and §§ 201.60–201.66, concerning the selection of school attendance areas and schools for Title I projects.

(2) Section 123 (Children to be served) of Title I and §§ 201.70–201.71, concerning the selection of children to be served by Title I projects;

(3) Section 124(a) (Purpose of program) of Title I, describing the purpose of Title I projects;

(4) Section 124(b) (Assessment of educational need) of Title I and §§ 201.100–201.105, containing requirements for the assessment of educational needs;

(5) Section 124(d) (Sufficient size, scope, and quality) of Title I and 34 CFR 200.51, containing requirements concerning the size, scope, and quality of Title I projects;

(6) Section 124(l) (Training of educational aides) of Title I and 34 CFR 200.60, containing requirements for the training of education aides; and

(7) Section 126(c) (Federal funds to supplement, not supplant regular non-Federal funds) of Title I and §§ 201.130–201.135 requiring the use of Title I funds to supplement, not supplant non-Federal funds that would otherwise be available.

(Sec. 130(a), 20 U.S.C. 2740(a))

§ 201.81 Determining the eligibility of private school children.

(a) Title 34 CFR Part 76.651(a)(2) covers the responsibility of SEAs and LEAs to provide services to eligible private school children. Eligible students under Part 201 include educationally deprived children who reside in a project area selected under §§ 201.60–201.61 or §§ 201.63–201.66.

(b) An LEA shall adopt procedures for identifying and selecting for participation in a Title I project those private school children who satisfy criteria identical or comparable to those adopted by the LEA for public school children under §§ 201.101–201.103.

(c) If it is impractical for an LEA to conduct Title I projects for educationally deprived children from the project area who are enrolled in private schools located in other LEAs, the LEA may arrange with the other LEAs to provide Title I services for those children.

(Sec. 130(a), 20 U.S.C. 2740(a))

§ 201.82 Prohibition concerning noninstructional duties.

Limitations on the use of personnel paid with program funds are contained in 34 CFR 76.659–76.660. In addition, Title I personnel who provide services in private schools may not perform the noninstructional duties permitted under 34 CFR 200.61.

(Sec. 130(a), 20 U.S.C. 2740(a); Sec. 1004 of ESEA, 20 U.S.C. 3384)

§§ 201.83–201.89 [Reserved]

By-Pass Provisions

Note.—These by-pass provisions refer to "equitable services" which means the same as "comparable benefits" in 34 CFR 76.654.

§ 201.90 General standard for by-pass actions.

(a) Except as provided in paragraph (b) of this section, the Secretary by-passes an LEA responsible for providing Title I services to educationally deprived children in private schools if—

(1) The Secretary determines that the LEA has substantially failed to provide for the participation of these private school children on an equitable basis; or

(2) The LEA is prohibited by law from providing for this participation.

(b) The Secretary may decide not to implement a by-pass if—

(1) The number of private school children in the LEA who would participate is fewer than 10; and

(2) The by-pass would result in the wasteful and extravagant expenditure of Title I funds.

(Sec. 130(b), 20 U.S.C. 2740(b))

§ 201.91 Secretary's procedures for by-pass actions.

Before taking any final by-pass action under § 201.95, the Secretary provides the LEA and SEA with—

(a) Written notice of the Secretary's intent to by-pass the LEA. This notice—

(1) Indicates the reasons for the by-pass;

(2) Advises the LEA and SEA that, within 45 days, they may—

(i) Submit written objections to the proposed by-pass; and

(ii) Request in writing the opportunity for a hearing to show cause why the by-pass should not be implemented; and

(3) Is sent by certified mail with a return receipt requested; and

(b) An opportunity to appear at a hearing before the Secretary or the Secretary's designee to show cause why the by-pass should not be implemented.

(Sec. 130(b)(4)(A), 20 U.S.C. 2740(b)(4)(A))

Note.—Sections 201.92–201.93 governing show cause hearings for by-pass actions will be published separately as proposed regulations.

§ 201.94 Judicial review of by-pass actions.

If an LEA or SEA is dissatisfied with the Secretary's final action after a proceeding under §§ 201.91–201.93, it may, within 60 days after receiving notice of that action, file a petition for review with the United States court of appeals for the circuit in which the State is located.

(Sec. 130(b)(4)(B), 20 U.S.C. 2740(b)(4)(B))

§ 201.95 Effect of a by-pass action.

If, under the procedures in §§ 201.90–201.94, an LEA is found to have substantially failed to provide or is prohibited from providing for the participation of private school children on an equitable basis, the Secretary—

(a) Waives the LEA's responsibility for providing the Title I services required under §§ 201.80–201.82;

(b) Arranges for Title I services that meet the requirements in §§ 201.80–201.82; and

(c) Deducts the cost of these services, including the administrative cost of arranging for these services, from the Title I allocation of the LEAs in which the private school children reside or from the SEA, if the Secretary decides this deduction is appropriate.

(Sec. 130(b), 20 U.S.C. 2740(b))

§ 201.96 Withholding funds pending final resolution of a by-pass action.

Pending the final resolution of an investigation or complaint that could result in a by-pass action, the Secretary may withhold from the allocation of the affected SEA or LEA the amount the Secretary estimates is necessary to pay the cost of the services referred to in § 201.95.

(Sec. 130(b)(3)(B), 20 U.S.C. 2740(b)(3)(B))

§ 201.97 Continuation of the by-pass until the LEA complies.

Any by-pass action by the Secretary continues until the Secretary determines that there will no longer by any failure or inability on the part of the LEA that is being by-passed to meet the requirements of §§ 201.80–201.82.

(Sec. 130(b)(3)(C), 20 U.S.C. 2740(b)(3)(C))

§§ 201.98–201.99 [Reserved]

Subpart G—Needs Assessment

§ 201.100 Purpose of the required assessment of educational need.

An LEA may receive Title I assistance only if it conducts an annual assessment of educational need, consistent with §§ 201.101–201.103, that generates data from which the LEA shall—

(a) Identify educationally deprived children in all eligible attendance areas and eligible schools;

(b) Identify the general instructional areas on which the project will focus;

(c) Identify educationally deprived children in the greatest need of special assistance in the instructional areas selected by the LEA; and

(d) Determine, with sufficient specificity to result in the development of highly effective projects, the special educational needs of children who are selected to participate.

(Sec. 124(b), 20 U.S.C. 2734(b); H. Rept. 1137, 95th Cong., 2d Sess. 23 (1978))

§ 201.101 Identification of educationally deprived children.

Using existing and—to the extent possible—objective data, an LEA shall identify educationally deprived children in—

(a) All school attendance areas that are eligible to receive Title I assistance under § 201.51; and

(b) All schools that are eligible to be project schools under § 201.52.

(Sec. 124(b), 20 U.S.C. 2734(b))

§ 201.102 Identification of general instructional areas and needs.

An LEA shall identify the general instructional areas on which the project will focus, including—

(a) The grade levels to be served; and

(b) The types of educational needs to be addressed.

(Sec. 124(b), 20 U.S.C. 2734(b); H. Rept. 1137, 95th Cong., 2d Sess. 23 (1978))

§ 201.103 Selection of children to participate in a project.

(a) After completing the procedures in §§ 201.101–201.102 an LEA shall use specified criteria and—to the extent possible—objective data to select first for participation in a project—

(1) Those educationally deprived children who are in the greatest need of assistance in the instructional areas identified under § 201.102; or

(2) Those children who were in greatest need of assistance in a previous year and are still educationally deprived.

(b) In selecting children, an LEA must also meet the supplement, not supplant requirements in §§ 201.130–201.143.

(c) The LEA may use Title I funds to obtain the objective data referred to in paragraph (a) of this section, but it may not use Title I funds for the cost of identifying children under § 201.101.

(Sec. 124(b), 20 U.S.C. 2734(b); H. Rept. 1137, 95th Cong., 2d Sess. 24 (1978))

§ 201.104 Determination of the special educational needs of participating children.

After selecting children for participation in a Title I project, according to the provisions in § 201.103, an LEA shall use specified criteria and—to the extent possible—objective data to—

(a) Identify in detail the precise educational needs of the children selected to participate in the project;

(b) Determine whether certain special educational needs are best addressed through noninstructional support services; and

(c) Identify, to the extent possible, factors that have contributed to the educational deprivation of the children selected to participate.

(Sec. 124(b), 20 U.S.C. 2734(b))

§ 201.105 Establishment of educational objectives and instructional strategies.

(a) Based on the results of the procedures in §§ 201.101–201.104, an LEA shall develop specific—

(1) Educational objectives for its Title I project; and

(2) Types of services and instructional strategies to achieve those objectives.

(b) An LEA is not required to use any particular instructional strategy in its Title I project.

(Sec. 124(b), 20 U.S.C. 2734(b))

§§ 201.106–201.109 [Reserved]

Subpart H—Fiscal Requirements

Maintenance of Effort

§ 201.110 Maintenance of effort requirement.

An LEA must maintain fiscal effort as required by section 126(a) (Maintenance of effort) of Title I and 34 CFR 200.90, unless the LEA receives a waiver from the Secretary under 34 CFR 200.91.

(Sec. 126(a), 20 U.S.C. 2736(a))

Excess Costs

§ 201.111 Excess costs requirement.

An LEA shall use Title I funds only for excess costs, as required by section 126(b) (Excess costs) of Title I and 34 CFR 200.93–200.95.

(Sec. 126(b), 20 U.S.C. 2736(b))

Comparability

§ 201.112 Basic standards for determining comparability of services.

(a) Except as provided in paragraph (b) of this section and in the exclusions in § 201.118, an LEA may receive Title I funds only if it uses State and local funds in schools serving project areas and in school attendance areas that have been skipped under § 201.65 to provide services that, taken as a whole, are at least comparable to services being provided in school attendance areas in the LEA that are not receiving Title I assistance.

(b) If the LEA selects all its school attendance areas as project areas, the LEA may receive Title I funds only if it uses State and local funds—except those excluded under § 201.118—to provide services that, taken as a whole, are substantially comparable in each school serving a project area.

(Sec. 126(e), 20 U.S.C. 2736(e); (Sec. 122(e), 20 U.S.C. 2732(e)))

§ 201.113 Submission of comparability reports.

(a) An LEA, except one described in paragraph (b) of this section, shall submit to its SEA on or before December 1 of each fiscal year a report concerning its compliance with the criteria for determining comparability in § 201.116.

(b) Except as provided in paragraph (c) of this section, the following types of LEAs are not required to submit the report referred to in paragraph (a) of this section:

(1) An LEA that receives at least 95 percent of its educational funds from Federal sources.

(2) An LEA that operates only one school serving children in the grade levels at which Title I services are provided.

(3) An LEA that—

(i) Was not required, as of November 1, 1978, to file a report concerning comparability; and

(ii) Does not have any grade span groupings or size groupings under § 201.51 that include both project areas and nonproject areas.

(c) The Secretary may require an LEA that qualifies for an exemption under paragraph (b)(3) of this section to submit the report referred to in paragraph (a) of this section, if the Secretary has reason to question whether the LEA is in compliance with the comparability requirements in §§ 201.112–201.122.

(d) An LEA that is currently relieved of the obligation to file a comparability report because it qualifies for an exemption under paragraph (b)(3) of this section must still—

(1) Comply with the comparability requirements in §§ 201.112–201.122; and

(2) Maintain records that demonstrate that the LEA is in compliance with those comparability requirements.

(Sec. 126(e), 20 U.S.C. 2736(e))

§ 201.114 Data to be included in a comparability report.

(a) An LEA that is required to submit a comparability report under § 201.113 shall sumbit a report that—

(1) Is in the form prescribed by the SEA;

(2) Contains the information that the SEA needs to make the comparability determinations required under § 201.116; and

(3) Includes the data required under paragraph (b) and (c) of this section.

(b)(1) If the LEA has both project area schools and nonproject area schools, the LEA's comparability report must include the data described in paragraph (c) of this section—

(i) For each school serving a project area or school attendance area that has been skipped under § 201.65, unless the school is exempt under paragraph (d) of this section, and

(ii) On a combined basis for all other schools—that is, nonproject area schools—serving corresponding grades.

(2) If all schools in the LEA serve project areas, the LEA's comparability report must include the data described in paragraph (c) of this section—

(i) For each school serving a project area, unless the school is exempt under paragraph (d) of this section; and

(ii) On a combined basis for those schools serving project areas with the lowest precentages or numbers of children from low-income families as determined under § 201.116(b).

(c) Except as provided in § 201.118, the LEA shall include the following data for each school and combination of schools as required by paragraph (b)(1) or (b)(2) of this section:

(1)(i) The number of children actually enrolled (less than full-time students must be counted on a full-time equivalency basis); or

(ii) If State or local law specifies that different levels of State or local support be provided to certain categories of children, age groupings, or grade levels and if the SEA approves, the number of children enrolled weighted by multiplying (A) the actual number of children enrolled by (B) the rate specified for each category of children, age grouping or grade level.

(2) The number of instructional staff (determined on a full-time equivalency basis), as defined in § 201.4 who are regularly assigned to the school or schools and paid with State and local funds.

(3)(i) The total amount of the annual salaries of the instructional staff (determined on a full-time equivalency basis) minus (ii) the amount of those salaries based on length of service.

(4)(i) The number of children enrolled, as reported under paragraph (c)(1) of this section, divided by (ii) the number of instructional staff, as reported under paragraph (c)(2) of this section.

(5)(i) The amount of the annual salaries for instructional staff, as reported under paragraph (c)(3) of this section, divided by (ii) the number of children enrolled, as reported under paragraph (c)(1) of this section.

(d) LEA is not required to include in its comparability report a school with an enrollment of 100 or fewer children, if the LEA submits an assurance to the SEA that it will allocate its staff to that school without regard to the availability of Title I funds.

(Sec. 126(e), 20 U.S.C. 2736(e))

§ 201.115 The date on which the data included in the comparability report must be collected.

The LEA shall collect the data required under § 201.114 as of the date specified by the SEA. In any case, that date may not be later than November 1 of each year.

(Sec. 126(e), 20 U.S.C. 2736(e))

§ 201.116 Criteria for determining comparability of services.

(a) *Criteria that apply if some schools serve project areas and other schools serve school attendance areas that do not receive Title I assistance.* An LEA meets the comparability requirements in § 201.112(a) if the SEA properly determines, for schools serving corresponding grade levels as provided under § 201.117, that—

(1) The average number of children enrolled per instructional staff member for each school serving a project area or school attendance area that has been skipped under § 201.65 is not more than 105 percent of the average number of children enrolled per instructional staff member in schools serving school attendance areas in the LEA that are not receiving Title I assistance and were not skipped under § 201.65; and

(2) The average per child expenditure of State and local funds for instructional staff in each school serving a project area or school attendance area that has been skipped under § 201.65 is not less than 95 percent of the average per child expenditure of State and local funds for instructional staff in schools serving school attendance areas in the LEA that are not receiving Title I assistance and were not skipped under § 201.65.

(b) *Criteria that apply if all schools serve project areas.* The LEA meets the comparability requirement in § 201.112(b) if, for corresponding grade levels as provided under § 201.117, both of the following conditions prevail:

(1) In each school serving a project area, the average number of children enrolled per instructional staff member is not more than 105 percent of the average number of children enrolled per instructional staff member in the group of schools serving those project areas with the lowest percentages or numbers of children from low-income families. This group of schools may not include more than one-half of all schools serving project areas.

(2) In each school serving a project area, the average per child expenditure of State and local funds for instructional staff is not less than 95 percent of the average per child expenditure of State and local funds for instructional staff in the group of schools serving those project areas with the lowest

percentages or numbers of children from low-income families. This group of schools may not include more than one-half of all schools serving project areas.

(Sec. 126(e), 20 U.S.C. 2736(e))

§ 201.117 Grouping schools by corresponding grade levels.

(a) For the purpose of demonstrating compliance with the comparability requirements in §§ 201.112–201.116, an LEA shall—subject to paragraphs (b), (c), and (d) of this section—group all of its schools by corresponding grade levels in up to three groups.

(b) If the LEA has schools that serve eight or more grades above kindergarten, the LEA may consider those schools to be a separate group in addition to the groups determined under paragraph (a) of this section.

(c)(1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, if one school has an enrollment for a particular grade span that is at least two times that of another school, the LEA may divide—providing it can justify its division under paragraph (c)(4) of this section—the schools in that span into two groups:

(i) One group for the schools with the larger enrollments.

(ii) One group for the schools with the smaller enrollments.

(2) An LEA that has schools with enrollments of 100 or fewer students shall exclude those schools in making a determination of the size of the smallest school.

(3) An LEA may not use the procedure in paragraph (c)(1) of this section to divide a school into two groups if that division would have the effect of exempting any school from compliance with the comparability requirements. However, if this restriction requires an LEA to compare a school with an enrollment for a particular grade span of at least two times that of the school with which it is being compared, the LEA may, with approval of the SEA, weight the enrollments in one or both schools to provide for a more equitable comparison as long as such weighting is consistent with State standards and practices.

(4) In justifying the division permitted in paragraph (c)(1) of this section, the LEA or SEA shall indicate why the different sizes of the schools require different expenditures or pupil-teacher ratios.

(d) Except as provided in paragraphs (b) and (c) of this section, in grouping its schools as required by paragraph (a) of this section, an LEA shall meet the following requirements:

(1) An LEA serving seven or fewer grade levels above kindergarten is limited to one group.

(2) An LEA serving eight or nine grade levels above kindergarten is limited to two groups.

(3) An LEA serving any levels from grades 6 through 12, but only those levels, is limited to two groups if the LEA serves five or more grade levels, and to one group if the LEA serves four or fewer grade levels.

(4) If a school serves grades in more than one group, the LEA shall include that school—

(i) In the group with which the school has the most grade levels in common; or

(ii) In the group that includes the lower grade levels, if the school has the same number of grade levels in common with two or more groups.

(Sec. 126(e), 20 U.S.C. 2736(e))

§ 201.118 Exclusions from the excess costs and comparability requirements.

(a) *General standard.* Subject to the requirements in this paragraph and advance determinations under paragraph (e) or (f) of this section, an LEA may exclude, for the purpose of determining compliance with the comparability requirements in §§ 201.112–201.117 and the excess costs requirements in 34 CFR 200.93–200.95—

(1) State and local funds spent in carrying out a special program, as defined in paragraph (b) of this section, or a State phase-in program, as defined in paragraph (c) of this section; and

(2) The FTE number of children and staff in those programs.

(b) *Special program defined.* For purposes of this section, a special program is—

(1) A State compensatory education program that—

(i) The Secretary has determined in advance, under paragraph (e) of this section, meets the requirements of paragraph (d) of this section; and

(ii) The SEA determines is being implemented by the LEA in accordance with paragraph (d) of this section;

(2) A State compensatory education program that—

(i) The Secretary has determined in advance, under paragraph (e) of this section, does not satisfy the requirements of paragraph (d) of this section; but

(ii) The Secretary has determined permits the LEA to use the special State funds in accordance with paragraph (d) of this section, provided that—

(A) The LEA designs a program that the SEA determines in advance, under paragraph (f) of this section, meets the requirements of paragraph (d) of this section; and

(B) The SEA determines that the LEA will implement the program in accordance with paragraph (d) of this section;

(3) A local compensatory education program that—

(i) The SEA has determined in advance, under paragraph (f) of this section, meets the requirements of paragraph (d) of this section; and

(ii) The SEA determines is being implemented in accordance with paragraph (d) of this section; or

(4)(i) A bilingual program for children of limited proficiency in the English language; or

(ii) A special education program for handicapped children or children with specific learning disabilities.

(c) *State phase-in program defined.* (1) For purposes of this section, a State phase-in program is a program that—

(i) The Secretary has determined in advance, under paragraph (e) of this section, meets the requirements in paragraph (c)(2) of this section; and

(ii) The SEA determines will be implemented by the LEA in accordance with paragraph (c)(2) of this section.

(2) A State education program that is being phased into full operation meets the requirements of this section if—

(i) The program is authorized and governed specifically by State law;

(ii) The purpose of the program is to provide for the comprehensive and systematic restructuring of the total educational environment at the level of the individual school;

(iii) The program is based on objectives, including performance objectives, related to educational achievement and is evaluated in a manner consistent with those objectives;

(iv) Parents and school staff are involved in comprehensive planning, implementation, and evaluation of the program;

(v) The program will benefit all children in a particular school or grade span within a school;

(vi) Schools participating in a program describe, in an individual school plan, program strategies for meeting the special education needs of educationally deprived children;

(vii) At all times during the phase-in period, at least 50 percent of the schools participating in the program are the schools serving project areas that have the greatest number or percentage of educationally deprived children or children from low-income families;

(viii) State funds made available for the phase-in program will supplement, not supplant State and local funds that would, in the absence of the phase-in program, have been provided for schools participating in this program;

(ix) For purposes of complying with the preceding requirements in

paragraphs (c)(2)(i) through (viii) of this section, the LEA is separately accountable to the SEA for any funds spent for the program;

(x) The LEAs carrying out the program are complying with the preceding requirements in paragraphs (c)(2)(i) through (ix) of this section; and

(xi) The phase-in period of the program is not more than six school years. However, if the phase-in period for a program began before November 1, 1978, the phase-in period is considered to have begun on November 1, 1978.

(d) *State and local compensatory education program that is similar to Title I.* A State or local educational program meets the requirements of this paragraph and is considered to be similar to the Title I program if—

(1) All children participating in the program are educationally deprived;

(2) The program is based on performance objectives related to educational achievement and is evaluated in a way that is consistent with those objectives;

(3) The program provides supplementary services designed to meet the special educational needs of the children who are participating;

(4) The LEA keeps and affords access to whatever records are necessary to verify compliance with the preceding requirements in paragraphs (d)(1) through (3) of this section;

(5) The SEA monitors performance under the program to ensure that the LEA meets the preceding requirements in paragraphs (d)(1) through (4) of this section.

(e) *Advance determination by the Secretary. (1)* If requested by an SEA, the Secretary makes an advance determination of whether—

(i) A State program described in paragraph (b)(1) or (b)(2) of this section meets the requirements in paragraph (d) of this section; or

(ii) A State phase-in program described in paragraph (c)(1) of this section meets the requirements in paragraph (c)(2) of this section.

(2) Before making an advance determination, the Secretary requires the SEA to submit copies of the applicable provisions of State law, together with all relevant rules, orders, guidelines, interpretations, and other information that the Secretary may need in order to make the determination.

(3) If there is a significant change in the applicable State law or implementation of the State program for which an advance determination is being sought or has been made, the SEA shall promptly submit those changes to the Secretary.

(4) The Secretary makes an advance determination in writing and includes a statement of the reasons for the determination.

(f) *Advance determination by an SEA.* (1) If requested by an LEA, its SEA shall make an advance determination of whether—

(i) An LEA program described in paragraph (b)(2) of this section meets the requirements in paragraph (d) of this section; or

(ii) An LEA program described in paragraph (b)(3) of this section meets the requirements in paragraph (d) of this section.

(2) Before making an advance determination, the SEA shall require the LEA to submit copies of the applicable provisions of local law, together with all relevant rules, orders, guidelines, interpretations, and other information the SEA may need in order to make the determination.

If there is a significant change in the applicable local law or implementation of the program for which an advance determination is being sought or has been made, the LEA shall promptly submit those changes to the SEA.

(4) Each advance determination that the SEA makes must be in writing and must include a statement of the reasons for the determination.

(Sec. 131, 20 U.SC. 2751)

§ 201.119 Required annual assurance.

On or before July 1 of each year covered by a project application, an LEA shall submit to its SEA as part of the application an assurance that the LEA will maintain comparability of State and local services in schools serving attendance areas that were served by the LEA's Title I project during the preceding fiscal year.

(Sec. 126(e), 20 U.S.C. 2736(e))

§ 201.120 Maintaining comparability.

(a) At least once during the period January 1 through April 30, an LEA shall determine whether it is maintaining the comparability required by §§ 201.112–201.119.

(b) Except as provided in paragraph (c) of this section, an LEA shall make whatever adjustments are necessary to maintain the comparability required by §§ 201.112–201.119.

(c) With prior approval of the SEA, an LEA experiencing high student mobility need not make the adjustments required by paragraph (b) of this section unless—

(1) The average number of children enrolled per instructional staff member in any school is more than 110 percent of the LEA's comparability average as determined under § 201.116 (a)(1) or (b)(1); or

(2) The average per child expenditure of State and local funds for instructional staff in any school is less than 90 percent of the LEA's comparability average as determined under § 201.116 (a)(2) or (b)(2).

(Sec. 126(e), 20 U.S.C. 2736(e))

§ 201.121 Comparability data must be for the same date.

All data that an LEA uses in a given comparability report must reflect conditions as of the same date on which the LEA bases the comparability.

(Sec. 126(e), 20 U.S.C. 2736(e))

§ 201.122 Retention of records concerning comparability.

An LEA that is required to file a comparability report under § 201.113 shall—

(a) Keep all records, worksheets, and documents from which it derived that data included in each comparability report, determination regarding maintenance of comparability, and request for advance determination for the period specified in 34 CFR 200.140;

(b) File, index, and maintain the records required under paragraph (a) of this section so that they may be reviewed easily by local, State, and Federal officials; and

(c) Make the records and documents referred to in paragraph (a) of this section available to parents, teachers, and other persons in accordance with 34 CFR 200.141 and to State and Federal auditors in accordance with 34 CFR 200.142.

(Sec. 126(e), 20 U.S.C. 2736(e))

§ 201.123 Actions to be taken by an SEA if an LEA violates the comparability requirements.

(a) Except as provided in paragraph (b) of this section, an SEA shall, within 30 days of discovering that any school serving a project area is in violation of the comparability requirements in section 126(e) of Title I and §§ 201.112–201.117, but not later than January 1 of the fiscal year involved—

(1) Initiate a withholding proceeding under 34 CFR 200.200 and suspend all further Title I payments to the LEA under 34 CFR 200.200(c); or

(2) Enter into a compliance agreement with the LEA under 34 CFR 200.210–200.214.

(b) The SEA may not take any compliance action against the LEA under paragraph (a) of this section if—

(1) The LEA files with the SEA a report as of December 1 of the fiscal year involved that shows that one or more schools are in violation of the comparability requirements; and

(2) The LEA files a revised comparability report with the SEA showing that, as of a date no later than December 1 of that fiscal year, the violation has been corrected.

(c)(1) Except as provided in paragraph (c)(2) of this section, if the LEA does not achieve comparability by December 1, the SEA shall ensure that none of the obligations incurred by that LEA during the period when the LEA was not in compliance with the comparability requirements is charged to Title I.

(2) If the LEA enters into a compliance agreement with the SEA before December 1 and fully complies with the terms of that agreement—

(i) The deadline for achieving comparability may be extended until the date specified in the agreement; and

(ii) The LEA is not liable for the Title I obligations it incurred in noncomparable schools during the fiscal year involved and prior to the date specified in the compliance agreement.

(d) If an LEA determined to be in violation of the comparability requirements fails to submit to its SEA by March 1 of the fical year involved a revised comparability report that demonstrates full compliance with the comparability requirements, the SEA shall, under the procedures in § 201.38, reallocate the balance of the LEA's unobligated Title I funds to other LEAs in the State that are in full compliance.

(e) Within 30 days of discovering that an LEA has failed to maintain comparability as required by § 201.120, an SEA shall—

(1) Initiate a withholding proceeding under 34 CFR 200.200 and spend all further Title I payments to the LEA under 34 CFR 200.200(c); or

(2) Enter into a compliance agreement with the LEA under 34 CFR 200.210–200.214.

(Sec. 126(e), 20 U.S.C. 2736(e))

§ 201.124 Amount of funds that an SEA shall refund for a violation of the comparability requirement.

(a) Except as provided in paragraph (e) of this section, if the Secretary or an SEA finds, on the basis of an audit, that an LEA failed to comply with the comparability requirements in section 126(e) of Title I and §§ 201.112–201.123, the SEA shall refund to the Department the total amount of Title I funds spent to operate a project in each noncomparable school of the LEA during the period of noncomparability. These funds must include—

(1) All of the Title I expenditures directly attributable to the project in each noncomparable school—that is, direct costs, including salaries, fringe benefits, materials and supplies, equipment, and transportation;

(2) The prorated share, as computed under paragraph (b) of this section, of all the Title I expenditures that are made on a shared basis with other schools serving project areas;

(3) The prorated share, as computed under paragraph (b) of this section, of all the LEA's districtwide Title I costs—that is, costs not directly attributable to any particular school, including expenditures for supervision of instructional and support staff, monitoring, evaluation, and training; and

(4) The prorated share of all the indirect costs attributable to the project, as computed under paragraph (c) of this section.

(b)(1) The SEA shall base the amount of shared costs under paragraph (a)(2) of this section that is charged to each noncomparable school on the ratio of (i) the direct costs charged to Title I for that school—as determined under paragraph (a)(1) of this section—to (ii) the total amount of direct costs for all the schools involved in the shared aspect of the project.

(2) For example, if noncomparable school A with direct costs of $30,000 and noncomparable school B with direct costs of $20,000 shared in a Title I service costing $10,000, school A would be charged with $6,000 (that is, $30,000/$50,000 or 60 percent of $10,000) and school B would be charged with $4,000 (that is, $20,000/$50,000 or 40 percent of $10,000). School A would be charged with a total of $36,000 for expenditures under paragraphs (a)(1) and (a)(2) of this section ($30,000 for direct costs plus $6,000 in shared costs). School B would be charged with a total of $24,000 under those paragraphs ($20,000 for direct costs plus $4,000 in shared costs).

(c)(1) For each noncomparable school, the SEA shall base the sum of the prorated share of the LEA's districtwide Title I costs under paragraph (a)(3) of this section and the prorated share of the indirect costs under paragraph (a)(4) of this section on the ratio of (i) the total of the direct and shared costs under paragraphs (a)(1) and (a)(2) of this section for each noncomparable school to (ii) the total of the direct and shared costs for all project locations.

(2) For example, if noncomparable school A had a total of $36,000 in direct and shared costs, and if the total of the direct and shared costs for all project locations in the LEA was $500,000, school A would be charged with 7.2 percent ($36,000/$500,000) of the LEA's total districtwide expenditures under paragraph (a)(3) of this section, and 7.2 percent of the total indirect costs under paragraph (a)(4) of this section. Thus, if the LEA had districtwide Title I indirect costs of $50,000, school A would be charged $47,200 (7.2 percent of $100,000) for districtwide expenditures under paragraph (a)(3) of this section and $3,600 (7.2 percent of $50,000) for indirect costs under paragraph (a)(4) of this section.

(d) Thus, under the examples in paragraphs (b)(2) and (c)(2) of this section, the total amount of Title I funds that must be refunded because school A did not meet the comparability requirement would be $46,800 ($30,000 in direct costs, $6,000 in shared costs, $7,200 in districtwide expenditures, and $3,600 in indirect costs).

(e) The SEA is not required to refund any amounts that the LEA spent to operate a project in any noncomparable school of the LEA during the period of noncomparability if—

(1) The comparability violation was revealed in a comparability report that the LEA filed with the SEA before December 1 of that fiscal year involved; and

(2) The LEA filed a revised comparability report with the SEA showing that, as of a date no later than December 1 of the fiscal year, the violation has been corrected.

(Sec. 126(e), 20 U.S.C. 2736(e); Sec. 185(b), 20 U.S.C. 2835(b); Sec. 452 of GEPA, 20 U.S.C. 1234a)

§ 201.125 SEA reports to the Secretary.

On or before May 1 of each year, an SEA shall report to the Secretary on—

(a) The number of LEAs that—

(1) Are operating Title I projects in the State;

(2) Submitted comparability reports under § 201.113; and

(3) Were required to submit revised comparability reports;

(b) Any actions that the SEA has taken under § 201.123(a);

(c) Any reallocations that the SEA has made under § 201.123(d); and

(d) Any refunds that the SEA has made, or will make, under § 201.124.

(Sec. 126(e), 20 U.S.C. 2736(e); Sec. 172, 20 U.S.C. 2822)

§§ 201.126–201.129 [Reserved]

Supplement, Not Supplant: General

§ 201.130 Introduction.

An LEA that receives Title I funds shall meet the requirements in each of the following:

(a) Section 201.132 (Assurance of equal opportunity);

(b) Sections 201.133–201.135 (Supplement, not supplant: regular State and local funds and State and local funds for State phase-in programs); and

(c) Sections 201.136–201.143 (Supplement, not supplant: special State and local programs).

(Sec. 126(c), 20 U.S.C. 2736(c); Sec. 126(d), 20 U.S.C. 2736(d); 42 U.S.C. 2000d–2000d–4; 20 U.S.C. 1681–1683; 29 U.S.C. 749)

§ 201.131 Definitions.

(a) "Educational setting" refers to the time and location in which educational services are provided.

(b) "Handicapped children" includes learning disabled and other

handicapped children who meet the definition in 34 CFR 104.3(j) or the definition in 34 CFR 300.5.

(c) "Intensity of instruction" refers to the following two elements in the provision of Title I instruction to a child in a particular class:

(1) The amount of time during which the child receives Title I instruction.

(2) The pupil-teacher ratio used in providing that instruction.

(d) "Limited proficiency in the English language" refers to children—

(1) Whose primary or home language is other than English; and

(2) Who lack sufficient proficiency in the English language to allow them the opportunity to participate effectively in school if the language of instruction is English.

(e) "Primary or home language other than English" means a language, other than English, to which any of the following applies:

(1) It is the first language of the child.

(2) It is the language normally used by the child.

(3) It is a language normally used in the child's home.

(f) "Regular funds" means those State and local funds that an LEA provides for the support of any educational program except the following—

(1) State phase-in programs; or

(2) Special program defined in § 201.118(b).

(g) "State phase-in program" means a program that satisfies the definition in § 201.118(c).

(h) "Special programs'."

(1) Are programs defined in § 201.118(b), including programs of the following types:

(A) State or local compensatory education programs.

(B) Bilingual programs for children with limited proficiency in the English language.

(C) Special education programs for handicapped children; and

(2) For purposes of §§ 201.130–201.143 (relating to supplementing and not supplanting of State or local funds), include programs which are supported by—

(A) State or local funds specifically appropriated to support special programs;

(B) State or local funds earmarked by the LEA to support special programs; or

(C) State or local funds available for the support of any educational programs which are used for purposes of providing programs of the types described in paragraph (h)(1) of this section.

(Sec. 126(c), 20 U.S.C. 2736(c); Sec. 126(d), 20 U.S.C. 2736(d); Sec. 131(b), 20 U.S.C. 2751(b); Sec. 132, 20 U.S.C. 2752)

§ 201.132 Assurance of equal opportunity.

(a) *General.* (1) An LEA may not, on the basis of race, sex, national origin, or handicap, exclude a child from participation in services provided with Title I funds.

(2) An LEA shall ensure that all children participating in a Title I project—including handicapped children and children with limited proficiency in the English language—are provided an equal opportunity to benefit from that project.

(b) *Services for handicapped children.* (1) Except as provided in paragraph (b)(2) of this section, the LEA shall use Title I funds, as necessary, to provide assistance and materials needed to ensure handicapped children an equal opportunity to participate in and benefit from Title I services.

Example. The LEA may use Title I funds to provide to a visually impaired participant large-print books used in a Title I reading class.

(2) However, the assistance provided by the LEA for handicapped children from Title I funds must be in addition to the assistance the LEA would otherwise be required to provide to accommodate the participation of handicapped children in non-Title I activities.

Example. If the LEA is required to provide a deaf child—under the child's individualized education program—with a sign language interpreter whose only job is to assist that one child's participation in the school's program, the LEA may not use Title I funds to pay for the services of an interpreter during the child's participation in a remedial class funded under Title I.

(c) *Services for children with limited proficiency in the English language.* (1) In providing Title I services, the LEA shall use Title I funds, as necessary, to provide assistance and materials needed to ensure participants with limited proficiency in the English language an equal opportunity to participate in and benefit from Title I services.

Example 1. An LEA designs a Title I project which provides special tutorial assistance for educationally deprived first through fourth graders through a resource center. Among the participating students are several who have Vietnamese as their primary or home language and who are limited in their proficiency in the English language. In order to provide these children with equal access to the Title I project, the LEA includes on the resource center staff a bilingual education teacher paid for using Title I funds. The LEA also provides bilingual instructional materials, comparable to those used for English speaking children, to assist the limited English proficiency children to learn to read in English. These materials are paid for using Title I funds. The LEA has acted in compliance with paragraph (c) of this section.

Example 2. An LEA designs a Title I project to provide an intensive program of training in reading as a replacement for the regular program of reading instruction provided to first and second graders. Among those children selected to participate in the Title I project are a number of children whose primary language is French and who are limited in their proficiency in the English language. These children ordinarily receive reading instruction from a second grade teacher who is assisted by a bilingual teacher aide. The intensive program of reading instruction may be provided to these children using a bilingual teacher and bilingual aide paid for using Title I funds. However, the LEA is also obliged to allocate to the Title I project an appropriate amount of non-Title I funds (including a proportionate share of the salary of both the teacher and bilingual aide) or an appropriate number of staff as required by 34 CFR 200.94.

(42 U.S.C. 2000d–2000d–4, 20 U.S.C. 1681–1683; 29 U.S.C. 794)

Supplement, Not Supplant: Regular State and Local Funds and State and Local Funds for State Phase-In Programs

§ 201.133 Introduction

(a) An LEA may use Title I funds only to supplement and, to the extent practical, increase the level of funds that would, in the absence of Title I funds, be made available from the following State and local sources for the education of children who participate in Title I projects:

(1) Regular funds; and

(2) Funds for State phase-in programs.

(b) In no case may the LEA use Title I funds to supplant the State and local funds referred to in paragraph (a) of this section.

(c) The LEA supplants State and local funds in violation of paragraph (b) of this section if it fails to comply with the requirements of either—

(1) Section 201.134 (Equitable distribution: regular funds and State phase-in programs); and

(2) Section 201.135 (Provisions of services required by law: regular funds and State phase-in programs).

(Sec. 126(c), 20 U.S.C. 2736(c))

§ 201.134 Equitable distribution: Regular funds and funds for State phase-in programs.

(a) An LEA shall distribute regular State and local funds and State and local funds for State phase-in programs in a way that does not discriminate against children who participate in Title I projects.

(b) *Presumption of violation.* An LEA is presumed to have violated the requirements of paragraph (a) of this section if it does any of the following:

(1) Uses Title I funds, in violation of 34 CFR 200.93–200.95 (related to excess costs), to pay more than the excess cost

of a Title I service that the LEA is providing as a substitute for a non-Title I service that participating children would otherwise receive.

(2) Systematically assigns a greater number of pupils per teacher in classes that include children who are receiving Title I services.

(3) Denies children who receive Title I services opportunities to receive State and locally funded regular programs or State phase-in services on the same basis as other children.

(Sec. 126(c), 20 U.S.C. 2736(c))

§ 201.135 Provision of services required by law: Regular funds and funds for State phase-in programs.

(a) *General rule.* (1) An LEA may not use Title I funds to provide services that the LEA is required to make available under—

(i) Federal, State, or local law;

(ii) A court order; or

(iii) A voluntary plan for compliance approved by the Office for Civil Rights, United States Department of Education.

(b) *Presumption of violation.* (1) The LEA is presumed to have violated the requirements in paragraph (a) of this section if the LEA—

(1) Has been subject to a court order or an approved voluntary plan for compliance specifying its obligations under Federal, State, or local law; and

(2) Uses Title I funds to provide services that it is required to provide, using State or local funds, under that court order or voluntary plan for compliance.

Example. An LEA that has been ordered by a court to provide specific remedial assistance to remedy the effects of past segregation is presumed to have violated the requirements of paragraph (a) of this section if it uses Title I funds for that purpose.

(Sec. 126(c), 20 U.S.C. 2736(c))

Supplement, Not Supplant: Special State and Local Programs

§ 201.136 Introduction.

(a) An LEA may use Title I funds only to supplement and, to the extent practical, increase the level of funds that would, in the absence of Title I funds, be made available from State and local sources for special programs for the education of educationally deprived children in the aggregate in Title I eligible school attendance areas and schools.

(b) In no case may an LEA use Title I funds to supplant the State and local funds referred to in paragraph (a) of this section.

(c) An LEA supplants special State and local funds in violation of paragraph (b) of this section if it fails to comply with the requirements of either—

(1) Section 201.137 (Equitable distribution: special State and local programs); or

(2) Section 201.139 (Provision of services required by law: special State and local programs (general)).

(Sec. 126(d), 20 U.S.C. 2736(d))

§ 201.137 Equitable distribution: Special State and local programs.

(a) *General rule.* Except as provided in paragraph (c) of this section, an LEA shall distribute State and local funds for special programs in a way that does not discriminate against educationally deprived children in the aggregate in Title I eligible school attendance areas or attending Title I eligible schools.

(b) *Demonstration of compliance.* In order to demonstrate that it has met the requirement of paragraph (a) of this section, the LEA shall—

(1) Provide the SEA with satisfactory assurances that it equitably distributes State and local funds for each special program of an appropriate level so as—

(i) To meet the special needs of educationally deprived children in Title I eligible school attendance areas and schools; and

(ii) To avoid discrimination against educationally deprived children in Title I eligible school attendance areas and schools; and

(2) Make available to its SEA and to others, on request—

(i) Evidence that it distributes a proportionate share of State and local funds available under each type of special program, as applicable, for the education of educationally deprived children in Title I eligible school attendance areas and schools;

Note.—The method for calculating proportionate share is contained in § 201.138, or

(ii) Evidence of the extent to which it distributes a proportionate share of State and local funds referred to in paragraph (b)(2)(i) of this section and evidence that its failure to provide a full proportionate share results from—

(A) A disproportionate distribution, within the LEA, of children whose handicaps require particularly high expenditures;

(B) A disproportionate distribution, within the LEA, of children whose instruction related to their lack of proficiency in the English language requires particularly high expenditures; or

(C) Distribution of State and local funds in compliance with the limited exemption described in paragraph (c) of this section.

(c)(1) *Limited exemption.* The LEA may use additional State and local funds for special programs and projects that are solely for educationally deprived children residing in non-project areas or attending non-project schools, including school attendance areas and schools ineligible for assistance under Title I, so long as the requirements of paragraph (c)(2) of this section are met.

(2) The LEA qualifies for the exemption described in paragraph (c)(1) of this section if all of the following conditions are satisfied:

(i) The LEA uses special State and local funds to provide a special program, as defined in § 201.118(b) (1) through (3), that qualifies under § 201.118 or exclusion from the comparability and excess cost requirements of §§ 201.111–201.123.

(ii) The amount of State and local funds provided by the LEA during a particular fiscal year in eligible school attendance areas and schools for purposes of the special program referred to in paragraph (c)(2)(i) of this section, when added to the amount of funds provided for the LEA's Title I project during that year, equals or exceeds the amount the LEA is eligible to receive for that fiscal year under section 111(a)(2) of Title I (referring to how the amount of a grant is determined), without regard to adjustments under section 193 of Title I (Adjustments where necessitated by appropriations).

(3) The amount of limited exemption provided in paragraph (c)(1) of this section is calculated as follows:

(i) *Step 1.* The LEA adds the following:

(A) Title I funds provided to project areas in the LEA; and

(B) State and local funds provided to project areas in the LEA for the special program referred to in paragraph (c)(2)(i) of this section.

(ii) *Step 2.* The LEA determines the number of children, in project areas, who participate in either—

(A) Title I projects; or

(B) The special program referred to in paragraph (c)(2)(i) of this section.

(iii) *Step 3.* The LEA divides the sum of the amounts in Step 1 by the number of children in Step 2.

(iv) *Step 4.* The LEA determines the number of children in non-project areas who are eligible to participate in the special program referred to in paragraph (c)(2)(i) of this section.

(v) *Step 5.* The LEA multiplies the amount in Step 3 by the number in Step 4. This is the amount of the limited exemption.

(Sec. 126(c), 20 U.S.C. 2736(c); Sec. 126(d), 20 U.S.C. 2736(d); Sec. 131(b), 20 U.S.C. 2751(b); Sec. 132, 20 U.S.C. 2752)

§ 201.138 Procedures for determining proportionate share.

(a) In order to calculate proportionate share for purposes of § 201.137(b)(2)(i) (related to equitable distribution), and LEA takes the following steps:

(1) *Step 1.* The LEA uses objective criteria, described in § 201.143(b)(2)(iii) to identify the total number of children in all of its school attendance areas who are eligible for each of the following types of special programs, if applicable:

(i) State compensatory education programs.

(ii) Local compensatory education programs.

(iii) Bilingual programs for children with limited proficiency in the English language.

(iv) Special education programs for handicapped children.

(2) *Step 2.* The LEA then identifies, in all of its title I eligible school attendance areas and schools, the total number of children who are eligible for each type of special program referred to in Step 1.

(3) *Step 3.* For each type of special program, the LEA divides the number of children identified in Step 2 by the number of children identified in Step 1. The result may be expressed as either a fraction or a percentage.

(4) *Step 4.* For each type of special program, the LEA lists the amount of funds that it proposes to distribute during the current fiscal year in all its school attendance areas.

(5) *Step 5.* For each type of special program, the LEA multiplies—

(i) The fraction or percentage calculated in Step 3; by

(ii) The amount of funds for that program listed in Step 4.

(iii) The result of this multiplication for each type of special program is the amount of funds that the LEA is obligated to provide, under that type of program, in Title I eligible school attendance areas and schools. This is the proportionate share.

(b) The LEA will be presumed to have provided a proportionate share of special funds for each type of special program so long as it expends, in Title I eligible school attendance areas, no less than an amount equal to 98 percent of the amount calculated in Step 5 for that special program.

Example 1. There are 200 children in an LEA who fail to achieve a passing score on a State minimum competency test. Of these children, 150 (75 percent) are in Title I eligible school attendance areas. $40,000 in State funds are available to the LEA to provide compensatory education to children who fail to pass the State minimum competency test. The LEA must expend a proportionate share—at least $30,000 (that is, 75 percent of $40,000)—for the benefit of eligible children in title I eligible school attendance areas.

Example 2. There are 1,000 handicapped children in an LEA. Of these children, 600 (60 percent) are in title I eligible school attendance areas and schools. The LEA expends $500,000 in State and local funds on special education programs for handicapped children. The LEA must spend a proportionate share—at least $300,000 (that is, 60 percent of $500,000)—for the benefit of handicapped children in title I eligible school attendance areas and schools, unless the LEA can demonstrate that its failure to do so results from a disproportionate distribution, within the LEA, of children whose handicaps require particularly high expenditures.

Example 3. There are 600 children with limited proficiency in the English language in an LEA. Of these children, 450 (75 percent) are in title I eligible school attendance areas and schools and have Spanish as their primary or home language. Of the 200 children who are not in Title I eligible school attendance areas or schools, 150 have Vietnamese as their primary or home language, and 50, who have just arrived in the United States, have Korean as their primary language. State and local funds for bilingual programs total $160,000. The LEA must spend a proportionate share—at least $120,000 (that is, 75 percent of $160,000)—for the benefit of children with limited proficiency in the English language in Title I eligible school attendance areas and schools, unless the LEA can demonstrate that the costs of providing services to the Vietnamese and Korean children, for example, are disproportionately high.

(Sec. 126(c), 20 U.S.C. 2736(c); Sec. 126(d), 20 U.S.C. 2736(d); Sec. 131(b), 20 U.S.C. 2751(b); Sec. 132, 20 U.S.C. 2752)

§ 201.139 Provision of services required by law: Special State and local funds (General).

(a) An LEA may not use Title I funds to provide special services—

(1) That the LEA is otherwise required to make available under Federal, State, or local law; and

(2) For which the LEA is required to pay using State or local funds.

(b) The LEA shall comply with the requirements of §§ 201.140–201.142, as applicable.

(Sec. 126(c), 20 U.S.C. 2736(c); Sec. 126(d), 20 U.S.C. 2736(d); Sec. 131(b), 20 U.S.C. 2751(b); Sec. 132, 20 U.S.C. 2752)

§ 201.140 Provision of services required by law: Special State and local programs (Handicapped children).

(a) *General rule.* An LEA may not use Title I funds to provide services that the LEA is required to make available under—

(1) Part B of the Education of the Handicapped Act, as amended by Pub. L. 94–142 (20 U.S.C. 1401 *et seq.*);

(2) Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 29 U.S.C. 706), as amended;

(3) The regulations governing the administration of either of those statutes; or

(4) A court order.

(b) *Models for compliance.* The SEA determines that the LEA does not violate the requirements in paragraph (a) of this section if the LEA satisfies the requirements described in paragraphs (c), (d), and (e) of this section, as applicable.

(c) *Common services and setting.* (1) The LEA provides Title I services with all of the following characteristics:

(i) The LEA designs its Title I project to address special needs resulting from educational deprivation, not needs relating to a child's handicapping condition.

(ii) The LEA sets overall project objectives that do not distinguish between handicapped and non-handicapped participants.

(iii) The LEA—

(A) Through the use of uniform criteria, selects children for participation on the basis of educational deprivation, not on the basis of handicap; and

(B) Selects as participating handicapped children only those who can reasonably be expected to make substantial progress toward accomplishing project objectives without the LEA's substantially modifying the educational level of the subject matter or the intensity of instruction.

(iv) The LEA provides Title I services in a common educational setting that includes significant numbers of non-handicapped children, as well as handicapped children, if any.

(v) The LEA provides Title I services at intensities taking into account the needs and abilities of individual participants but without distinguishing generally between handicapped and non-handicapped participants with respect to the intensity of instruction provided.

(2) Upon request, the LEA makes available—

(i) Information demonstrating that the Title I project is designed to address special needs resulting from educational deprivation, not needs relating to a child's handicapping condition;

(ii) Information demonstrating that overall project objectives do not distinguish between handicapped and non-handicapped participants;

(iii) Where the proportion of handicapped children participating in the LEA's Title I project is more than 15 percent greater than the proportion of handicapped children in the LEA's Title I eligible school attendance areas, information demonstrating that the LEA's method of selection has not resulted in the selection of children for

participation on the basis of handicap; and

(iv) Information explaining its basis for concluding that handicapped children participating in its Title I project can reasonably be expected to make substantial progress toward accomplishing project objectives without the LEA's substantially modifying the educational level of the subject matter or the intensity of instruction.

Example. An LEA plans a Title I project to increase children's reading proficiency by two grade levels. The LEA plans to accomplish this goal through intensified instruction in the form of tutorial assistance given several times a week in hour-long sessions using additional personnel. Children's eligibility for inclusion in the project is based on their classroom performance and reading achievement test scores.

Of the 100 children selected for participation in the project using these criteria, 10 (10 percent, a proportion approximately comparable to the percentage of handicapped children in the LEA's Title I eligible school attendance areas) are handicapped children with learning disabilities who receive special education in a resource room for portions of the school day. The LEA does not select for participation any child who would require substantial modification in the educational level of the subject matter or the intensity of instruction in order to make substantial progress toward accomplishing project objectives.

None of the small groups in which instruction is provided consists solely of learning disabled children, since it is possible to group these children (by age and instructional needs) with non-handicapped participants. Although individual handicapped and non-handicapped children receive additional time and attention to assist them to meet project objectives, handicapped children do not generally receive more intensified instruction than non-handicapped children as part of their tutorial sessions.

In this case, the LEA has designed its project to address special needs resulting from educational deprivation, not a handicapping condition, and has established project objectives that do not distinguish between handicapped and non-handicapped children. It has selected children using uniform criteria, and has not selected on the basis of handicap. The Title I services are provided in a common educational setting, which includes non-handicapped as well as handicapped children, using intensities of instruction that vary from child to child, but that are not substantially different for handicapped and non-handicapped children.

The SEA in this case determines that the LEA has complied with the requirements of paragraph (a) of this section.

(d) *Common services and separate setting.* (1) The LEA provides Title I services with all of the following characteristics:

(i) The services have those characteristics described in paragraphs (c)(1) (i) through (iii) of this section.

(ii) The services are provided to handicapped participants in a separate educational setting that does not include non-handicapped children so long as the requirements of paragraph (d)(3) of this section are met.

(iii) The LEA—

(A) Provides instruction in the separate setting at an intensity comparable to that provided to other participants in a common educational setting which includes significant numbers of non-handicapped children, as well as handicapped children, if any; or

(B) Demonstrates that its use of a different intensity of instruction is attributable to the limited number of participants for whom service in a separate educational setting is justified in accordance with paragraph (d)(3) of this section.

(2) Upon request, the LEA makes available—

(i) Information demonstrating that the Title I project is designed to address special needs resulting from educational deprivation, not needs relating to a child's handicapping condition;

(ii) Information demonstrating that overall project objectives do not distinguish between handicapped and non-handicapped participants, including information demonstrating that comparable Title I services or comparable per pupil expenditures for Title I services are afforded children who receive Title I services in a common educational setting which includes significant numbers of non-handicapped children, as well as handicapped children, if any;

(iii) Where the proportion of handicapped children participating in the LEA's Title I project is more than 15 percent greater than the proportion of handicapped children in LEA's Title eligible school attendance areas, information demonstrating that the LEA's method of selection has not resulted in selection of children for participation on the basis of handicap;

(iv) Information explaining its basis for concluding that handicapped children participating in its Title I project can reasonably be expected to make substantial progress toward accomplishing project objectives without the LEA's substantially modifying the educational level of the subject matter or the intensity of instruction; and

(v) Information demonstrating that LEA—

(A) Provides instruction in the separate setting at an intensity comparable to that provided to other participants; or

(B) Uses a different intensity of instruction attributable to the limited number of participants for whom service in a separate educational setting is justified in accordance with paragraph (d)(3) of this section.

(3) In its project application, the LEA justifies use of a separate educational setting by demonstrating that—

(i) Use of a separate educational setting is required because irreconcilable scheduling requirements preclude provision of Title I services—

(A) At the same time; or

(B) In the same location as Title I services are provided to other Title I participants;

(ii)(A) Participating handicapped children can reasonably be expected to make substantial progress toward accomplishing project objectives without substantial modification of the educational level of the subject matter or the intensity of instruction, but that

(B) The nature of the children's handicapping condition precludes participation in a Title I program including non-handicapped children; or

(iii) Use of a separate setting is—

(A) Necessary to meet project objectives effectively; and

(B) Approved in advance by the Department.

Example. An LEA designs a Title I project to teach remedial math skills to children in grades 4 through 6 in order to increase their performance by two grade levels. As a criterion for selection, the LEA uses children's performance on a math achievement test. Of the 100 children selected to participate—in this case, those who scored between the 5th and the 16th percentile on a math achievement test—10 are emotionally disturbed.

In its project application, the LEA demonstrates that, based on assessments prepared in connection with development of the handicapped children's individualized educational programs, including a review of their past performance, these children can reasonably be expected to make substantial progress toward accomplishing project objectives without substantially modifying the educational level of the subject matter or the intensity of instruction. The LEA also demonstrates that, in order to effectively meet project goals, the emotionally disturbed children, whose condition precludes instruction in a classroom with non-handicapped children at the usual 15-to-1 ratio, must receive instruction in a different location or at a different time.

The LEA has provided an adequate justification for serving the emotionally disturbed children in a separate educational setting and has demonstrated compliance with the requirements of paragraph (e)(3)(ii) of this section.

(e) *Intensified services and common setting.* (1) The LEA provides services

with all of the following characteristics—

(i) The services have those characteristics described in paragraphs (c)(1)(i) through (c)(1)(iv) of this section;

(ii) The services are provided using different intensities of instruction for handicapped and non-handicapped participants so long as the requirements of paragraph (e)(3) of this section are met.

(2) Upon request, the LEA makes available—

(i) Information demonstrating that the Title I project is designed to address special needs resulting from educational deprivation, not needs relating to a child's handicapping condition;

(ii) Information demonstrating that overall project objectives do not distinguish between handicapped and non-handicapped participants;

(iii) Where the proportion of handicapped children participating in the LEA's Title I project is more than 15 percent greater than the proportion of handicapped children in the LEA's Title I eligible school attendance areas, information demonstrating that the LEA's method of selection has not resulted in selection of children for participation on the basis of handicap;

(iv) Information explaining its basis for concluding that handicapped children participating in its Title I project can reasonably be expected to make substantial progress toward accomplishing project objectives without the LEA's substantially modifying the educational level of the subject matter or the intensity of instruction.

(3) In its project application, the LEA justifies use of different intensities of instruction by demonstrating that—

(i)(A) It has a substantial basis for concluding that the handicapped children participating in the Title I project can reasonably be expected to make substantial progress toward accomplishing project objectives without the LEA's substantially modifying the educational level of the subject matter or the intensity of instruction; and

(B) The services are provided as part of a replacement project involving handicapped children which satisfies the requirements of 34 CFR 200.94(f); or

(ii) Use of a separate setting is—

(A) Necessary to meet project objectives effectively; and

(B) Approved in advance by the Department.

Example. The LEA proposes to establish a replacement project in basic skills for third and fourth graders. The project is to run for two hours per day. The LEA proposes to include in its project 5 mildly mentally retarded children who ordinarily participate in regular classroom activities for 2 hours per day, but who would otherwise receive instruction in basic skills from a special education teacher during the other four hours of the day. The Title I project will replace two of the four hours of instruction by the special education teacher for these children.

The LEA provides information demonstrating that the five mildly mentally retarded children can reasonably be expected to make substantial progress toward meeting project objectives without the LEA's substantially modifying the educational level of the subject matter or the intensity of instruction.

A full-time teaching load for a teacher of special education is 15 students for 6 hours per day. Instruction of five students for 2 hours per day equals 1/9 FTE (5 students divided by 15 students per FTE times 2 hours divided by 6 hours per day teaching load). The LEA agrees to allocate 1/9 times the average salary for special education teachers in the district to be paid from non-Title I funds, to provide a part-time teacher aide who works exclusively with the handicapped children by giving them tutorial assistance two days a week during one of the two hours in which they participate in the Title I project.

The SEA approves the LEA's proposal as satisfying the requirements of paragraph (e)(3) of this section.

(Sec. 126(a), 20 U.S.C. 2736(c); Sec. 126(d), 20 U.S.C. 2736(d); Sec. 131(b), 20 U.S.C. 2751(b); Sec. 132, 20 U.S.C. 2752; 20 U.S.C. 1401; 29 U.S.C. 706)

§ 201.141 Provision of services required by law: Special state and local programs (children whose primary or home language is other than English)

(a) *General rule.* (1) An LEA may not use Title I funds to provide services that the LEA is required to make available under—

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4).

(ii) The regulations governing the administration of that statute; or

(iii) A court order.

(2)(i) The provisions of this section shall apply to LEAs whose primary language of instruction is not English.

(ii) In the case of LEAs of this type, the language the LEA ordinarily uses to provide instruction shall be deemed substituted for "English" wherever this word is used in this section.

(b) *Models for compliance.* The SEA determines that the LEA does not violate the requirements of paragraph (a) of this section if the LEA satisfies the requirements described in paragraphs (c), (d), (e), and (f) of this section, as applicable.

(c) *Court order, voluntary plan for compliance, or compliance review.* (1) The LEA satisfies the requirements of paragraph (a) if it has the characteristics described in paragraph (c)(2) or (c)(3) of this section.

(2) The LEA—

(i) Has been subject to a court order, or has entered into a voluntary plan for compliance specifying its obligations under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4); and

(ii) Uses Title I funds to provide only services other than those it is required to provide under this court order or voluntary plan for compliance.

(3) The LEA—

(i) Has, within the previous five years, been the subject of a review for compliance and has been found in compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4); and

(ii) Includes in its project application information demonstrating that it continues to use non-Title I funds to provide services provided at the time of the compliance review.

(d) *Common services and setting.* (1) The LEA provides Title I services with all of the following characteristics:

(i) The LEA designs its Title I project to address special needs resulting from educational deprivation, not needs relating solely to a child's having a particular primary or home language.

(ii) The LEA sets overall project objectives that do not distinguish between participants whose primary or home language is other than English and participants whose primary or home language is English.

(iii) Through the use of uniform criteria, the LEA selects children for participation on the basis of educational deprivation, not on the basis of their primary or home language.

(iv) The LEA provides Title I services in a common educational setting that includes significant numbers of children whose primary or home language is English, as well as children, if any, whose primary or home language is other than English.

(v) The LEA provides Title I services taking into account the needs and abilities of individual participants but without distinguishing generally between children whose primary or home language is other than English and children whose primary or home language is English, with respect to the intensity of instruction provided.

(2) Upon request, the LEA makes available—

(i) Information demonstrating that the Title I project is designed to address special needs resulting from educational deprivation, not needs relating solely to a child's having a particular primary or home language;

(ii) Information demonstrating that overall project objectives do not distinguish between participants whose primary or home language is other than

English and participants whose primary or home language is English;

(iii) Where the proportion of children whose primary or home language is other than English is more than 15 percent greater than the proportion of such children in the LEA's Title I eligible school attendance areas, information demonstrating that the LEA's method of selection has not resulted in selection of children for participation on the basis of their primary or home language; and

(iv) Information demonstrating that the LEA satisfies its obligations to provide Title I participants whose primary or home language is other than English with special instruction as required under Title VI of the Civil Rights Act of 1964, applicable regulations, or court order by—

(A) Using non-Title I funds to provide special instruction comparable to that provided to non-participating children; or

(B) Otherwise uses non-Title I funds to satisfy its obligations to provide participants whose primary or home language is other than English with special instruction.

Example. An LEA designs a project to increase by two grade levels the reading proficiency of children in grades 3 and 4 who score below the 25th percentile on reading achievement tests. It selects 200 participants, 120 of whom have Spanish as their primary or home language and who have varying degrees of proficiency in English, and 80 of whom have English as their primary or home language. The LEA provides instruction in a common educational setting as part of a program which includes children of both language backgrounds by using a bilingual aide to provide an in-class program of special assistance. All of the children receive individualized attention, as needed, to assist them to benefit from the instruction.

The LEA provides, upon request, information demonstrating that the proportion within the participant group of children with a Spanish-language background is approximately comparable to the proportion of similar children in the LEA's Title I eligible school attendance areas. It also provides information that all children who require special instruction under Title VI, regulations, or court order receive such instruction during part of the regular school day that is unaffected by the Title I program.

Since the LEA has designed its project, set common objectives, selected participants and provided instruction at a comparable intensity in a common educational setting including children with Spanish and English language backgrounds, the SEA determines that the LEA has complied with the requirements of paragraph (a) of this section.

(e) *Common services and separate setting.* (1) The LEA provides services with all of the following characteristics:

(i) The services have those characteristics described in paragraphs (d)(1) (i) through (iii) of this section.

(ii) The services are provided to participants whose primary or home language is other than English in a separate educational setting that does not include participants whose primary or home language is English so long as the requirements of paragraph (e)(3) of this section are met.

(iii) The LEA—

(A) Provides instruction in the separate setting at an intensity comparable to that provided to other participants in a common educational setting which includes significant numbers of children whose primary or home language is English, as well as children, if any, whose primary or home language is other than English; or

(B) Demonstrates that its use of a different intensity of instruction is attributable to the limited number of participants for whom service in a separate educational setting is justified in accordance with paragraph (e)(3) of this section.

(2) Upon request, the LEA makes available—

(i) Information demonstrating that the Title I project is designed to address special needs resulting from educational deprivation, not needs relating solely to a child's having a particular primary or home language;

(ii) Information demonstrating that overall project objectives do not distinguish between participants whose primary or home language is other than English and participants whose primary or home language is English, including information demonstrating that comparable Title I services or comparable per pupil expenditures for Title I services are afforded children who receive Title I services in a common educational setting which includes significant numbers of children whose primary or home language is English, as well as children, if any, whose primary or home language is other than English;

(iii) Where the proportion of children whose primary or home language is other than English is more than 15 percent greater that the proportion of such children in the LEA's Title I eligible school attendance areas, information demonstrating that the LEA's method of selection has not resulted in selection of children for participation on the basis of their primary or home language;

(iv) Information demonstrating that the LEA satisfies its obligations to provide Title I participants whose primary or home language is other than English with special instruction as required under Title VI of the Civil Rights Act of 1964, applicable regulations, or court order by—

(A) Using non-Title I funds to provide special instruction comparable to that provided to non-participating children; or

(B) Otherwise uses non-Title I funds to satisfy its obligations to provide participants whose primary or home language is other than English with special instruction; and

(v) Information demonstrating that—

(A) The LEA provides instruction in the separate setting at an intensity comparable to that provided to other participants; or

(B) The LEA's use of a different intensity of instruction is attributable to the limited number of participants for whom service in a separate educational setting is justified in accordance with paragraph (e)(3) of this section.

(3) In its project application, the LEA justifies use of a separate educational setting by demonstrating that—

(i) Use of a separate educational setting is required because irreconcilable scheduling requirements preclude provision of Title I services—

(A) At the same time; or

(B) In the same location as Title I services provided to other Title I participants;

(ii)(A) The program is a replacement program satisfying the requirements of 34 CFR 200.94(f); and

(B) The LEA provides assurances that comparable services or comparable per pupil expenditures for Title I services are afforded children who receive Title I services in a common educational setting which includes significant numbers of children whose primary or home language is English as well as children, if any, whose primary or home language is other than English; or

(iii) Use of a separate setting is—

(A) Necessary to meet project objectives effectively; and

(B) Approved in advance by the Department.

Example. The LEA selects 90 second graders to participate in a Title I basic skills program which will provide intensive instruction for three hours of the normal six hour school day. Thirty of the children have Vietnamese as their primary or home language, and lack proficiency in the English language. All of the children are drawn from second grade classes taught by regular teachers, assisted by teacher aides qualified in bilingual education. Both the teachers and the aides are assigned at a 25-to-1 pupil-instructor ratio. The aides assist both the Vietnamese- and English-speaking children on an as-needed basis.

The LEA proposes to divide the children into six classes of 15 students each. The Vietnamese-speaking children will be assigned to two of the classes, to allow them to receive instruction, where necessary, in Vietnamese so as to assist them in improving

their English-language skills as quickly as possible. These children will be instructed by a qualified bilingual education teacher, who will be assisted by a teacher aide. The other four classes will also be instructed by a teacher and a teacher aide.

In its project application, the LEA agrees to allocate to the title I project 1.8 times the average salary of a second grade teacher (90 students divided by 25 students per FTE instructor times .5 since the program is half-time only). It also assigns four teacher aides on a half-time basis to assist in the Title I project, since, as described in 34 CFR 200.94, it may allocate either funds or instructional staff. It also demonstrates that comparable services are provided to children receiving Title I services in a common educational setting, since those children also receive instruction from a teacher and teacher aide at a comparable pupil-teacher ratio.

The SEA concludes that the LEA has satisfied the requirements of paragraph (e)(3) of this section.

(f) *Intensified services and common setting.* (1) The LEA provides services with all of the following characteristics:

(i) the services have those characteristics described in paragraphs (d)(i) through (iv) of this section;

(ii) The services are provided using different intensities of instruction for children whose primary or home language is other than English and children whose primary or home language is English, so long as the requirements of paragraph (f)(3) of this section are met.

(2) Upon request, the LEA makes available—

(i) Information demonstrating that the Title I project is designed to address special needs resulting from educational deprivation, not needs relating solely to a child's having a particular primary or home language;

(ii) Information demonstrating that overall project objectives do not distinguish between participants whose primary or home language is other than English and participants whose primary or home language is English;

(iii) Where the proportion of children whose primary or home language is other than English is more than 15 percent greater than the proportion of such children in the LEA's Title I eligible school attendance areas, information demonstrating that the LEA's method of selection has not resulted in selection of children for participation on the basis of their primary or home language; and

(iv) Information demonstrating that the LEA satisfies its obligations to provide Title I participants whose primary or home language is other than English with special instruction as required under Title VI of the Civil Rights Act of 1964, applicable regulations or court order by—

(A) Using non-Title I funds to provide special instruction comparable to that provided to non-participating children; or

(B) Otherwise uses non-Title I funds to satisfy its obligations to provide participants whose primary or home language is other than English with special instruction.

(3) In its project application, the LEA justifies use of different intensities of instruction by—

(i)(A) Demonstrating that the services are part of a replacement program, involving children whose primary or home language is other than English, which satisfies the requirements of 34 CFR 200.94(f); and

(B) Including satisfactory assurances that it provides comparable special instructional services using non-Title I funds or expends a comparable per capital amount of non-Title I funds to provide participating children with special instruction as it does to provide such instruction to non-participating children whose primary or home language is other than English; or

(ii) Demonstrating that use of different intensities of instruction is—

(A) Necessary to meet project objectives effectively; and

(B) Approved in advance by the Department.

Example. An LEA selects 90 third and fourth graders to participate in a half-time basic skills program. Sixty of the children have English as their primary or home language. They are drawn from regular third and fourth grade classrooms having a 25 to 1 pupil teacher ratio. Teachers in these classrooms are unassisted by teacher aides. The other thirty children have Spanish as their primary or home language, and are very limited in their English proficiency. They are drawn from two classrooms in which the regular teacher is assisted by a bilingual teacher aide who is assigned to assist limited English proficient children at a 20 to 1 pupil-teacher ratio.

Under its Title I project, the LEA proposes to divide the 90 children into six classes of 15 children each. Five Spanish-speaking children who have limited proficiency in the English language are to be assigned to each of the six classes. Bilingual teacher aides will provide assistance to all the children, but will give particularly intensive tutorial assistance to the children whose primary language is Spanish.

In its project application, the LEA Provides assurances that its per capita expenditures for providing participating children whose primary or home language is other than English with special instruction as required under Title VI of the Civil Rights Act are comparable to expenditures for similar non-participating children (all would be assigned to a classroom with a bilingual teacher aide assigned to provide instruction at a 20 to 1 pupil-teacher ratio). The LEA also agrees to allocate to the Title I project 1.8 times the average salary for third and fourth grade teachers (90 students divided by 25 students per FTE teacher times .5 since the program is half-time only). In addition, it agrees to allocate .75 times the average salary of a bilingual teacher aide (30 students requiring bilingual instruction divided by 20 students per FTE bilingual teacher aide times .5 since the program is half-time only).

The SEA concludes that the LEA has satisfied the requirements of paragraph (f)(3) of this section.

(Sec. 126(c), 20 U.S.C. 2736(c); Sec. 126(d), 20 U.S.C. 2736(d); Sec. 131(b), 20 U.S.C. 2751(b); Sec. 132, 20 U.S.C. 2752; 42 U.S.C. 2000d–2000d–4; *Lau v. Nichols*, 414 U.S. 563 (1974)).

§ 201.142 Provision of services required by law: Special State and local programs (Compensatory education or other services required by State or local law).

(a) An LEA may not use Title I funds to provide compensatory education or other services that the LEA is required to make available under State or local law.

(b) However, the LEA may use Title I funds to supplement its expenditures for compensatory education or other required services if the LEA can demonstrate that—without the use of Title I funds—it is fully meeting its obligations under State or local law.

(c) The LEA can demonstrate that it is fully meeting its obligations under State law if—

(1) Appropriate State and local officials certify to the SEA that the LEA is meeting those obligations; and

(2) The LEA has supporting documentation available for review.

(d) The LEA can demonstrate that it is fully meeting its obligations under local law if—

(1) An appropriate local official certifies to the SEA that the LEA is meeting those obligations; and

(2) The LEA has supporting documentation available for review.

Example. An LEA's Title I project provides intensive reading instruction to children who have failed to pass a State minimum competency test. State law requires that special compensatory instruction be provided to those children as part of a program meeting the definition of special program in § 201.118(b). However, the law does not specify the level or intensity of instruction. The SEA, on the advice of the State Attorney General, certifies that LEAs within the State may satisfy the requirements of State law by providing children with a one-semester course in remedial English if that course meets at least three times per week and has a pupil-teacher ratio comparable to the LEA's normal pupil-teacher ratio. The LEA certifies that this type of special course is being provided for eligible children. The LEA may therefore use Title I funds to provide educationally deprived children in Title I eligible school attendance areas with additional class periods or remedial reading

or to provide—to children selected for participation in the Title I project—instruction using a reduced pupil-teacher ratio.

(Sec. 126(c), 20 U.S.C. 2736(c); Sec. 126(d), 20 U.S.C. 2736(d); Sec. 131(b), 20 U.S.C. 2751(b); Sec. 132, 20 U.S.C. 2752)

§ 201.143 Coordination.

An LEA may take into account and may coordinate State and local special programs, as defined in § 201.118(b), with projects funded under Title I if the LEA meets all of the following conditions:

(a) The LEA satisfies the requirements of—

(1) This part, including, but not limited to—

(i) §§ 201.132–201.143 (requirements that Title I funds be used to supplement, not supplant funds from State and local sources); and

(ii) §§ 201.65 and 201.71 (requirements related to the skipping of higher-ranked school attendance areas and schools and the skipping of children determined to be in greatest need of special assistance but receiving services of the same nature and scope from non-Federal sources); and

(2) Other applicable Federal requirements, such as the requirements of Part B of the Education of the Handicapped Act, 20 U.S.C. 1401, *et seq.*

(b)(1) The LEA satisfies the requirements of paragraph (b)(2) so as to ensure that educationally deprived children, in the aggregate, in eligible school attendance areas or attending eligible schools, receive at least the same level of special State and local funds that would have been available to such children in the absence of Title I.

(2)(i) The LEA develops a plan for distribution of special funds, based on objective criteria, as defined in paragraph (b)(2)(iii) of this section.

(ii) The LEA uses objective criteria to determine, in each of the following:

(A) Children.

(B) Schools.

(C) Grade spans.

(D) School attendance areas.

(iii) Objective criteria include any one or combination of the following:

(A) Direct indicators of educational need.

(B) A reasonable proxy for educational need; or

(C) Level of poverty.

(c) The LEA ensures that educationally deprived children who satisfy the objective criteria described in paragraph (b) of this section receive assistance under either Title I or under the special State or local program before any child who does not satisfy those objective criteria receives that type of assistance.

Example. An LEA has four school attendance areas, two of which are eligible for Title I assistance and two of which are not. The LEA designs a Title I project to provide special assistance in reading to children in the first quartile in reading achievement. It selects children for participation as required under Title I. One hundred children are selected in each of the two Title I eligible school attendance areas.

Under State law special funds are provided for the compensatory education of children from kindergarten through grade 6 who rank in the first and second quartile in reading achievement, through programs which meet criteria contained in § 201.118(b). The LEA desires to provide children eligible for assistance under this program with special reading instruction that costs $300 per participant.

The LEA develops a plan for distribution using the objective criteria specified by State law (reading achievement in the first and second quartile). The LEA determines that 200 children in each of the areas eligible for Title I and 50 children in each of the areas not eligible for Title I are eligible for services under the special State program. The LEA is allocated $75,000 in State funds under the special State compensatory education program. Since 80 percent of the children eligible for services under the special State program (400 of the 500 total) are in areas that are eligible for Title I and 20 percent (100 of the 500 total) are in areas that are not eligible for Title I, the LEA distributes $60,000 (that is, 80 percent of $75,000) for use in areas that are eligible for Title I. The $60,000 in State funds allocated to provide compensatory education services to children in the Title I eligible school attendance areas under the special State program is sufficient to allow 200 of the 400 eligible children to participate. These State funds may be distributed in several ways to ensure that educationally deprived children, in the aggregate, in eligible school attendance areas or attending eligible schools, receive at least the same level of special State and local funds as would have been available in the absence of Title I:

(1) For example, they may be used to provide services to 100 children in each Title I eligible school attendance area, with Title I funds used to provide comparable services to the additional 100 children in each area.

(2) Alternately, for example, they may be used to provide services to the 200 eligible children in one of the Title I eligible school attendance areas, with Title I funds used to provide comparable services to the 200 eligible children in the other Title I eligible area.

(3) In each case, the children in the school attendance area served using State funds must receive services of the same nature and scope as the services provided under Title I.

(4) In no case, however, may the LEA use Title I funds to pay for this special program of reading instruction for children in school attendance areas not eligible for Title I.

(Sec. 126(d), 20 U.S.C. 2736(d))

Subpart I—Parental Involvement

§ 201.150 Purpose of advisory councils.

The purpose of the advisory councils that LEAs are required to establish under this subpart is to encourage the involvement of parents in the planning, implementation, and evaluation of projects operated by the LEAs as an important means of increasing the effectiveness of Title I projects.

(Sec. 125, 20 U.S.C. 2735)

§ 201.151 Advisory councils that LEA's shall establish.

An LEA that receives Title I assistance—

(2) Shall establish, under the requirements in §§ 201.152–201.154, a district advisory council for the entire school district of the LEA; and

(b) Except as provided in § 201.155(c), shall establish, under the requirements of §§ 201.155–201.158—

(1) A project area advisory council for each school attendance area that is selected as a project area under § 201.61 and §§ 201.63–201.66; and

(2) A project school advisory council for each school that is selected as a project school under §§ 201.62–201.65.

(Sec. 125, 20 U.S.C. 2735)

§ 201.152 Composition of membership on district advisory councils.

A district advisory council must—

(a) Have a majority of members who are parents of children (including parents of private school children) to be served by the project. These parents include—

(1) Parents of children who have been selected, under §§ 201.70–201.71 and § 201.103, to participate in the Title I project during the current project year; and

(2) Parents of children who were not selected to participate in the Title I project during the current year, but who have been selected to participate in the Title I project during the next project year;

(b) Include at least two members—who may be any individuals that meet the requirements in paragraph (c) of this section—who represent—

(1) Children who, under §§ 201.70–201.71 and § 201.101, are eligible to receive Title I services during the current project year, but who were not selected, under §§ 201.70–201.71 and § 201.103, to participate in the current Title I project; and

(2) Children in school attendance areas and schools that, under §§ 201.51–201.52, would be eligible to receive Title I assistance during the current project year, but that were not selected, under

§§ 201.60–201.66, to receive that assistance; and

(c) Include additional members, if any, elected under the procedures in §§ 201.153–201.154, who are—

(1) Residents of the LEA; or

(2) Teachers in the LEA's project schools or schools serving project areas, but not necessarily residing in the LEA's district.

(Sec. 125(a), 20 U.S.C. 2735(a))

§ 201.153 Models for nominating and electing district advisory councils.

(a) After consulting with the current district advisory council, an LEA shall adopt a procedure for nominating persons for election as members of the district advisory council.

(b) After consulting with the current district advisory council, an LEA shall select one of the following models for electing members of the district advisory council:

(1) Election by parents of children in project areas and project schools, including—

(i) Parents of children in project areas who attend private schools; and

(ii) Parents of preschool children, if the project provides preschool services.

(2) Election by members of the project area advisory councils and project school advisory councils elected under § 201.157.

(c)(1) In addition to the members elected under one of the methods in paragraph (a) of this section, the LEA shall provide for the election of at least two representatives of the children referred to in § 201.152(b).

(2) The representatives referred to in paragraph (c)(1) of this section must be elected by parents of children in school attendance areas and schools that were identified as eligible to receive Title I assistance, but that were not selected to receive that assistance.

Sec. 125(a), 20 U.S.C. 2735(a))

§ 201.154 Procedures for electing district advisory councils.

(a) *Notice of procedures.* The LEA shall—

(1) Establish nomination and election procedures in consultation with the district advisory council; and

(2) Provide appropriate and timely notice of these procedures to—

(i) Members of all of the LEA's advisory councils;

(ii) Parents of children in project areas and project schools;

(iii) Parents of eligible-but-not-participating children and of children in eligible-but-not-participating school attendance areas and schools; and

(iv) The general public.

(b) *List of candidates.* (1) Except for the provisions in paragraph (b)(2) of this section, the LEA shall provide the electorate—those persons who will elect the members of the district advisory council according to one of the models in § 201.153(a)—with a list of candidates that identifies each candidate as—

(i) A parent of a child to be served by the project, if the parent has consented in writing to be identified in that manner;

(ii) A teacher in a project school or a school serving a project area; or

(iii) A resident of the school district of the LEA who is seeking membership on the district advisory council, but who does not qualify under paragraphs (b)(1)(i) or (b)(1)(ii) of this section.

(2) The LEA shall provide the parents referred to in § 201.153 (c)(2) with a list of candidates who are seeking election as representatives of the children referred to in § 201.152(b).

(c) *Procedures to ensure required membership on the district advisory council.* The LEA shall, in consultation with the district advisory council, establish procedures to ensure annually that—

(1) A majority of the members referred to in § 201.152 who are serving on the district advisory council are parents of children to be served; and

(2) At least two representatives of the children referred to in § 201.152 (b)(1)-(2) are serving on the district advisory council.

(d) *Election of district advisory council members in a district with a single school attendance area.* An LEA with only one school attendance area may, without regard to the number of schools serving that area, have one project area advisory council that is also its district advisory council.

(Sec. 125(a), 20 U.S.C. 2735(a))

§ 201.155 Required project area advisory councils and project school advisory councils.

(a) *General rule.* An LEA that receives Title I assistance shall establish project area advisory councils and projects school advisory councils as required in § 201.151(b).

(b) *Special application to private school children.* An LEA that has skipped an eligible school attendance area under § 201.65, because that area is receiving services of the same nature and scope from non-Federal sources as would otherwise be provided with Title I funds, shall establish a project area advisory council for that school attendance area if there are private school children residing in the area who are receiving Title I services.

(c) *Exception.* An LEA is not required to establish an advisory council for any project area or project school in which—

(1) Not more than one full-time equivalent staff member is paid with Title I funds; and

(2) Not more than 40 students receive Title I services.

(Sec. 125(a), 20 U.S.C. 2735(a), Sec. 122(e), 20 U.S.C. 2732(e))

§ 201.156 Membership of project area advisory councils and project school advisory councils.

(a) *Composition.* Each project area advisory council and project school advisory council must—

(1) Have a majority of members who are parents of children to be served, as described in § 201.152(a) and who are elected under the procedures in § 201.157; and

(2) Include any additional members elected by the parents of children in the project area or project school under the procedures in § 201.157.

(b) *Eligibility.* (1) Except as provided in paragraph (b)(2) of this section, a person must be a resident of the school district of the LEA in order to be elected to serve as a member of a project area advisory council or project school advisory council.

(2) Any teacher in a project school or school serving a project area in the LEA's district may, without regard to place of residence, be elected to serve as a member of a project area advisory council or project school advisory council for that area or school.

(c) *Requirements if 75 or more children are served.* If a project serves 75 or more children in a project area or project school, the advisory council for that area or school must be composed of at least eight members who shall—

(1) Serve for two-year terms, after which they may be reelected;

(2) Elect officers from among their membership after the council has been fully constituted;

(3) Determine a meeting schedule that provides for a sufficient number of meetings per year to enable the council to be involved effectively in planning, implementing, and evaluating the project; and

(4) Determine the locations for council meetings.

(d) *Procedures to ensure required membership on project area advisory councils and project school advisory councils.* The LEA, in consultation with its district advisory council, shall establish procedures to ensure annually that—

(1) A majority of the members referred to in paragraph (a) of this section are parents of children to be served; and

(2) Advisory councils for project areas and project schools serving 75 or more children have at least 8 members as required in paragraph (c) of this section.

(Sec. 125(a), 20 U.S.C. 2735(a))

§ 201.157 Procedures for electing project area advisory councils and project school advisory councils.

In consultation with its district advisory council, an LEA shall establish procedures for the election of project area advisory councils and project school advisory councils, including procedures for—

(a)(1) Identifying the parents of—

(i) Children attending a project school;

(ii) Children attending a school serving a project area; and

(iii) Children who would attend a school described in paragraph (a)(1)(i) or (ii) of this section if they were not attending a private school; and

(2) Notifying these parents of—

(i) Their opportunity to participate in the election;

(ii) The date, time, and place of the election; and

(iii) The purpose of the election and the election procedures.

(b) Notifying the general public in each project area of the date, time, method, and place of the election;

(c) Providing the parents identified in paragraph (a) of this section with the names of the persons who desire to be candidates, and indentifying each candidate as—

(1) A parent of a child to be served by the project, if the parent has consented in writing to be identified in that manner;

(2) A teacher in a project school or a school serving a project area; or

(3) A resident of the school district of the LEA who does not qualify under paragraph (c) (1) or (2) of of this section; and

(d) Making the names of all members of the project area advisory councils and project school advisory councils available to the general public on request and through appropriate notices.

(e) The LEA shall take appropriate measures, such as publishing the election procedures in a language other than English, to ensure that adequate notice is provided to parents in areas where the dominant language in not English.

(Sec. 125(a), 20 U.S.C. 2735(a))

§ 201.158 An LEA may not impose additional restrictions on the rights of parents to elect advisory council members.

(a)(1) The responsibility of an LEA to establish advisory councils does not authorize it to limit the freedom of eligible parents to elect advisory council members, except to ensure that the requirements in §§ 201.150–201.157 are met.

(2) The LEA may not impose any other restrictions on the rights of eligible parents to elect members of advisory councils.

(b) For example, the LEA is not authorized to—

(1) Restrict the number of terms individual parents may serve;

(2) Prevent a husband and wife from serving at the same time on the same advisory council; or

(3) Prevent school employees who are otherwise qualified from being elected.

(c) The LEA may not restrict advisory council members in their choice of individuals to serve as officers of their councils.

(Sec. 125, 20 U.S.C. 2735)

§ 201.159 Participation by advisory councils.

(a) *General.* An LEA shall give each of the advisory councils established under § 201.151 responsibility for advising the LEA in planning, implementing, and evaluating the project.

(b) *Comments on project application.* An LEA shall—

(1) Give its district advisory council an adequate opportunity to submit comments and recommendations on the LEA's project application;

(2) Consider the district advisory council's comments and recommendations; and

(3) Inform the district advisory council in writing of its reasons for adopting or rejecting the district advisory council's comments and recommendations.

(c) *Alternative ranking based on educational deprivation.* If the LEA desires to use the alternative ranking procedures in § 201.66, it must obtain the prior consent of its district advisory council.

(d) *Schoolwide projects.* If the LEA desires to seek SEA approval of a plan for a schoolwide project under §201.73, the project area advisory council for the school attendance area served by the school must first approve the plan.

(Sec. 122, 20 U.S.C. 2732; Sec. 125(b), 20 U.S.C. 2735(b); Sec. 133, 20 U.S.C. 2753)

§ 201.160 Information that an LEA shall provide to advisory councils.

(a) *Basic requirement.* An LEA shall provide, without charge, to each advisory council and to each member of an advisory council who requests a copy—

(1) The Title I statute;

(2) Any Title I regulations, interpretive rules, and guidelines;

(3) Any State regulations and guidelines that apply to Title I projects; and

(4) The LEA's current project application.

(b) *Auditing, monitoring, and evaluation reports.* The SEA shall provide to each LEA's district advisory council, a copy of any report resulting from State or Federal auditing, monitoring, or evaluation activities concerning the Title I project in that LEA.

(c) *Auditing, monitoring, and evaluation information.* Upon request, the SEA shall provide to each LEA's district advisory council—

(1) Notice of the SEA's final action on audit appeals resolved under 34 CFR 200.192 and any corrective action that the audited agency must take;

(2) Dissemination of information concerning exemplary Title I projects and particularly effective elements of Title I projects identified in 34 CFR 200.230(g).

(Sec. 125(c), 20 U.S.C. 2735(c))

§ 201.161 Training for members of advisory councils.

(a) *Basic requirement.* An LEA shall develop a program for training members of each advisory council to carry out their responsibilities under the Title I project. This program—

(1) Must be planned in full consultation with the members of the advisory councils;

(2) Must provide each member of the advisory councils with appropriate training materials; and

(3) May permit the use of Title I funds for expenses of the training program.

(b) *Training that involves travel.* The LEA shall provide training for advisory council members at convenient locations within the LEA. However, if it is cost effective, one or more LEAs may provide training at a location outside those LEAs in conjunction with another LEA that is receiving Title I assistance.

(c) *Regional or national conferences.* (1) The LEA may not include attendance at a regional or national conference as part of its training program for advisory council members, unless—

(i) The Secretary determines in advance that attendance at the conference will provide unique and valuable experiences; and

(ii) The SEA determines in advance that the conference is relevant to the LEA's project and to the functions of each advisory council member who will attend the conference.

(2) The LEA shall limit the number of advisory council members attending a regional or national conference at Title I expense to the minimum number of

council members required to communicate effectively to other members the information presented at the conference.

(d) *Workshops on parental involvement.* (1) For each fiscal year for which Title I payments are made to the SEA and funds are appropriated under section 125(g) (Authorization of appropriations) of Title I, the Secretary sponsors, in the several regions of the United States, workshops that are designed to—

(i) Assist LEA's to work with and provide training to advisory councils; and

(ii) Promote parental involvement in the Title I projects.

(2) These workshops are planned and conducted in consultation with members of advisory councils in the region served by each workshop.

(Sec. 125, 20 U.S.C. 2735)

§ 201.162 Allowable expenditures for advisory councils.

(a) The general standards governing the allowability of expenditures under Title I projects are contained in 34 CFR 200.70–200.83.

(b) In addition to meeting the standards in 34 CFR 200.70–200.83, an LEA may not pay or reimburse any expenditures relating to advisory councils unless those expenditures are—

(1) Authorized in advance by the LEA;

(2) Within the scope of the LEA's approved Title I project application; and

(3) In compliance with the specific standards in paragraph (c) of this section.

(c) The LEA shall comply with the following specific standards that apply to the use of Title I funds for expenditures related to advisory councils:

(1) *Advisory council elections.* The LEA may use Title I funds to pay for costs directly associated with advisory council elections.

(2) *Memberships in organizations.* The LEA may not use Title I funds to pay for the individual membership of an advisory council member in any organization or group.

(3) *Registration fees.* The LEA may use Title I funds to pay registration fees for advisory council members at approved training conferences.

(4) *Travel.* The LEA may use Title I funds to pay the actual cost of travel—that is, transportation, food, lodging, and related expenses—incurred by advisory council members in connection with an approved Title I activity that is within the scope of the LEA's approved project. However, the LEA may not use Title I funds for additional payments on a per diem basis.

(5) *Salary for time away from job.* The LEA may not use Title I funds to reimburse an advisory council member for salary lost because that member misses work to attend meetings, training sessions, or any other Title I related activity.

(6) *Expenses related to attendance at meetings.* The LEA may use Title I funds to pay expenses related to attendance by advisory council members at advisory council meetings. Examples of these expenses include babysitting, transportation, and copying of minutes.

(Sec. 125, 20 U.S.C. 2735; Sec. 408(a)(1) of GEPA, 20 U.S.C. 1221e–3(a)(1))

§§ 201.163–201.169 [Reserved]

Subpart J—Evaluations by Local Educational Agencies

§ 201.170 General evaluation requirements.

To meet its Title I evaluation responsibilities, an LEA shall comply with—

(a) The evaluation provisions in 34 CFR 200.130; and

(b) The requirements in §§ 201.171–201.177.

(Sec. 124(g), 20 U.S.C. 2734(g); Sec. 183, 20 U.S.C. 2833)

§ 201.171 Standards for evaluation by an LEA.

An LEA shall explain in its application how its Title I evaluation procedures are consistent with the following technical standards. The SEA shall use these same standards to determine the adequacy of the LEA's procedures.

(a) *Representativeness of evaluation findings.* The evaluation results are computed so that the conclusions apply to the persons or schools served by the Title I project. This may be accomplished by including in the evaluation either all or a representative sample of the persons or schools served by the project.

(b) *Reliability and validity of evaluation instruments and procedures.* The proposed evaluation instruments—

(1) Consistently and accurately measure the objectives of the project; and

(2) Are appropriate, considering factors such as the age or background of the persons served by the project.

(c) *Evaluation procedures that minimize error.* The proposed evaluation procedures minimize error by including—

(1) Proper administration of the evaluation instruments;

(2) Accurate scoring and transcription of data; and

(3) Use of analysis procedures whose assumptions are appropriate for the data.

(d) *Valid assessment of achievement gains in reading, language arts and mathematics.* In assessing the effectiveness of regular school year Title I reading, language arts, and mathematics projects in grades 2 through 12, the proposed evaluation procedures yield a valid measure of (1) the Title I children's performance after receiving Title I services compared to (2) an estimate of what their performance would have been in the absence of Title I services.

(e) As used in §§ 201.172–201.174 and § 201.176, a language arts project does not include a project designed to teach English to non-English-speaking children.

(Sec. 124(g), 20 U.S.C. 2734(g); Sec. 183, 20 U.S.C. 2833)

§ 201.172 Use of models by an LEA.

An LEA shall use one of the models in § 201.173—or an approved alternative (*see* § 201.174)—in the evaluation of each regular school year Title I project that provides instructional services in reading, language arts, or mathematics in grades 2 through 12.

(a) The models require that the LEA administer a test—

(1) Before or at the beginning of services for the project period (pre-test); and

(2) After or at the end of the project period (post-test).

(b) The models compare the post-test scores of Title I children to an estimate of what their post-test scores would have been if they had not received Title I services ("expected performance").

(c) Each model provides a different method for estimating expected performance using the scores of children not receiving Title I services who are tested at the same time of year.

(d) With any of the three models, the LEA may use a test with or without national norms.

(Sec. 124(g), 20 U.S.C. 2734(g); Sec. 183, 20 U.S.C. 2833)

§ 201.173 Model requirements.

(a) *Norm-Referenced Model.* An LEA using the Norm-Referenced Model shall—

(1) Administer a pre- and post-test to Title I children; and

(2) Estimate expected performance using the performance of children in a norm sample developed—

(i) Locally;

(ii) By the SEA; or

(iii) By a test publisher.

(b) *Comparison Group Model.* An LEA using the Comparison Group Model shall—

(1) Identify a comparison group of educationally deprived children who—

(i) Are similar to Title I children with respect to educationally relevant factors (such as age, socio-economic status, and previous achievement); and

(ii) Are not receiving Title I or similar compensatory education services;

(2) Administer a pre- and post-test to both the Title I children and the children in the comparison group; and

(3) Estimate expected performance for the Title I children by using the test scores of the children in the comparison group.

(c) *Regression Model.* An LEA using the Regression Model shall—

(1) Administer a pre-test to a group of children in Title I eligible schools at grade levels to be served by Title I. In the Regression Model only, the pre-test may consist of a test, teacher judgment of student performance, or a composite of these;

(2) Establish a cutoff score and provide Title I services to those children scoring below the cutoff. Children scoring above the cutoff are the comparison group for the evaluation; and

(3) Administer a post-test to both groups and estimate expected performance using the pre- post-test scores for the comparison group.

(Sec. 124(g), 20 U.S.C. 2734(g); Sec. 183, 20 U.S.C. 2833)

§ 201.174 Alternative models.

(a) An LEA may use an alternative to one of the three models in § 201.173 for the evaluation of regular school year reading, language arts, or mathematics projects in grades 2 through 12. An alternative model would provide a method for estimating expected performance that differs from methods provided by the three models.

(b) The use of an alternative model must be approved first by the SEA and then by the Secretary.

(c) To be approved, an alternative model must yield a valid measure of—

(1) The Title I children's performance in reading, language arts, or mathematics;

(2) Their expected performance; and

(3) The results of the Title I project expressed in the common reporting scale established by the Secretary for SEA reporting.

(d) The request for using an alternative model may be submitted to the Secretary by the LEA or the SEA acting at the request of one or more LEAs.

(e) The request must indicate how the alternative model meets the three requirements in paragraph (c) of this section.

(f) The Secretary responds to the request in writing within 30 days.

(Sec. 124(g), 20 U.S.C. 2734(g); Sec. 183, 20 U.S.C. 2833)

§ 201.175 Frequency of LEA evaluations.

(a)(1) An LEA shall evaluate the effectiveness of its Title I projects at least once every three years in accordance with a schedule established by the Secretary.

(2) This evaluation must include an assessment of achievement gains of Title I children compared to an estimate of their expected performance in the absence of Title I services.

(3) The LEA shall measure the achievement gains over a period of approximately either nine or twelve months. (Examples of appropriate testing intervals include fall-to-fall testing, fall-to-spring testing, and spring-to-spring testing.)

(b) At least once during the three-year period, the LEA shall collect additional information needed to determine whether the achievement gains measured over nine to twelve months are sustained over a longer period of time. (Examples of appropriate testing cycles for this long-term evaluation include fall-spring-fall testing, fall-fall-fall testing, and spring-spring-spring testing.)

(Sec. 124(g), 20 U.S.C. 2734(g))

§ 201.176 Reports of evaluation results.

(a) *LEA reporting.* (1)(i) An LEA shall report to its SEA the results of its evaluations conducted in accordance with the schedule established by the Secretary.

(ii)(A) In reporting the results of measurements of educational achievement in regular school year projects in reading, language arts, or mathematics in grades 2 through 12, the LEA shall use the common reporting scale established by the Secretary unless the SEA approves some other form of local reporting.

(B) If the SEA approves another form of reporting, the LEA shall include sufficient information to enable the SEA to convert the achievement results to the common scale.

(2) Unless requested by the SEA, the LEA is not required to include in its evaluation report the results of the long-term evaluations required by § 201.175(b).

(3)(i) The LEA shall retain all of the data used to develop its report to the SEA for a period of five years from the date of the report or until any pending Federal audit has been resolved.

(ii) The data to be retained must include—

(A) A record of all individual scores, with an identifying code so that pre- and post-test scores can be matched, in regular school year projects in reading, language arts, or mathematics in grades 2 through 12; and

(B) The name, form, level, and date of publication of any tests administered.

(b) *SEA reporting.* (1) *Sampling plan.* An SEA shall submit, for the approval of the Secretary, a proposed sampling plan designed to ensure that evaluations are conducted in a representative sample of its LEAs in any school year. The proposed plan shall be developed according to the schedule and criteria specified by the Secretary.

(2) *Annual performance report.* To provide nationwide information about the recipients of Title I services and the types of services delivered, the SEA shall provide in its annual performance report—for all or a representative sample of LEAs—the following information for all regular and summer projects of those LEAs included in the report:

(i) the number of participants, by type of services received.

(ii) the number of participants, by grade, who attend public schools.

(iii) the number of participants, by grade, who attend nonpublic schools.

(iv) Other information requested by the Secretary. This may include, for example, information about advisory councils and teacher training.

(3) *Biennial evaluation report.* The SEA biennial evaluation report (required by 34 CFR 200.160(a)) shall contain information about projects conducted since the last report. To provide nationwide information about the effectiveness of regular school year projects offering instructional services in reading, language arts, or mathematics in grades 2 through 12, the SEA shall include the following information for all or a representative sample of LEAs:

(i) A statewide average, by grade level, of achievement gains resulting from Title I participation expressed in the common reporting scale established by the Secretary.

(ii) For a sample of grade levels, information by grade level relating levels of achievement gain to—

(A) The number of hours of project exposure;

(B) The pupil-instructor ratio; and

(C) Project enrollment.

(iii) If applicable, the number of projects excluded because of erroneous or missing data and the reasons for their exclusion.

(iv) The SEA shall retain all the data used to develop its report for a period of five years from the date of the report or until any pending Federal audit has been resolved.

(Sec. 124(g), 20 U.S.C. 2734(g); Sec. 183, 20 U.S.C. 2833)

§ 201.177 Allowable costs for evaluation.

(a) Title I funds may be used for evaluation activities to—

(1) Identify specific strengths and weaknesses of a project;

(2) Determine the results of a project; and

(3) Disseminate the results of Title I evaluations.

(b) In addition to the requirements concerning the supplementary nature of Title I funds (§§ 201.130–201.143) and other rules governing the allowability of Title I expenditures, the following rules apply to the use of Title I funds to support the purchase, administration, scoring, and analysis of evaluation instruments. Except for cases in which data meeting these needs are already available, Title I funds may be used—

(1) To test Title I participants for evaluation purposes;

(2) In the Comparison Group Model, to test an appropriate number of educationally disadvantaged children who are at the same grade level(s) as Title I participants, but who are not receiving Title I services;

(3) In the Regression Model, to test an appropriate number of children in Title I eligibile schools who are at the grade level(s) served by Title I;

(4) To administer a nationally normed test to all, or a representative sample of, the Title I participants when a test without national norms has been used for evaluation purposes. This will permit the LEA or SEA to convert its evaluation reults to the common scale; and

(5) To test an appropriate number of children no longer receiving Title I services to determine whether achievement gains measured over nine or twelve months are sustained over a longer period of time (as required by § 201.175(b)).

(c) Title I funds may not be used for—

(1) General districtwide or statewide testing programs;

(2) Establishing local or State norms; or

(3) Research and development activities, such as the development and field testing of new instruments.

(Sec. 124(g), 20 U.S.C. 2734(g); Sec. 183, 20 U.S.C. 2833)

§§ 201.178–201.179 [Reserved]

Appendix—Comments and Responses for 34 CFR Parts 200 and 201.

Note.—This Appendix will not be codified in the Code of Federal Regulations.

Subpart A—General

§ 200.1 *Purpose.* One commenter recommended that this section specifically require applicant agencies which serve special populations to provide special Title I services to children of limited English proficiency.

Response. No change has been made. Section 200.1 is a statement of purpose and as such includes no specific requirements of any kind. Various sections throughout parts 200 and 201 do, however, address the issue of provision Title I services to children of limited English proficiency.

Comment. One commenter asked why this section did not repeat certain phrases in Section 101 of Title I.

Response. A change has been made. Section 200.1 is intended to identify the grantees and, in a general way, the type of children to be served. Thus, § 200.1(d) was added to show that Title I funds are provided to the Secretary of the Interior to meet the special educational needs of Indian children.

Comment. One commenter questioned why this section omitted the provision in Section 101 of Title I that Title I funds are intended to go to those LEAs serving areas with concentrations of children from low-income families to expand and improve their educational programs.

Response. A change has been made. Section 200.1(a) has been revised to include the statutory language "to expand and improve their educational programs. . ."

§ 200.3 *Applicability of other Title I regulations.*

Comment. One commenter recommended revising paragraph (a)(1)(i) to indicate that the educationally deprived children are in public school attendance areas with high concentrations of children from low-income families, rather than simply in low-income areas.

Response. A change has been made. Section 200.3(a)(1)(i) now uses the language of Section 101 of Title I: "areas with concentrations of children from low-income families."

§ 200.5 *Definitions.*

Comment. One commenter asked why a definition of "Assistant Secretary" was included.

Response. No change has been made. The Secretary may delegate certain responsibilities. Accordingly, the Secretary has delegated to the Assistant Secretary for Elementary and Secondary Education the responsibility of handling direct complaints and appeals at the Federal level. Thus, a definition is needed to designate to which Assistant Secretary this responsibility was delegated.

Comment. One commenter questioned the omission of a reference to "data available at the time of computation" in the definition of "average per pupil expenditure" in paragraph (b)(2).

Response. A change has been made. The definition has been revised to conform to the definition in Section 198 of Title I.

Comment. One commenter questioned why the phrase "or all of the States" was included in clause (a)(2) in the definition of average per pupil expenditure.

Response. No change has been made. That phrase is necessary to complete the definition of average per pupil expenditure for the United States as a whole.

Comment. One commenter questioned the definition of "cease and desist" because it includes the initiation of a required practice.

Response. No change has been made. As used in Section 454 of the General Education Provisions Act (GEPA), "cease and desist" orders may include a requirement to initiate a practice in order to eliminate a continuing violation.

Comment. One commenter questioned why the definition of "construction" used the term "means" when the statute uses "includes."

Response. A change has been made. The definition has been revised by replacing "means" with "includes."

Comment. One commenter requested that the term "current expenditures," as used in computing maintenance of effort, be made consistent with the definition in this section.

Response. No change has been made. The expenditures to be included in determining maintenance of effort under § 200.90 are consistent with the definition of "current expenditures" in § 200.5.

Comment. One commenter questioned the substitution of "means" for the statutory "includes" in the definition of "equipment."

Response. A change has been made. The definition has been changed to incorporate the statutory language "includes."

Comment. Several commenters recommended excluding items (c)(2) and (c)(3) under the definition of equipment in this section.

Response. No change has been made. The term "equipment" for purposes of

Title I is defined in Section 198(a)(8) of Title I. That definition has been restated in § 200.5 only as a convenience to persons using these regulations.

Comment. One commenter expressed concern over the provision in the definition of "fiscal year" which allows States to use whichever 12 month period they normally use as the fiscal year for purposes of complying with Title I requirements.

Response. No change has been made. Allowing agencies to use the same fiscal year that the State uses for recordkeeping eases the paperwork burden on both SEAs and applicant agencies without jeopardizing the effectiveness of any Title I requirement.

Comment. One commenter recommended clarification of the term "grant period" as defined in this section.

Response. No change has been made. The grant award specifies the grant period.

Comment. One commenter questioned why the definition of "parent" in the NPRM is different than the statutory definition.

Response. A change has been made. The definition of "parent" has been revised to be consistent with the statutory definition.

Comment. One commenter questioned the necessity of including the last sentence under subsection (c) in the definition of "State agency."

Response. No change has been made. When the term "State agency" is used in these regulations, it includes any State educational agency that operates a program for migrant children. The term "State agency," however, is not intended to cover State educational agencies when they act in their capacity as the agency carrying out State administrative responsibilities.

Comment. One commenter recommended revising the definitions of "suspension" and "withholding" to provide that neither would result in loss of services to children.

Response. No change has been made. Sections 169(a) and 186(a) of Title I do not permit the discretion to avoid withholding if it would result in the loss of services to children. However, the effect of withholding on the participating children is a factor in deciding what amount to withhold under § 200.200(b)(3)(i)(C) or in deciding whether to suspend under § 200.200(c)(2)(iv).

Comment. One commenter recommended defining the term "program" in this section.

Response. No change has been made. The term "program" is occasionally used to refer to broad categories of Title I activities—e.g., Migrant Program. In all other instances, the term "project," as defined in § 200.5, is consistently used to refer to specific activities funded under Title I. Therefore, it is not useful to attempt to describe all categories covered by the occasional use of the term "program."

Comment. One commenter pointed out that terms such as, Title I, Title V, etc. are abbreviations and therefore belong in § 200.6 rather than § 200.5.

Response. No change has been made. These terms are defined in that the subjects with which they deal are explained; therefore, they appear in § 200.5.

Subpart B—Allocation of Title I Funds

§ 200.10 *Amount of funds available for Title I grants.*

Comment. One commenter recommended requiring SEAs to notify applicant agencies of the amount of Title I funds they are eligible to receive within 30 days after making a determination of that amount.

Response. No change has been made. SEAs are responsible for notifying LEAs and State agencies as soon as the necessary determinations are made. Because some SEAs need considerably more time than others to compute allocations, these regulations cannot fairly impose a 30-day deadline on all SEAs.

Comment. One commenter recommended including a specific date by which the Department of Education would annually distribute Title I funds.

Response. No change has been made. The availability of funds for distribution by the Department depends upon the receipt of the data required to compute allocations and upon congressional appropriation of funds. Both of these factors are beyond the control of the department. Therefore, inclusion of a specific date in these regulations is not feasible.

Comment. One commenter expressed concern over the phrase "on the basis of other data" in paragraph (c) as possibly implying that all States will use other data.

Response. A change has been made. Section 200.10(c) now provides that States may use other data only if necessary to determine the amount of Title I funds that each LEA is eligible to receive.

Subpart C—Documents a State Must Submit Before Receiving Title I Funds

§ 200.20 *State application.*

Comment. One commenter requested that SEAs be required top solicit input from LEAs, parents, and other interested parties in developing State applications under this section.

Response. No change has been made. Although it may be desirable for SEAs to do so, the statute does not require SEAs to disseminate State applications for review prior to submission to the Department.

Comment. One commenter recommended clarifying the relationship between the general application SEAs must submit under Section 435 of GEPA and the Title I application, and further questioned why SEAs must provide assurances related to GEPA and EDGAR in their Title I application if they have already done so in their general application under Section 435 of GEPA.

Reponse. No change has been made. This section is designed to assist the Secretary in implementing Section 182 of Title I which requires that the Secretary be "satisfied that the assurances in [the Title I] application and the assurances contained in its general application under Section 435 of [GEPA] will be carried out" before the Secretary may approve the Title I application.

§ 200.21 *State monitoring and enforcement plan (MEP).*

Comment. One commenter requested that specific guidance be provided concerning the contents of an MEP.

Response. No change has been made. The list in § 200.21(c) prescribing the contents of an MEP is as specific as possible. Due to the variation in operating procedures among States, no more specific guidance can be given without infringing upon an SEA's prerogative to adopt monitoring and enforcement procedures that reflect its unique needs.

Comment. One commenter recommended that SEAs be required to disseminate MEPs within the State within 30 days after Departmental approval.

Response. No change has been made. LEAs and district advisory councils may request to receive copies of MEPs under § 200.21(e). A requirement that all applicant agencies and advisory councils automatically receive them would be overly burdensome for the SEA.

Comment. One commenter recommended using the word "program" rather than "schedule" in subsection (c)(2).

Response. A change has been made. The statutory word "program" is now used in § 200.21(c)(2).

Comment. One commenter questioned why the statutory requirement in Section 171(a)(4) of Title I was interpreted broadly in paragraph (c)(5)

to require SEAs to establish audit resolution procedures in accordance with §§ 200.191–200.196.

Response. No change has been made. Section 171(a)(4) requires SEAs to establish procedures for audits of applicant agencies and for the recovery of funds determined to be unallowable under Title I. The audit resolution procedures in §§ 200.191–200.196 simply establish guidelines for SEAs to follow in determining whether unallowable expenditures were in fact made and in recovering funds that are determined to have been misspent.

Comment. One commenter pointed out that the statute does not require amendments to the monitoring and enforcement plan (MEP) and questioned why amendments are required by paragraph (d).

Response. No change has been made. Allowing SEAs to make unlimited and substantial changes in their MEPs after they are approved, without submitting the amendments to the Secretary, would effectively relieve SEAs of the responsibility of following the procedures in the MEPs.

Comment. One commenter, noting that H. Rept. No. 95–1137 directed the Secretary to develop and disseminate a model reporting form for MEPs, questioned when and how the Secretary would do so.

Response. The Officer of Education developed a model form for States to follow in preparing their MEPs and disseminate it in a Title I program directive INST A203–8 on April 3, 1979.

Comment. One commenter questioned why § 200.21(a)(2) authorizes the submission of multiple MEPs when the statute refers only to one single MEP.

Response. No change has been made. In most SEAs, the different categories of Title I programs are administered by different organizational units. Therefore, the opportunity to submit separate MEPs would allow each program office to formulate a plan that would enable it to administer its program most effectively. No SEA is obligated, however, to submit separate MEPS.

Subpart D—Program Requirements That Apply to All Agencies That Receive Title I Funds

§ 200.30 *Teacher and school board participation.*

Comment. One commenter objected to the requirement that teachers and school boards be afforded access to prior project evaluations.

Response. No change has been made. The persons referred to in § 200.30(a) need documents such as prior evaluation reports in order to be involved effectively in planning of future projects.

Comment. One commenter recommended revising paragraph (a) to require the involvement of representatives of teachers in participating schools rather than the teachers themselves.

Response. No change has been made. Section 124(i) of Title I requires the involvement of the teachers, not their representatives.

§200.31 *Parental participation.*

Comment. One commenter requested that agencies be required to make the information referred to in paragraph (b) of this section available in the native language of parents whose principal language is other than English.

Response. No change has been made. However, individual LEAs may decide that parental participation will be more meaningful and effective if the information referred to in §200.31(b) is provided in a language other than English.

Comment. One commenter requested clarification on whether Title I funds must be used to provide parent training in order to provide parents with an opportunity to assist their children effectively in achieving the instructional goals as required by §200.31(a)(3).

Response. No change has been made. Agencies may, but are not required, to provide training to parents of participating children to assist them in helping their children achieve the instructional goals. Expenditures for this type of training would need SEA approval.

§200.40 *Coordination with other programs.*

Comment. One commenter recommended listing specific programs, such as Title I migrant services, under paragraph (b).

Response. No change has been made. The intent of §200.40 is to encourage coordination between Title I and all other programs. Unless the regulations contained an exhaustive list of specific programs, one could infer that coordination was not required with any program not included in the list.

Comment. One commenter objected to the Secretary's strong encouragement for coordination between Title I and other programs.

Response. No change has been made. Section 124(f) of Title I requires that agencies "ensure that all programs and projects complement each other . . ."

Comment. One commenter questioned why this section did not follow the statute in requiring agencies to consider only those offers which may aid in carrying out or making more effective the Title I programs.

Response. A change has been made. Section 200.40(a)(2) has been revised to reflect the statutory language exactly.

Comment. One commenter questioned the rationale for encouraging coordination between the Title I program and the LEA's regular instructional program.

Response. No change has been made. Section 124(f) of Title I requires that LEAs ensure that all programs and projects complement each other.

§ 200.41 *Coordination of health, nutrition, or social services.*

Comment. One commenter recommended specifying what types of social services were referred to in paragraph (a).

Response. No change has been made. Because the regulations do not define permissible types of social services, an LEA or State agency has the maximum flexibility to choose services appropriate to fit its needs. If specific types of social services were listed, applicant agencies could be restricted from applying to use Title I funds for services other than the ones listed.

Comment. Several commenters requested that school breakfast programs be identified as one type of program that may be provided with Title I funds.

Response. No change has been made. Section 200.41 restates the statutory provision. The federally-assisted School Breakfast Program is clearly a "nutrition program" and, like other nutrition programs, could be provided with Title I funds if the conditions in § 200.41(b) are met.

Comment. Several commenters objected to this section because it requires SEAs to provde information on other programs that the SEA knows little or nothing about.

Response. No change has been made. Although SEAs may not have detailed information about programs which provide support services, they may not approve requests for Title I assistance for support services which would or could be funded from another source. The Department will maintain and provide to SEAs, upon request, information on Federal assistance programs which may fund activities such as those listed under § 200.41(a).

Comment. Several commenters recommended that paragraph (b)(2) be revised to eliminate the implication that Title I may provide support services to all children who are eligible to participate in the project.

Response. A change has been made to clarify § 200.41(b)(2) by stating that

support services under Title I may be provided only to children who have been selected to participate in the Title I project.

Comment. One commenter recommended including in subsection (a)(2) the requirement that applicant agencies request information about where support services are available.

Response. A change has been made. The requirement that an agency shall ask the SEA for information concerning where services are available has been added to § 200.41(a)(2)(iii).

Comment. One commenter questioned the rationale behind paragraph (b)(1) which provides that SEAs shall not approve support services unless those services are designed to address an identified need of the Title I participants.

Response. No change has been made. Section 101 of Title I indicates that financial assistance under Title I shall be used for programs and projects which contribute particularly towards meeting the special educational needs of educationally deprived children. Therefore, support services, if they are to be funded with Title I funds, must be designed to address special, identified educational needs.

Comment. One commenter questioned the omission of any reference in this section to the language in the House report that Title I funds may be used for support services if the services are otherwise not available or the LEA cannot meet the conditions to the receipt of the services.

Response. A change has been made. This provision has been added to paragraph (b)(2).

Comment. One commenter expressed concern over the provision in paragraph (b)(2) which requires that funds and services from other programs be fully utilized before use of Title I funds to provide support services may be approved.

Response. No change has been made. Use of Title I funds to provide a service for which other funds were available but not used would not "increase the level of funds . . . for the education of children participating in programs and projects assisted under [Title I]" as required by Section 126(c) of Title I.

§ 200.42. *Simultaneous use of Title I funds and other funds.*

Comment. One commenter recommended revising the language in this section to provide that agencies which do meet the requirements of § 200.140(c) may simultaneously use Title I funds and funds from other sources.

Response. A change has been made. Section 200.42 has been revised to provide for this possibility.

Comment. One commenter recommended adding the requirement that if Title I funds are used to support more than 51 percent of a project, dissemination procedures and evaluation results be reported in accordance with Title I requirements.

Response. No change has been made. This section requires agencies to maintain records showing that they use Title I funds in compliance with all Title I requirements, regardless of the percentage of support that is provided with Title I funds. Therefore, there is no reason to add a specific provision concerning compliance with the Title I dissemination and evaluation requirements.

Comment. One commenter questioned the authority for this section noting that Section 173 of Title I refers to SEA, not applicant agency records.

Response. A change has been made. The statutory reference is Section 127(a) of Title I.

§ 200.43. *Jointly operated projects.*

Comment. Several commenters requested more guidance in the implementation of a joint project.

Response. No change has been made. This section is intended only to authorize joint Title I project applications, rather than list specific requirements which must be met in implementing projects under these applications. In general, projects operated by more than one agency under a joint application are subject to the same requirements as projects operated under an application submitted by a single applicant agency.

§ 200.50. *Use of evaluations in planning.*

Comment. One commenter recommended revising this section to provide that an SEA may not approve applications unless evaluations demonstrate that the project is of sufficient size, scope, and quality to meet the children's needs.

Response. No change has been made. Section 200.110(b)(4) requires SEAs to consider evaluations in reviewing applications for approval.

Comment. One commenter recommended deletion of the section since the requirement is covered in § 200.130(c).

Response. No change has been made. The section is included under project design to emphasize the role of evaluations in the design of Title I projects.

Comment. One commenter pointed out that Section 124(g) of Title I requires evaluation results to be used to improve projects rather than simply to plan effective projects.

Response. No change has been made in this section. However, § 200.130(c) requires agencies that receive Title I funds to use evaluation results in planning for and improving Title I projects to be carried out in the following years.

§ 200.51. *Sufficient size, scope, and quality of projects.*

Comment. One commenter requested specific reference to the use of bilingual materials for children of limited English proficiency as an example of a possible way to meet the size, scope and quality requirement.

Response. No change has been made. This point is made under 34 CFR 201.132 (Assurance of Equal Opportunity).

Comment. Several commenters recommended that paragraphs (a) and (b) retain the statutory language that projects have reasonable promise of meeting . . . the special educational needs of the children being served, rather than the project objectives.

Response. A change has been made. Sections 200.51 (b) and (c) now reflect the statutory language. However, appropriate project objectives are essential to the design of a project with sufficient size, scope, and quality to show reasonable promise of meeting the needs of the participating children.

Comment. One commenter requested that the prohibition in section 116a.22(b)(4)(ii) of the previous final regulations against expenditures of Title I funds which are impudent, extravagant, excessive, or wasteful be included in this section.

Response. A change has been made. Section 200.71 has been revised to include this requirement.

Comment. One commenter objected to the use of the term "reasonable promise" as vague and ambiguous.

Response. No change has been made. That term is used in Section 124(b) of Title I. Note that § 200.122(a) specifically authorizes SEAs to adopt rules concerning the size, scope, and quality requirement.

§ 200.52 *Prohibition against using Title I funds to provide general aid.*

Comment. One commenter questioned the necessity of the phrase, "and have the effect of meeting" in paragraph (a), noting that it could be interpreted so as to deny funding to an agency which, though acting in good faith, operated an unsuccessful project.

Response. A change has been made. The phrase "and have the effect of meeting" has been deleted from § 200.52(a).

§ 200.53 *Minimum expenditure for a Title I project.*

Comment. One commenter questioned the inclusion of paragraph (b) (1) which provides that an SEA may reduce the minimum expenditure requirement if any agency cannot meet that requirement on its own.

Response. No change has been made. The first determination is whether an agency can support a $2500 project on its own. If it cannot, the next determination is whether the agency can reasonably be expected to support a $2500 project by joining with other agencies.

§ 200.54 *Sustaining educational gains.*

Comment. One commenter requested that the regulations clarify whether there is a maximum percentage of participants who could be served under this provision, when these students are not among those in greatest need.

Response. No change has been made. The selection of educationally deprived children who are no longer among those in greatest need is acceptable under Section 123(b) of Title I. Section 200.54 requires agencies to consider components designed to operate during a year subsequent to the year during which children received services and made gains. It does not authorize the selection of children who are not currently in greatest need to participate in the Title I project except as part of a discrete component designed to sustain educational gains.

§ 200.55 *Individualized educational plan.*

Comment. One commenter recommended deletion of this section as the cost of developing an individualized educational plan for each child would be so great it would outweigh the benefits.

Response. No change has been made. The section essentially restates Section 129 of Title I which itself only encourages development of IEPs, leaving the choice of whether to do so to the individual applicant agencies.

Comment. One commenter recommended replacing the term "individualized educational plan" (IEP) with the term "personalized educational plan" (PEP) to give uniqueness to Title I individualized plans.

Response. No change has been made. The term "individualized educational plan" is used in the law and, therefore, is used in the regulations.

§ 200.60 *Training education aides and volunteers.*

Comment. Several commenters interpreted this section as requiring agencies to provide joint training every year. They objected to this requirement and recommended that training be required when needed, the need to be determined by the agency operating the project.

Response. A change has been made. Section 200.60(b) now requires that training be provided as needed.

Comment. One commenter recommended that the section be revised to emphasize that teachers, aides, and volunteers should be trained together.

Response. No change has been made. Section 200.60(c) does require that training of aides and volunteers include the professional staff whom the aides and/or volunteers will assist.

Comment. One commenter questioned why the statutory provisions requiring agencies to have well developed plans for coordinated programs of training were omitted.

Response. A change has been made. Section 200.60(d) reflects the statutory provisions in Section 124(l) of Title I that require agencies to have well developed plans for coordinated programs of training.

Comment. One commenter recommended revising the language in this section to specifically provide that while agencies must have a joint training program for aides and professional staff, some training may be provided to aides without professional staff present.

Response. No change has been made. The language in this section does not preclude such training.

Comment. One commenter recommended requiring new aides and volunteers to be trained as they enter the project.

Response. A change has been made. Section 200.60(b) now requires training to be provided as needed, thereby covering the training of new aides and volunteers as they enter the project.

Comment. One commenter questioned the inclusion of paragraph (a) which requires that training of Title I volunteers and aides be directly related to Title I services to be provided.

Response. No change has been made. Title I funds must be used to provide services which contribute particularly toward meeting the special educational needs of educationally deprived children. Accordingly, Title I training must relate directly to the services to be provided under the Title I project.

§ 200.61 *Noninstructional duties.*

Comment. Several commenters questioned allowing regular supervision of any homeroom as an acceptable noninstructional duty for Title I personnel.

Response. A change has been made. Section 200.61(a)(3) specifically prohibits assigning Title I personnel to homeroom supervision. Since regular supervision of a homeroom does not meet the statutory criterion that any noninstructional duty be rotating, it may not be performed at Title I expense.

Comment. One commenter objected to allowing Title I staff to perform any noninstructional duties.

Response. No change has been made. Section 134 of Title I authorizes the use of not more than 10 percent of Title I staff members' time to carry out certain noninstructional duties.

Comment. One commenter objected to the language in paragraph (a)(3) as requiring LEAs to discriminate between different classes of personnel (Title I and non-Title I) within a single school.

Response. No change has been made. Section 134 of the Title I statute authorizes only certain limited noninstructional duties for staff paid with Title I funds; thus the distinction is necessary.

Comment. Several commenters recommended including a provision limiting the proportion of Title I staff who perform noninstructional duties to the proportion of non-Title I staff who perform such duties.

Response. No change has been made. The proportion referred to in § 200.61(a)(5) is the proportion of total staff time spent performing noninstructional duties. Therefore, the proportion of staff members who perform a certain duty is included already.

Comment. One commenter questioned why the statutory term "personnel paid entirely with Title I funds" was interpreted as "instructional personnel paid with Title I funds."

Response. A change has been made. Section 200.61(a) uses the statutory term "personnel paid entirely with Title I funds."

Comment. One commenter recommended revising the example in § 200.61(a)(3) dealing with substitute teaching to specify that only substitute teaching of a non-Title I class is prohibited.

Response. A change has been made. The phrase "of a non-Title I class" was added in § 200.61(a)(3) to clarify that substitute teaching of a Title I class is not prohibited.

Comment. One commenter recommended that paragraph (a)(5) be revised to specify that the proportion of time Title I staff members spend performing noninstructional duties may not exceed the proportion of time similarly situated personnel at the same school site spend performing the same duties.

Response. A change has been made. The phrase "at the same school site" was added to § 200.61(a)(5).

Comment. One commenter noted that the statutory citation for this section was incorrect.

Response. A change has been made. The authority is now correctly cited as Section 134 of Title I.

Comment. One commenter recommended deletion of the requirement that noninstructional duties performed by Title I instructional staff be on a rotating basis.

Response. No change has been made. Section 134 of Title I requires that noninstructional duties be limited, rotating, and supervisory.

Comment. One commenter recommended that the meaning of the term "supervisory" be clarified.

Response. No change has been made. The term "supervisory" refers to duties which involve a staff member who is in charge of a number of students during some portion of the day when the students are not in a classroom or under the supervision of their regular classroom teacher.

Comment. One commenter recommended including a definition of "similarly situated personnel" that specifies that these personnel are persons not paid with Title I funds who perform the same functions and are considered to be in the same category (such as teachers or aides) as Title I personnel who perform noninstructional duties.

Response. No change has been made. It is intended that this term be interpreted in the manner suggested by the commenter. However, it is felt that whether a person is similarly situated should be determined on a case-by-case basis.

Comment. One commenter questioned the omission of the phrase "for which such similarly situated personnel are paid."

Response. No change has been made. Section 200.61 refers to duties to which both Title I and State and locally paid staff are assigned. Staff members are not assigned to duties for which they are not paid.

§ 200.70 *Allowable costs under EDGAR.*

Comment. One commenter felt the term "certain indirect costs" should be clarified.

Response. No change has been made. Rules governing indirect cost rates are contained in 34 CFR Part 76 (EDGAR) and appendices B through D to 34 CFR Part 74.

Comment. One commenter recommended revising this section to provide that Title I funds may be used to meet certain restricted indirect costs, rather than just certain indirect costs.

Response. No change has been made. The actual indirect costs themselves are not restricted. The amount of Title I funds which can be used to meet those costs is restricted.

§ 200.71 *Specific requirements concerning allowable costs under Title I.*

Comment. One commenter questioned whether volunteers may be reimbursed with Title I funds.

Response. A change has been made. Section 200.82 authorizes the reimbursement of volunteers with Title I funds for certain expenses directly related to the performance of their duties as volunteers in a Title I project.

§ 200.74 *Use of Title I funds for health, nutrition, or social services.*

Comment. One commenter recommended deletion of this section as redundant, stating that the provision is covered in § 200.41.

Response. No change has been made. This section authorizes use of funds for support services; § 200.41 contains the requirements which must be met in order actually to provide support services.

§ 200.75 *Use of Title I funds for training eligible persons.*

Comment. One commenter recommended including parents under persons for whom training may be provided using Title I funds.

Response. No change has been made. Section 200.79 and 34 CFR 201.161–201.162 specifically deal with training and allowable costs for parents.

Comment. One commenter recommended specifically mentioning teacher centers as acceptable ways of providing inservice training.

Response. No change has been made. Methods of providing inservice training are chosen at the discretion of the applicant agency with SEA approval.

Comment. One commenter recommended deletion of the requirement in paragraph (a)(2) that, in order to receive training under Title I, staff paid with non-Federal funds must provide services to children participating in the Title I project. The commenter also recommended requiring SEA approval for any Title I funded training of non-federally paid staff.

Response. No change has been made. Since no benefit would accrue to Title I participants from training instructional staff which do not provide the Title I participants any services, such training is not authorized under Title I. Application approval by SEAs and State rulemaking authority give SEAs considerable opportunity to regulate Title I funded training of non-Title I staff.

Comment. One commenter recommended clarifying exactly which staff members may be trained using Title I funds.

Response. No change has been made. The present language sets out adequate criteria for determining whether a given staff member may be provided training at Title I expense.

Comment. One commenter questioned why the regulations provide for training of principals, staff specialists, and other staff members at Title I expense.

Response. No change has been made. In many Title I projects, locally paid curriculum specialists provide extensive supervisory assistance to Title I instructional personnel. Principals in Title I schools may also need training since they must understand the Title I projects thoroughly in order to administer them effectively at the school level.

Comment. One commenter recommended referring to education aides in paragraph (a)(1) as persons eligible for training at Title I expense.

Response. No change has been made. Education aides are already included in § 200.75(a)(1) as staff paid with Title I funds.

Comment. One commenter questioned the inclusion of the requirements of paragraph (b) concerning the scope of the training provided with Title I funds.

Response. No change has been made. The requirements in § 200.75(b) are necessary to ensure that Title I funds are expended to provide services which contribute particularly to meeting the special educational needs of educationally deprived children.

§ 200.76 *Use of Title I funds for bonus pay.*

Comment. Several commenters requested more guidance as to whom and under what conditions bonus pay may be paid.

Response. No change has been made. The regulations are designed to provide

flexibility for LEAs and State agencies to decide who should receive bonus pay.

§ 200.77 *Use of Title I funds for evaluation.*

Comment. One commenter pointed out that neither this section nor § 200.130 which it references addresses the issue of use of Title I funds.

Response. A change has been made. Section 200.77 now specifies that evaluation is one category of costs that may be paid from Title I funds. The evaluation itself must be appropriate and reasonable.

§ 200.78 *LEA's use of Title I funds for selecting children to receive Title I services.*

Comment. One commenter recommended that an LEA be permitted to select children to receive Title I services based on economic as well as educational criteria.

Response. No change has been made. Section 123(a) of Title I requires that children be selected for Title I services based on educational criteria only.

Comment. One commenter requested that this section be clarified and examples provided.

Response. No change has been made. 34 CFR 201.103 contains detailed requirements concerning selection of participants. 34 CFR Parts 202, 302, and 204 also contain provisions concerning the selection of participants.

Comment. One commenter questioned both the necessity and the legal authority for this section.

Response. A change has been made. The authority, Section 124(a) of Title I, has been added. The provision is necessary to clarify widespread confusion concerning which steps in the needs assessment/student selection process may be paid for using Title I funds.

§ 200.79 *LEA's use of Title I funds for expenses related to advisory councils.*

Comment. One commenter requested that this section include a provision requiring Title I funds which are used for project area and project school advisory council activities be used in accordance with LEA policies for advisory council activities.

Response. No change has been made. LEA's may require this under their authority in 34 CFR 201.162(b)(1).

Comment. One commenter recommended deletion of this section as the provisions are contained in 34 CFR 201.162.

Response. No change has been made. This section authorizes use of Title I funds for expenses related to advisory councils. 34 CFR 201.162 contains the requirements which must be met in order actually to use funds for that purpose.

§ 200.80 *Use of Title I funds for construction.*

Comment. One commenter questioned the inclusion of the special restrictions in paragraph (b)(2) requiring agencies to make every reasonable effort to pay for construction before using Title I funds.

Response. No change has been made. The requirement is necessary to ensure that Title I funds are not used for construction which would have been paid for from other sources in the absence of Title I.

§ 200.81 *Use of Title I funds for equipment.*

Comment. One commenter recommended including supplies under this section.

Response. No change has been made. Section 200.81 is intended only to authorize the purchase of equipment with Title I funds and to outline the criteria of need which must be met in order to purchase it. Since these restrictions apply specifically to equipment, supplies were not included in the section.

Comment. One commenter recommended requiring applications to include justifications for equipment purchases.

Response. No change has been made. Section 200.113(a) requires applicant agencies to include budgets in their annual updates, and § 200.113(b) requires SEA approval of amendments to the application whenever an agency wishes to purchase equipment. These requirements are sufficient to ensure that justification is provided for equipment purchases.

Comment. One commenter recommended deletion of paragraphs (b) and (c) of this section on the grounds that the requirements in those sections are subjective, ambiguous, and provide no practical standard.

Response. No change has been made. Although these standards do require agencies to interpret the term "every reasonable effort," the substance of the standards is necessary to ensure that Title I is fully a supplemental program.

Comment. One commenter recommended deletion of this section.

Response. No change has been made. Section 200.81 is necessary to ensure that equipment is purchased with Title I funds only when necessary.

Subpart E—Fiscal Requirements That Apply to All Agencies That Receive Title I Funds

§ 200.90 *Maintenance of effort.*

Comment. Several commenters recommended increasing the two percent tolerance to three, four, or five percent. Another commenter recommended that no tolerance be provided, and that the statutory language be observed.

Response. A change has been made. The legislative history of Pub. L. 95–561 clearly indicates that the five percent tolerance previously permitted is not acceptable. In conformance with the statutory language, all tolerance has been eliminated, and agencies must maintain 100 percent of their fiscal effort.

Comment. One commenter requested that agencies be allowed to compute maintenance of effort on the basis of average daily membership (ADM) or enrollment, rather than on average daily attendance (ADA).

Response. A change has been made. In § 200.90(b), agencies have the option of using either ADA or ADM in computing maintenance of effort.

Comment. Several commenters recommended that maintenance of effort determinations be based on some measure of services other than level of expenditures.

Response. No change has been made. Section 126(a) of Title I, upon which the requirements in § 200.90 are based, requires that agencies maintain "combined fiscal effort" in order to qualify to receive Title I funds. Therefore, there is no statutory basis for determining compliance with maintenance of effort on the basis of anything other than level of expenditures.

Comment. One commenter objected to the prohibition in paragraph (a)(2) against using, as a second preceding year, a year which was not previously used as a first preceding year.

Response. No change has been made. This provision in § 200.90(a)(2) is necessary to prevent an agency from significantly reducing fiscal effort in a given year and yet not reflecting that reduction on its maintenance of effort determination, thereby circumventing the requirement of Section 126(a) of Title I.

Comment. One commenter recommended that, in making determinations of substantial compliance, such factors as efficiency and the effort of withheld Title I funds on the educational deprivation within a school district be considered.

Other commenters, however, questioned whether a substantial compliance standard was authorized, and whether this standard was unduly vague.

Response. A change has been made. This provision was included to cover a limited class of situations—for example, when the retirement of a senior level teacher in a small district measurably affects the level of expenditures maintained. However, since questions have been raised suggesting that this provision might be abused, and since the exercise of discretion to accept substantial compliance in such circumstances is not expressly authorized by the Title I statute, this provision has been deleted.

Comment. One commenter objected that paragraph (a)(2) of this section was inconsistent with previous Departmental guidance interpreting the "preceding fiscal year" provision (ESEA Title I Program Directive INST. A101–8). The commenter recommended that the section be revised to conform to that guidance.

Response. No change has been made. The program directive provided agencies a one-time-only option of comparing either one of two sets of fiscal years in making maintenance of effort determinations. The prohibition in § 200.90(a)(2) is necessary to prevent agencies from completely circumventing the maintenance of effort requirement.

Comment. One commenter questioned whether the term "community services" as used in paragraph (d)(1) includes locally funded community education programs. It was recommended that community services be deleted as an expenditure that cannot be considered if it does include such programs.

Response. No change has been made. The definition of "current expenditures" in Section 198 of Title I excludes community services.

Comment. One commenter questioned the necessity of paragraph (a)(2), since the Department sets a closing date for applications each year.

Response. No change has been made. The Department sets no closing date for applications to the SEA from agencies operating projects.

Comment. One commenter questioned why rounding off of expenditures was felt to be necessary.

Response. No change has been made. Rounding off of figures to an even dollar amount has been an accepted practice designed to ensure that expenditures are maintained at the same basic level as the year before, without penalizing agencies for relatively minor changes in expenditure levels that may be attributable to mere statistical variations. The levels at which agencies are permitted to round off are not believed to allow a significant decrease in fiscal effort.

Comment. One commenter recommended including a statement in this section explaining what happens when an agency fails either to maintain effort or receive a waiver.

Response. No change has been made. If an agency has failed either to maintain effort or to receive a waiver, the SEA may not approve the agency's Title I application. The agency may not expend funds unless its application has been approved.

Comment. One commenter requested clarification as to whether an agency may expend Title I funds pending decisions on requests for maintenance of effort waivers.

Response. No change has been made. Section 200.90 states that an SEA may not approve an agency's application unless the agency has either maintained effort or secured a waiver, and funds may not be expended unless the application is approved. In situations where agencies are in the second and third year of a three-year application, the SEA must suspend approval each year pending maintenance of effort determinations.

Comment. One commenter requested a revision providing relief for LEAs which must reduce staff due to reduced enrollment.

Response. No change has been made. Section 200.90(a) authorizes agencies to compute maintenance of effort on a per pupil basis, thereby eliminating staff reductions which are commensurate with enrollment decreases as a problem in maintaining fiscal effort.

§ 200.91 *Waiver of the maintenance of effort requirement.*

Comment. One commenter recommended including time limits for the Secretary's action on requests for waivers of maintenance of effort.

Response. No change has been made. The Secretary will process all requests for maintenance of effort waivers in an expeditious manner.

Comment. One commenter recommended considering the adverse effect of withholding Title I funds when making waiver determinations.

Response. No change has been made. The statute does not provide for consideration of the effect of withholding Title I funds in making waiver determinations.

Comment. Several commenters objected to the exclusion of referenda, or acts of State legislatures, school boards, or other governmental bodies as circumstances which qualify for a waiver of maintenance of effort.

Response. No change has been made. Section 126(a) of Title I authorizes the Secretary to waive the maintenance of effort requirement only in the event that an agency fails to maintain effort due to exceptional and unforeseen circumstances. Since the voluntary action of a governmental body, be it an electorate or a legislature, cannot be unforeseen, reductions in fiscal effort due to those actions do not meet the statutory criteria for a waiver by the Secretary.

Comment. One commenter requested that greater flexibility be provided in granting waivers.

Response. No change has been made. The language in this section provides the Secretary the maximum flexibility authorized by Section 126(a)(2) of the Title I statute.

Comment. One commenter suggested requiring the approval of the district advisory council before an LEA requests a waiver.

Response. No change has been made. There is no statutory authority for requiring district advisory council approval of a request for a waiver of the maintenance of effort requirement.

Comment. One commenter requested that the term "exceptional and unforeseen circumstances" be defined and that examples be provided.

Response. No change has been made. Examples of exceptional and unforeseen circumstances are provided. Including a more specific definition of the term could limit the Secretary's flexibility in granting waivers, as needed, in appropriate circumstances.

Comment. One commenter recommended that this section provide for more direct involvement of the SEA in requests for waivers of maintenance of effort.

Response. No change has been made. Under Section 126(a)(2) of the Title I statute, only the Secretary is authorized to waive the maintenance of effort requirement; therefore, there is no need for direct SEA involvement in waiver requests.

Comment. One commenter asked why paragraph (d)(3) does not specify that, for all years subsequent to the year in which a waiver is granted, agencies must determine compliance with the basic maintenance of effort requirement on the basis of the level of effort that would have been required had the waiver not been granted.

Response. No change has been made. Section 200.91(d)(3) requires that "for the fiscal year immediately following the fiscal year for which the waiver was granted, the SEA shall determine the

affected agency's compliance with the basic standard required if the affected agency had not be granted the waiver." However, if the affected agency's level of fiscal effort increases in subsequent years, that agency's compliance with the basic standard will be based on those higher levels, not the level which would have been required had a waiver not been granted.

Comment. One commenter questioned the inclusion of an extended strike as grounds for a waiver of the maintenance of effort requirement.

Response. A change has been made. An extended strike has been deleted as a specific basis for a waiver since it is not in all cases exceptional and unforeseen. However, an extended strike may qualify an agency for a waiver under the general criteria in § 200.91(c)(2)(iv) if the strike is exceptional and unforeseen.

Comment. One commenter asked what situations the provision in paragraph (c)(2)(iii) was intended to address.

Response. No change has been made. A loss of impact aid money is one type of situation which this provision would cover.

Comment. One commenter questioned why a double levy failure was not included as grounds for a waiver.

Response. No change has been made. A double levy failure is essentially a voluntary act and as such is not grounds for a waiver.

Comment. One commenter questioned why paragraph (d) transferred to an SEA the Secretary's responsibility for reducing the allocation of an agency to whom a waiver has been granted.

Response. No change has been made. Since the SEA makes the allocations to applicant agencies, the responsibility for reducing those allocations would fall naturally with the SEA.

§ 200.92 *Supplement, not supplant.*

Comment. One commenter objected to the use of the phrase "to the extent practical increase the level of funds" as unclear.

Response. No change has been made. That phrase comes directly from Section 126(c) of Title I. This basic requirement is discussed at greater length in 34 CFR 201.130–201.143.

§ 200.93 *Excess Costs.*

Comment. One commenter questioned the use of instructional time rather than simply expenditures as a means of implementing the excess costs requirement.

Response. A change has been made. Section 126(b) of Title I requires that Title I funds only be used to meet "excess costs" of Title I instruction—that is, costs over and above an agency's average per pupil expenditures, by grade level or levels, for all pupils in the grades included in the agency's Title I project. Records are not routinely kept of such expenditures on a grade level basis. Moreover, the provision of Title I services itself introduces an element of uncertainty into this calculation. This is because, at least in theory, except where Title I services are provided outside of regular school hours, use of Title I instructional staff to provide instruction to Title I participants reduces the instructional load of the regular instructional staff. It may therefore result in incremental inceases in per pupil expenditures for non-Title I participants. Non-Title I funds would then have to be used to provide comparable incremental increases to Title I participants in conformance with the statutory standard.

The Department has long recognized, however, that the excess costs provisions were not intended to require shifting of State and local expenditures to cover incidental shifts in instructional costs, within limits, where regular teachers remained responsible for the instruction of Title I participants.

It has also concluded that the most satisfactory way to identify situations in which such continuing responsibility can be maintained is to look to instructional time. Since instructional time serves as a proxy for instructional costs, it will also, in time, approximate per pupil expenditures. The regulations have been substantially revised, in this final revision, to provide several models of compliance with these requirements.

Comment. A number of commenters objected to the restriction of 20 percent on the amount of regular program instruction by a particular teacher that a Title I program may displace before allocation of some State and local funds to the Title I project is required.

Response. A change has been made. Models are provided, under the revised regulations, for observing the excess costs requirement without allocating State and local funds to the Title I project. These models identify cases in which, because the instructional time away from a regular teacher is limited, the Secretary believes that teachers can continue effectively to be responsible for a Title I participant's instruction in coordination with Title I instructional staff. In such cases, there is no substantial shift in teaching load, and therefore expenditures, in violation of the excess costs requirement.

Where, however, a substantial amount of instructional time is spent away from the regular instructor, the Secretary believes that the regular instructor can no longer effectively oversee a child's program or provide supplemental instruction during the remaining instructional time together to compensate for that which has been missed. Moreover, some limitation is necessary to preclude large-scale alteration of staffing patterns which might result, for example, if including a significant number of children in a Title I project allowed a school as a matter of practice to significantly reduce pupil-teacher ratios in non-Title I classes or to reduce the number of such classes it would otherwise be required to staff.

Models for replacement projects and extended pull-out projects have been included to provide appropriate guidance in order to prevent these violations. The standard of 25 percent, rather that 20 percent, of instructional time has been used in the final regulations to provide as much flexibility as possible for schools using various methods of dividing instructional time, including provision of instruction in certain basic subjects only four, rather than five, times per week.

Comment. One commenter requested clarification of the term "the time . . . spent receiving instruction from a particular teacher . . . "

Response. No change has been made in the regulatory language. Additional models and examples have been added to assist in the application of this standard.

Comment. One commenter recommended deletion of paragraph (d)(1) which requires that records be kept which demonstrate that Title I pays for only the excess costs of projects.

Response. A change has been made. The revised excess costs provisions describe five different project designs which, if implemented as described, can be designed and implemented so as to satisfy the excess costs requirement without the need for excessive recordkeeping. Agencies which operate projects that do not correspond to any of the five project designs described in § 200.94(b)–(f) must still comply with the excess costs requirement in Section 126(b) of Title I. Such agencies must maintain records to demonstrate their compliance, as required by 34 CFR 76.731 of EDGAR.

Comment. Several commenters recommended deletion of the provision which allows agencies to round down to a whole number the number of State and locally paid staff required under an excess costs program.

Response. A change has been made. Agencies may now round to the nearest whole number if they provide staff to the Title I project.

Comment. Several commenters recommended including examples or illustrations of how the standard is actually applied to programs.

Response. A change has been made. The revised excess costs provisions include examples of four of the five different project designs described. The only design for which an example is not included is the "add on project" which involves providing Title I services during times when students normally receive no regular instruction.

Comment. One commenter recommended that this section state the Department's position with respect to awarding high school graduation credit for instruction provided under Title I.

Response. A change has been made. Section 200.94(h) states the Department's position with respect to the award of credits, for purposes of graduation, to students participating in Title I projects. The awarding of credits for participation in a Title I project is entirely a State and local matter.

Comment. Several commenters recommended that this section specifically explain how the standard applies to in-class and pull-out program designs.

Response. A change has been made. The revised excess costs provisions describe and provide examples for four types of pull-out and in-class project designs.

Comment. One commenter recommended specifically stating the relationship between the excess costs requirement and the requirement that Tile I funds supplement, not supplant State and local funds.

Response. No change has been made in the regulatory language. However, the detailed provisions on supplementing and not supplanting in 34 CFR 201.130–201.143 have been revised to include references and examples relating to the excess costs requirement.

Comment. Several commenters objected to the percent of instructional time standard as allowing widespread supplanting.

Response. A change has been made. As described in an earlier response, the Secretary believes that use of an instructional time standard is fully justified. However, the regulations have been revised to clarify the range of options available for compliance, and to explain the context in which the instructional time standard applies.

Comment. One commenter recommended that handicapped Title I participants be exempted from the 20 percent restriction.

Response. No change has been made. One of the fundamental principles underlying the provisions in these regulations with respect to the participation of handicapped students in Title I programs is equality of treatment. To the extent possible, handicapped and non-handicapped students are to be treated equally—that is, selected on the same basis and provided the same services as other children. No compelling justification exists for deviating from this principle in the area of maximum allowable displacement of non-Title I program instruction.

Comment. One commenter questioned why the reference to the most recent year for which satisfactory data is available was omitted from paragraph (b).

Response. A change has been made. The requirement that agencies use the most recent satisfactory data available in computing excess costs has been added in § 200.93(b).

Comment. One commenter requested clarification of the provision allowing the maximum regular program instruction displacement to be determined per day, per week, or per month.

Response. A change has been made. Examples have been added to assist in the implementaton of this requirement.

Comment. One commenter questioned what was meant by the term, "by grade level or levels" in paragraph (b).

Response. No change has been made. This term has the same meaning as "grade or grades" in Section 126(b) of Title I.

Subpart F—State and Local Administrative Responsibilities

§ 200.100 *Applicability of the regulations in Subpart F.*

Comment. One commenter questioned the omission of the requirement that the funds referred to in paragraph (c)(2)(ii) are to be made available for expenditure prior to the beginning of the fiscal year.

Response. A change has been made. That requirement has been added to § 200.100(c)(2)(ii).

§ 200.101 *Payments for State administration.*

Comment. One commenter recommended adding the phrase "proper and efficient" before the word "performance" in paragraph (a).

Response. A change has been made. Under § 200.101(a) the Secretary pays each State an amount equal to the amount spend by it in the proper and efficient performance of its duties under Title I.

Comment. One commenter recommended that the language in paragraph (a)(1) be clarified by stating that the amount referred to in that paragraph includes amounts allocated to the State for payments to LEA's and State agencies.

Response. A change has been made. Section 200.101(a)(1) has been revised specifically to include amounts for payments to LEAs and State agencies.

Comment. One commenter recommended revising paragraph (b)(2)(ii) by using the statutory term "otherwise available" rather than "already being used" since funds could be available but not being used.

Response. A change has been made. Section 200.101(b)(2)(ii) has been revised to use the statutory term "funds otherwise available."

Comment. One commenter recommended using the term "is authorized to pay" rather than "may pay" in paragraph (d) to avoid the implication that the Secretary could withhold funds even if a State fulfills all the requirements.

Response. A change has been made. The word "may" has been deleted from § 200.101(d).

Comment. One commenter questioned the omission of the statutory requirement that activities under paragraph (d)(1) be directly and exclusively related to the enforcement of Titles I and IV.

Response. A change has been made. That requirement has been added to § 200.101(d)(1).

§ 200.110 *SEA approval of applications from LEAs and State agencies.*

Comment. One commenter recommended adding the provision that SEAs must consider the factors in paragraphs (b)(1)–(3) where pertinent.

Response. A change has been made. The phrase "where pertinent" has been added to § 200.110(b).

Comment. One commenter recommended specifying that the evaluations referred to in subsection (b)(4) are evaluations under Section 124(g) of Title I.

Response. A change has been made. Section 200.110(b)(4) now specifies evaluations under Section 124(g) of Title I.

Comment. One commenter recommended including a provision in this section stating that the effective date of approval of an application is the date that the application is received by the SEA in substantially approvable form.

Response. A change has been made. Under § 200.110(c), applications are considered approved as of the date on which they are received by the SEA in substantially approvable form.

Comment. One commenter recommended inserting a paragraph in

this section stating that SEA approval of an application does not relieve agencies of the responsibility of complying with all applicable requirements.

Response. A change has been made. Section 200.110(d) has been added to include that proviso.

Comment. One commenter recommended requiring SEAs to withhold approval of applications if any complaints against the agency of significant nature are unresolved while approval of the application is pending.

Response. No change has been made. The statute requires only that SEAs consider complaints when reviewing applications for approval. Thus, there is no statutory basis for requiring an SEA to withhold approval merely because a complaint is unresolved.

Comment. One commenter questioned the requirement that SEAs "consider" various factors, objecting that the term is too ambiguous to be useful.

Response. No change has been made. The requirement that SEAs "consider" the factors in § 200.110(b)(1)–(4) is in Section 164(a) of Title I.

§ 200.111 *Opportunity for a hearing on application disapproval*

Comment. One commenter recommended revising paragraph (b) to provide that an SEA shall afford opportunity for a hearing before disapproving an application.

Response. A change has been made. Section 200.111 has been revised to provide that applicant agencies will be afforded an opportunity for a hearing before the SEA disapproves an application in whole or in part.

§ 200.112 *Appeal to the Secretary*

Comment. One commenter recommended revising this section to provide that agencies must file notices of intent to appeal, rather than the appeals themselves, within 20 days of receiving the SEA's final action disapproving the agency's application.

Response. A change has been made. Section 200.112 was revised to provide that only the notice of intent to appeal need be filed within 20 days. Upon receiving a notice of intent to appeal, the Secretary will contact the appellant regarding handling of the appeal.

§ 200.113 *Amendments to the application.*

Comment. One commenter recommended deleting the phrase "three-year" from before "application" to cover situations where applications cover periods of less than three years.

Response. A change has been made. The term "three-year" modifying application has been deleted from § 200.113(a).

Comment. One commenter questioned the necessity of requiring a budget in annual updates of Title I applications since the original application will contain a budget for all the years of a multi-year application. The commenter also questioned the necessity of including a statement of the amount of Title I funds carried over from the previous year and the amount requested from the agency's current application.

Response. No change has been made. Because it is not possible to predict with certainty the amount that Congress will appropriate each year for Title I programs or the exact amount that each grantee will receive, it is necessary to require annual submission of budgets. It is necessary that the SEA know the amount of funds the agency plans to expend in order to effectively evaluate the appropriateness of the agency's expenditures.

Comment. One commenter questioned the inclusion of the items listed under paragraph (b)(1)–(7) as changes which must be included in amendments to the application unless they are the result of monitoring or auditing activities.

Response. No change has been made. It is necessary that SEAs remain informed regarding changes of the types described in § 200.113(b)(1)–(7) in order to administer effectively the projects in their respective states.

Comment. One commenter recommended revising this section to clarify that agencies may submit applications for less than three years and may submit amendments to applications at any time.

Response. A change has been made. Section 200.113(b) now specifies that agencies shall submit amendments whenever they seek to make changes in their projects. Section 200.113(a) has been revised by deleting the word "three-year" before "application."

§ 200.120 *Authority for State rulemaking.*

Comment. One commenter questioned the omission from this section of the statutory requirement that State rules not conflict with the law and regulations.

Response. No change has been made. That provision is included in § 200.121(b).

§ 200.121 *Limitations on State rulemaking authority.*

Comment. One commenter questioned the authority for the limitations imposed in this section.

Response. No change has been made. Both GEPA and Title I prohibit SEAs from adopting rules which conflict with requirements under applicable Federal laws.

Comment. One commenter recommended revising this section to allow SEAs to prohibit practices authorized under Title I if the practices are in violation of State statutory requirements or State board of education policy.

Response. No change has been made. The purpose of the provision is to prevent LEAs and State agencies from being prohibited by the SEA from designing whatever type of project they select as long as all Title I requirements are met.

§ 200.122 *Examples of State rulemaking.*

Comment. A number of commenters objected to the prohibition against SEAs prohibiting the use of Title I funds for services in particular curriculum areas.

Response. A change has been made. Section 200.122(c) has been revised to refer to the authority retained by LEAs, under the Title I statutory scheme, to decide what curriculum areas are to be included in Title I projects so long as all applicable requirements are met.

Comment. One commenter recommended including, as an example of a rule which an SEA may not adopt, prohibiting LEAs from using Title I funds to serve students whose primary language is other than English.

Response. No change has been made. 34 CFR 201.132 and 201.141 both contain prohibitions against any automatic elimination from consideration of students whose primary or home language is other than English.

Comment. One commenter recommended that a definition of curriculum area be provided.

Response. No change has been made. For the purpose of § 200.122, the term "curriculum area" is synonymous with instructional area, such as language arts, or mathematics.

Comment. One commenter recommended deletion of the prohibition against SEAs prescribing grade levels to be included in Title I projects.

Response. No substantive change has been made. Section 200.122(c)(1) provides that LEAs retain the authority to determine the grade levels that will be included in their Title I projects. To permit SEAs to prescribe the grade levels to be included would undermine the integrity of the needs assessment process and would deprive LEAs of their responsibility for designing local projects.

Comments. Several commenters recommended deletion of paragraph (b)(3), objecting to any SEA control over

selection by application agencies of curriculum areas.

Response. No change has been made. Although § 200.122(b) does not authorize an SEA to require the inclusion of a particular curriculum area in a Title I project, it does permit the SEA to limit the number or categories of curriculum areas to be included in Title I projects. This enables an SEA to limit the range of curriculum areas as a way of preventing the dilution of Title I services.

Comment. One commenter recommended revising paragraph (c)(2) to provide that SEAs may prohibit agencies from including curriculum areas in its Title I project which are not supported by the needs assessment.

Response. No change has been made. SEAs already have such authority under § 200.110, which provides that the SEA shall not approve applications unless it is satisfied that Title I funds will be used in accordance with all applicable requirements, including those relating to the needs assessment.

§ 200.130 *Evaluation procedures.*

Comment. One commenter recommended reviewing this section to ensure that it is consistent with the requirements in § 200.160.

Response. No change has been made. The two sections do not conflict with one another. Specific LEA evaluation reporting requirements are contained in 34 CFR 201.176.

Comment. One commenter recommended revising paragraph (b)(3) to provide that agencies may measure achievement gains over a period of 9 to 12 months.

Response. No change has been made. Section 200.130(b)(3) implements the requirement in Section 124(g)(2) of Title I which requires measurement of achievement over a period of at least 12 months in order to determine the extent to which regular school year programs have sustained effects over the summer. Data for an agency's regular evaluation (as opposed to the special sustaining effects evaluation) may be collected at 9 to 12 month intervals in accordance with 34 CFR 201.175(a)(3).

Comment. One commenter questioned why this section omitted the requirement that agencies collect data for evaluation purposes.

Response. A change has been made. Section 200.130(b)(2) has been revised to require agencies to collect data, as needed, for evaluation purposes.

§ 200.140 *Recordkeeping requirements.*

Comment. One commenter questioned why the regulations omitted any reference to the determination of the amount of Title I funds to be paid in cases where those funds have not been accounted for separately.

Response. A change has been made. Section 200.194(b) now specifies how that amount shall be determined.

Comment. One commenter questioned the omission of the requirement that SEAs use fiscal control and funds accounting procedures for Title I funds.

Response. A change has been made. That requirement has been added to § 200.140(a).

Comment. One commenter questioned the rationale for the five year period for retention of records. Another commenter requested clarification on whether records must be kept for five years after the end of the fiscal year in which a project is operated or for five years after the end of the three-year period for which an application is approved.

Response. No change has been made. Section 437(a) of GEPA requires agencies to maintain the records described in § 200.140(b)(1) and (2) for five years after the completion of the activities for which the Title I funds are used. That language has been interpreted in § 200.140(d) as requiring records to be retained for five years after the close of the fiscal year in which the funds were spent.

Comment. One commenter questioned why paragraphs (a) and (b) require records to be kept at the project level rather than program level.

Response. No change has been made. Both Title I and GEPA require records at the project level based on the definition of project in § 200.5.

Comment. One commenter questioned the authority for including paragraphs (b)(3) and (4) concerning records showing compliance and significant project experiences and results.

Response. No change has been made. Section 127(a) of Title I requires agencies to keep records which will facilitate an effective audit; such records would include those showing compliance. The requirement for records showing significant project experiences and results is based on the need for records with respect to evaluations.

§ 200.141 *Access to information.*

Comment. Several commenters requested that a definition of "documents related to a Title I project" be included in this section.

Response. No change has been made. A definition of this term would have to be either so general that it would not be helpful, or so specific that it might restrict access to documents which may be indirectly related to a Title I project.

Comment. Several commenters objected to the requirement that documents be specifically identified in order to gain access to them.

Response. A change has been made. Section 200.141(a) was amended to require persons to identify the type of information or documents they seek, rather than the actual documents.

Comment. One commenter recommended that persons be granted an opportunity to inspect and copy documents, rather than inspect or copy them.

Response. A change has been made in § 200.141(c) to clarify that the section does not preclude an individual from both inspecting and either copying or requesting the agency to copy documents.

Comment. One commenter requested that LEAs be required to distribute to all advisory council members, documents related to the Title I project without the members having to ask for them.

Response. No change has been made. This kind of requirement would place a costly if not impossible burden on some LEAs, particularly large ones. The distribution of documents to LEAs' Title I advisory councils is covered in 34 CFR 201.160.

Comment. Several commenters questioned the reference in paragraph (a) to "its Title I project" since most Title I projects are not operated by SEAs directly.

Response. A change has been made. Section 200.141(a) now provides that the SEA shall provide access to any of the records related to the Title I program in the State.

Comment. One commenter recommended revising this section to require that all correspondence relative to Title I going from the SEA to the LEA also be sent to the district advisory council.

Response. No change has been made in this section. However, 34 CFR 201.160 implements all statutory requirements concerning the provision of information to advisory councils.

Comment. Several commenters requested clarification of the term "reasonable cost" as used in paragraph (c)(2).

Response. No change has been made. The term "reasonable cost" is intended to authorize agencies to charge an amount approximately equal to the agency's cost of making the copies.

§ 200.142 *Access by State and Federal auditors.*

Comment. One commenter recommended deletion of the reference to personnel in this section since Section 170 of Title I relates only to records.

Response. No change has been made. The reference to personnel is reasonable

and necessary to ensure that effective audits may be conducted.

Comment. One commenter recommended revising the section to provide that private auditors conducting State audits under contract are to be afforded the same access as State and Federal auditors.

Response. No change has been made. The term "State auditors" as used in § 200.142 refers to any person conducting an audit under Section 170(a) of Title I.

§ 200.151 *Minimum standards for monitoring.*

Comment. One commenter recommended that SEAs only be required to make monitoring reports available to district advisory councils, rather than sending the reports to them.

Response. No change has been made. Section 125(c) of Title I requires SEAs to provide district advisory councils with copies of SEA monitoring reports.

Comment. One commenter recommended that this section include a reference to the technical assistance aspect of SEA monitoring.

Response. A change has been made. Section 200.151(a)(4) now includes a reference to the obligation of SEAs to provide technical assistance, where appropriate, in monitoring projects.

Comment. One commenter objected to the requirement that SEAs monitor for both compliance and program effectiveness.

Response. A change has been made. Section 200.151(a)(3) has been revised to require SEAs to evaluate applicant agencies' efforts to assess and improve the quality and program effectiveness of the Title I services being provided.

Comment. Several commenters objected to the requirement that SEA monitoring reports be sent to all project area and project school advisory councils which have been established for the agency which was monitored. The commenters argued that this requirement was overly burdensome.

Response. A change has been made. Section 200.151(f)(2)(i) requires the SEA to send the report to the district advisory council of the monitored agency, but not the other councils.

Comment. One commenter recommended making the LEA responsible for distributing monitoring reports to its district advisory council.

Response. No change has been made. Section 125(c) of Title I requires SEAs to provide copies of monitoring reports to district advisory councils.

Comment. One commenter recommended requiring SEAs to provide notification to LEAs concerning any follow-up action the SEA plans to take prior to notifying its district advisory council.

Response. A change has been made. Under § 200.151(f)(1), SEAs must notify the monitored agency of any planned follow-up action by the SEA.

Comment. One commenter recommended requiring an SEA to hold an exit conference with LEA staff prior to the SEAs issuing any written monitoring report.

Response. No change has been made. The Title I statute provides no authority for the Department to require an exit conference. An SEA may, however, adopt this procedure if it wishes.

Comment. Several commenters felt that the time limits for issuing and responding to monitoring reports were too long and should be decreased.

Response. A change has been made. The time limit for issuing reports by the SEA has been reduced from 90 days to 60 days and the time limit for agency response to monitoring reports has been reduced from 60 days to 45 days.

Comment. One commenter recommended changing the title of paragraph (a) to "Purpose and scope of monitoring" since the statute requires the Secretary's criteria to include the purpose of monitoring.

Response. A change has been made. Paragraph (a) has been retitled "Purpose and scope of monitoring."

Comment. One commenter questioned the omission of follow-up visits as one method of ensuring that corrective action is taken by applicant agencies.

Response. A change has been made. Follow-up visits have been added to the list of compliance procedures under § 200.151(e)(2).

Comment. Several commenters recommended requiring SEAs to involve advisory council members in monitoring activities.

Response. No change has been made. Nothing in either the statute or the legislative history indicates that SEAs should be required to involve advisory council members in State monitoring activities.

Comment. Several commenters recommended specifically requiring SEAs to interview parents of Title I participants as part of its required monitoring activities.

Response. No change has been made. Section 167 of Title I requires SEAs to monitor for program compliance and effectiveness. If an SEA determines that it cannot do this without interviewing parents, then parents should be interviewed. However, there is no authority for requiring these interviews as part of all monitoring visits.

Comment. One commenter recommended revising paragraph (d) to clarify that SEAs recommend improvements and require corrective actions.

Response. A change has been made. Section 200.151(d) now reads that SEAs require corrective actions rather than recommend them.

§ 200.160 *Reporting to the Secretary.*

Comment. One commenter questioned the omission from paragraph (a) of the requirement that the report referred to in that paragraph include the results of objective measurements required by Section 124(g) of Title I.

Response. A change has been made. That requirement has been added to § 200.160(a).

Comment. One commenter questioned why paragraph (a) interprets the statutory language "improving the educational attainment" as "meeting the special educational needs."

Response. A change has been made. The statutory language "improving the educational attainment" is now used in § 200.160(a).

§ 200.161 *Reporting to the SEA.*

Comment. One commenter recommended revising paragraph (a) to provide that LEAs will submit reports containing information reasonably necessary to enable the SEA to perform its Title I duties.

Response. A change has been made. The word "reasonably" has been added before the word "necessary" in § 200.161(a).

Comment. One commenter recommended including in paragraph (b) the statutory language of Section 127(b) of Title I which requires that, in the case of reports related to performance, the information must be in accordance with specific performance objectives.

Response. A change has been made. That proviso has been added to § 200.161(b).

§ 200.170 *Technical assistance provided by the SEA.*

Comment. One commenter recommended requiring LEA input into SEAs' development of technical assistance programs.

Response. No change has been made. The Title I statute provides no authority for the Department to require SEAs to consult LEAs in the development of their technical assistance programs. However, since the technical assistance will be provided to LEAs and State agencies, SEAs are encouraged to consult with officials of these agencies in order to provide effective assistance in the areas where it is most needed.

Comment. One commenter recommended specifically requiring

SEAs to provide technical assistance to LEAs and parents in the area of parent involvement.

Response. No change has been made. Parental involvement is one aspect of an LEA's Title I program and as such is covered under the present language of this section. While SEAs are encouraged to provide whatever assistance to parents that is appropriate, the Title I statute requires nothing specific as far as provision of technical assistance to parents.

§ 200.171 *Dissemination of information to LEAs and State agencies.*

Comment. One commenter recommended including a provision in this section requiring SEAs to adopt procedures to ensure that LEAs disseminate information to parents in a language they can understand.

Response. No change has been made. This section is intended to address only dissemination by SEAs to LEAs and State agencies. Provision of information by LEAs to advisory councils is covered in 34 CFR 200.160.

Comment. One commenter questioned why State policies with respect to noninstructional duties were singled out in this section.

Response. A change has been made. The paragraph in § 200.171 dealing with noninstructional duties has been deleted.

§ 200.172 *Dissemination of information to LEAs and State agencies.*

Comment. One commenter questioned the use in the NPRM of the term "incorporate" when the statute uses the term "adopt, where appropriate."

Response. A change has been made. The term "adopting, where appropriate" is now used in § 200.172(a)(2).

§ 200.180 *Contents of a complaint.*

Comment. One commenter recommended including "failure to operate a program in accordance with the approval application" as grounds for a complaint.

Response. No change has been made. The failure to operate a program in accordance with the approved application is a violation of Section 121 of Title I and as such is covered under this section without the specific reference requested.

Comment. Several commenters pointed out that this section could be interpreted as requiring complainants to refer to specific sections in the laws or regulations, and recommended clarification that such reference is not necessary.

Response. A change has been made to allow a complaint to be heard if it contains sufficient information to indicate that, if the information is found to be true, a specific applicable statute or regulation was violated.

Comment. One commenter objected to the requirement that complaints include a specific request for relief.

Response. A change has been made. A complaint need not include a specific request for relief. Paragraph (c) was therefore deleted.

Comment. One commenter complained that the provisions concerning contents of a complaint were too restrictive to enable relatively unsophisticated complainants to file acceptable complaints.

Response. A change has been made. Complaints need not specify a request for relief, and may include any data which supports the allegation of violation.

§ 200.183 *Required procedures for resolution of complaints that are filed with LEAs for State agencies.*

Comment. One commenter recommended providing complainants with the right to subpoena records which have bearing on the complaint.

Response. No change has been made. Section 200.141 governs the right of access to information. The Secretary lacks the statutory authority to confer the right to subpoena records.

Comment. Several commenters questioned why the SEA is to determine whether an investigation is necessary for local level resolution of a complaint.

Response. A change has been made. According to § 200.183(b)(5), the LEA or State agency, rather than the SEA, now determines whether an on-site investigation is necessary.

Comment. One commenter questioned the omission of any reference to investigations of complaints when the law requires applicant agencies to adopt procedures for the investigation as well as the resolution of complaints within 30 days.

Response. A change has been made. Section 200.183(b)(1) has been revised to provide that applicant agency complaint resolution procedures shall include time limits for the investigation *and* resolution of complaints. In addition, § 200.183(b)(5) provides for on-site investigations, when necessary.

Comment. One commenter recommended adding a provision allowing applicant agencies to dismiss complaints which are not filed in accordance with that agency's complaint procedures and allowing appeals to be filed with the SEA only on the issue of whether the applicant agency followed its own procedures.

Response. No change has been made. The procedures required by Section 128 of Title I are for applicant agency review and resolution of complaints as defined in § 200.180. Any statement meeting the requirements of § 200.180 must be handled in accordance with the agency's procedures. Any final action by an applicant agency on a complaint may be appealed to the SEA. If an individual submits a statement which does not qualify as a complaint, the agency should notify the individual who may then either resubmit a revised statement to the applicant agency or go directly to the SEA. The SEA may either dismiss, resolve, or refer the statement to the applicant agency.

Comment. One commenter recommended requiring applicant agencies to forward complaint resolutions to the SEA within five days of resolution.

Response. No change has been made. Applicant agency resolution of a complaint is considered final action unless that resolution is appealed. Nothing in the statute indicates that SEAs need be notified of all applicant agency complaint resolutions.

§ 200.184 *Time limit for resolution of complaints that are filed with LEAs or State agencies.*

Comment. One commenter requested extending the time limit for applicant agency complaint resolution to 60 days.

Response. No change has been made. Section 128 of Title I requires applicant agencies to investigate and resolve complaints within 30 days.

Comment. One commenter recommended allowing 30 working days for applicant agency complaint resolution.

Response. No change has been made. Nothing in the Title I statute or legislative history indicates that the 30 days referred to in Section 128 of Title I were intended to be working days.

Comment. Several commenters objected to the inclusion of "the need for an investigation" and "the fact that complex issues are raised" as factors which could result in delayed resolution of a complaint.

Response. A change has been made. Section 200.184(b)(1) now authorizes SEAs to extend the time limit for resolution of the complaint due to the need for an *extended* investigation. However, § 200.184(b)(2) retains the complex issues factor since resolution of complex legal and policy issues may frequently require more than 30 days.

§ 200.185 *Appeals from resolutions by LEAs and State agencies.*

Comment. One commenter stated that the law specifies that applicant agency resolutions must be appealed within 30 days, not just postmarked within that period.

Response. No change has been made. An appellant is considered to have appealed an agency's resolution by preparing the appeal and delivering it to the postal service for delivery to the appropriate agency for review.

§ 200.186 *Required procedures for resolution of appeals and complaints that are filed with SEAs.*

Comment. Several commenters suggested that SEAs be required to refer direct complaints back to the applicant agency involved.

Response. No change has been made. Under normal circumstances, SEAs will refer direct complaints back to the applicant agency. The standards for accepting direct complaints must be included in the SEAs' written complaint resolution procedures.

Comment. One commenter recommended that SEAs be required to resolve complaints directly instead of referring them back to the applicant agency.

Response. No change has been made. The legislative history of Title I clearly states that in most cases, complaints should first be lodged with the applicant agency, and the SEA should act as the first level appellate agency.

Comment. One commenter questioned the omission of any reference to SEA procedures, including time limits, for conducting on-site investigations as required by Section 168(1) of Title I.

Response. A change has been made. Section 200.186(a)(2) and (c)(2) has been revised to require SEAs to develop and implement written procedures for conducting on-site investigations and resolving complaints.

Comment. One commenter recommended requiring SEAs to disseminate copies of the complaint procedures rather than just information about them.

Response. No change has been made. The requirement in § 200.186(b)(3) parallels the statute. Information about the procedures would normally include, if not simply consist of, the procedures themselves.

Comment. One commenter questioned whether the reference in paragraph (c) to paragraph (a)(2) (relating to complaints) rather than paragraph (a)(1) (relating to appeals) would deny complainants the right to present evidence and question parties during SEA hearings on appeals of applicant agency resolutions.

Response. No change has been made. Although Section 128 of Title I affords complainants the opportunity to present evidence and questions parties during the initial stages of the complaint process, Section 168 of Title I does not require that a similar opportunity be afforded during the appeal process.

Comment. One commenter recommended requiring SEAs to provide information on their complaint procedures to district advisory councils.

Response. No change has been made. Such information is already available pursuant to § 200.186(b)(3).

Comment. One commenter recommended prohibiting SEAs from dismissing complaints because the complaint lacks certain information or is not in the proper form.

Response. No change has been made. If an SEA receives a statement that does not meet the criteria in § 200.180 for complaints, it should be returned to the sender with an explanation of why it does not meet the criteria. The complainant may then submit a revised complaint.

Comment. One commenter recommended specifying in paragraph (a)(1) that the appeals referred to are only appeals of complaints.

Response. No change has been made. Section 200.186(a)(1) requires SEAs to develop procedures for reviewing appeals of resolutions made under § 200.183. Section 200.183 deals only with resolution of complaints.

Comment. One commenter questioned whether paragraph (a)(2) (relating to SEA complaint resolution procedures) should include standards for SEA acceptance of direct complaints.

Response. No change has been made. Section 168 of Title I requires SEAs to adopt procedures for receiving complaints. Nothing in that section indicates that the Department should specify what the procedures should contain.

§ 200.187 *Time limit for resolution of appeals and complaints that are filed with SEAs.*

Comment. One commenter objected to the inclusion of "the need for an investigation" and "the fact that issues are complex" as factors which could result in delayed resolution.

Response. A change has been made. SEAs may now only exceed the 60-day limit due to the need for an *extended* investigation or due to the fact that the issues raised in the complaint are complex. However, § 200.187(b)(2)(ii) retains the complex issues factor since resolution of complex legal and policy issues may frequently require more than 60 days.

Comment. One commenter recommended reducing the time limit for SEA referral of complaints to applicant agencies from 60 to 10 days.

Response. A change has been made. The time limit for SEA referral has been reduced from 60 to 30 days in § 200.187(a)(2).

Comment. One commenter questioned why this section does not provide for completing both the investigation and the resolution within 60 days.

Response. A change has been made. Section 200.187(a)(1) imposes a 60-day time limit for SEA investigation and resolution of direct complaints and appeals.

§ 200.190 *State audits.*

Comment. One commenter recommended clarifying that the items listed in paragraph (a) are the minimum components of an audit.

Response. A change has been made. Section 200.190(a) has been revised to state that audits conducted under this section should cover, at a minimum, the items listed in § 200.190(a)(1) and (2).

Comment. One commenter recommended revising the language referring to the independence of auditors to prohibit auditors from being within the organizational unit that directly administers a State's Title I program.

Response. No change has been made. The regulation meets the desired end in requiring auditors to be "independent of the unit that administers Title I."

Comment. One commenter recommended that the regulations clearly state the relationship between OMB Circular A–102 and §§ 200.190–200.196.

Response. No change has been made. However, the Department plans to send SEAs information concerning the application of OMB Circular A–102 to audits under these regulations, particularly the recently issued Attachment P.

Comment. One commenter requested clarification of the term "under State supervision" in paragraph (c).

Response. No change has been made. The term means that the State agency must be responsible for the quality of any Title I audit performed by a private audit firm.

Comment. One commenter recommended including a provision allowing State audits to replace Federal audits.

Response. No change has been made. The Title I statute requires audits by SEAs and by the Inspector General.

Comment. One commenter recommended including, in this section,

major classes of financial information to be reviewed during State audits. Another commenter recommended including maintenance of effort, comparability, and excess costs as areas to be reviewed.

Response. A change has been made. The areas listed under § 200.190(a) (relating to the purpose of State audits) should provide sufficient guidance to allow SEAs and auditors to decide the specific nature and scope of the audits to be conducted in their States. Three new areas (comparability, maintenance of effort, and excess costs) have been added to this list.

Comment. One commenter recommended allowing the use of sample audits to satisfy the audit requirements of Section 170 of Title I.

Response. No change has been made. While sampling of particular types of records (*e.g.*, comparability) would be permitted under this section, sampling of individual LEAs rather than periodic auditing of all LEAs would be inconsistent with the Title I statute.

Comment. One commenter questioned the authority for the independence of auditor requirement in paragraph (c).

Response. No change has been made. The requirement for independence of auditors is consistent with both GAO auditing standards and the provisions in OMB Circular A–102, Attachment P.

Comment. Several commenters questioned the legal authority for requiring audits every three years when the Title I statute specifies only that audits shall be conducted with reasonable frequency.

Response. A change has been made. Although § 200.190(b) still indicates that normally each agency must be audited once every three years, the SEA, rather than the Secretary, may determine that an agency or agencies will be audited less frequently based on the factors listed in § 200.190(b)(1)(i) through (iv).

Comment. One commenter questioned the inclusion of the items in paragraphs (b)(1)(i), (ii), and (iv) as factors which may prevent an SEA from auditing all agencies in a State every three years.

Response. No change has been made. The factors listed in paragraphs 200.190(b)(1)(i), (ii), and (iv) are included because they relate to the size and complexity of the auditing activity and may prevent SEAs from completing an audit of every agency every three years.

§ 200.191 *Audit resolution.*

Comment. One commenter recommended increasing the time limit for agency responses to final audit reports from 60 to 90 days.

Response. No change has been made. The 60-day limit is felt to allow sufficient time for the agency to respond without causing the resolution process to become unduly protracted.

Comment. One commenter recommended including in this section the requirement that SEAs provide audit reports to district advisory councils.

Response. No change has been made. The provision of audit reports to district advisory councils is included in 34 CFR 201.160(b).

Comment. One commenter recommend revising the language in paragraph (b)(1) to provide for those instances where the SEA itself conducts the audit.

Response. A change has been made. The provision in § 200.191(b)(1) has been revised to cover situations where either an independent auditor or the SEA conducts the audit.

§ 200.192 *Audit appeals.*

Comment. Several commenters objected to the fact that there were no time limits on SEA resolution of audit appeals.

Response. A change has been made. According to § 200.192(c), SEAs must include, in their audit appeal resolution procedures, reasonable time limits for each step in those procedures.

Comment. One commenter recommended rewriting this section using standard legal language to afford due process.

Response. No change has been made. The current language affords due process without interfering with a State's development of audit resolution procedures.

§ 200.193 *Appeal to the Secretary.*

Comment. Several commenters recommended extending the time limit for appeal of SEA final audit resolutions to the Secretary beyond 20 days.

Response. A change has been made. Section 200.193 conforms with Section 425(b) of GEPA and provides that agencies need only file a notice of intent to appeal within 20 days of receiving SEA final action. Upon receiving a notice of intent to appeal, the Secretary will contact the appellant regarding handling of the appeal.

Comment. One commenter recommended revising this section to provide that an agency must file a notice of intent to appeal within 20 days of receiving the SEA's final action on an audit appeal, rather than filing the appeal itself.

Response. A change has been made. Section 200.193 was revised to provide that only a notice of intent to appeal need be filed within 20 days of receiving SEA final action. Upon receiving a notice of intent to appeal, the Secretary will contact the appellant regarding handling of the appeal.

§ 200.194 *Repayment of misspent Title I funds.*

Comment. Several commenters requested that the Secretary's grant back authority conferred by Section 456 of GEPA be regulated in this section.

Response. No change has been made. Section 456 of GEPA is regulated, with respect to funds recovered as a result of an audit of a Title I program, in the debt collection regulations contained in an amendment to EDGAR.

Comment. One commenter recommended including a requirement that SEAs repay audit exceptions against applicant agencies as a result of activities which were approved by the SEA and later determined to be illegal in a final audit resolution.

Response. No change has been made. As stated in § 200.110(d), approval of an application does not relieve an agency of the responsibility of complying with all applicable requirements.

Comment. One commenter requested an example of Federal funds which an agency could use to repay an audit exception.

Response. No change has been made. One type of funds currently available is general revenue sharing funds.

§ 200.195 *Use of misspent funds that are repaid to SEAs.*

Comment. One commenter questioned why SEAs are not given the option of reallocating funds to State agencies.

Response. No change has been made. State agencies are fully funded and as such are not eligible to receive any additional funds.

§ 200.200 *SEA withholding of Title I payments.*

Comment. One commenter recommended that this section be revised to provide, in the case of comparability violations, for withholding of funds only from those schools which are noncomparable.

Response. No change has been made. The SEA's actions in the event an LEA violates the comparability requirements are covered in 34 CFR 201.123–201.124. In particular, 34 CFR 201.124(a) requires an SEA to repay the total amount of Title I funds spent in each noncomparable school in the LEA during the period of noncomparability.

Comment. Several commenters objected to the inclusion of "the effect of the withholding on the participating children" and "the harm that may result to Title I projects" as factors an SEA should take into account in deciding whether to withhold funds.

Response. No change has been made. The factors listed above are to be considered in relation to the other factors listed in the section. In deciding whether to withhold funds, an SEA will weigh the seriousness of the noncompliance against the effect the withholding will have on the participating children, and the need for suspension in order to prevent further misuse of Title I funds against the harm that might result from this suspension. For example, an SEA would likely not withhold all funds from a large LEA due to a minor violation in only one project area school.

Comment. One commenter recommended that LEAs be required to notify the public when funds are about to be withheld.

Response. No change has been made. Section 169(b) of Title I requires public notification of withholding by the SEA. This requirement is restated in § 200.201 of these regulations.

Comment. One commenter recommended requiring district advisory council involvement in withholding negotiations and proceedings between LEAs and SEAs.

Response. No change has been made. The Title I statute does not require this involvement, although notice of withholding must be provided to district advisory councils.

Comment. One commenter recommended providing a definition of the term "impartial decisionmaker."

Response. No change has been made. Section 200.200(b)(2)(ii) provides additional guidance when it states: "before an impartial decisionmaker *who did not participate in the SEA's decision to initiate the withholding action.*" With this limitation, SEAs are free to exercise their own judgment in selecting the decisionmaker.

Comment. One commenter questioned the omission of the requirement that agencies be given reasonable notice and opportunity to show cause why suspension action should not be taken before that action is taken by the SEA.

Response. A change has been made. The requirement that agencies be given reasonable notice and opportunity to show cause has been inserted in § 200.200(c)(1).

§ 200.201 *Notice to the public of SEA withholding.*

Comment. One commenter recommended revising the language in this section to provide that the LEAs district advisory council will be notified when an SEA submits a notice of withholding to the LEA.

Response. A change has been made. Section 200.201(a) requires an SEA to provide notice to the LEAs district advisory council when the SEA submits a notice of withholding to the LEA.

§ 200.202 *Appeal to the Secretary.*

Comment. One commenter recommended revising this section to provide that an agency must file a notice of intent to appeal within 20 days of receiving the SEAs final action on a withholding action, rather than filing the appeal itself within that period.

Response. A change has been made. Section 200.202 was revised to provide that only a notice of intent to appeal need be filed within 20 days of receiving SEA final action. Upon receiving a notice of intent to appeal, the Secretary will contact the appellant regarding handling of the appeal.

§ 200.210 *Use of a State compliance agreement.*

Comment. One commenter questioned whether this section meant that an applicant agency could misspend Title I funds while under a compliance agreement.

Response. No change has been made. State compliance agreements may be used to permit an applicant agency to receive and spend Title I funds even though it is not in full compliance with all Title I requirements. However, the compliance agreement must describe the steps that the LEA or State agency will take to achieve full compliance during the period specified by the agreement. In no event may this period exceed 90 days.

Comment. One commenter recommended allowing compliance agreements to cover violations which occurred before the agreement was signed.

Response. No change has been made. The language of the Title I statute and its legislative history both clearly indicate that compliance agreements may not be retroactive.

Comment. One commenter recommended revising the language of this section to emphasize the importance of the applicant agency coming into compliance as soon as possible.

Response. No change has been made. Section 200.211(g) indicates that State compliance agreements may be in effect *no longer than* 90 days, indicating that, if feasible, a shorter time could be required.

Comment. One commenter recommended including examples in this section.

Response. No change has been made. It is difficult to speculate about the variety of situations in which an SEA may use State compliance agreements.

Comment. One commenter questioned the special emphasis on the maintenance of effort requirement in paragraph (d).

Response. No change was made. The maintenance of effort requirement is specifically mentioned because it applies to expenditures that were made by the agency during the preceding fiscal year. Thus, noncompliance with the maintenance of effort requirement cannot be resolved through a compliance of agreement.

§ 200.211 *Contents of a State compliance agreement.*

Comment. One commenter recommended extending the time limit on SEA compliance agreements from 60 days to 180 days or the beginning of the next school year.

Response. A change has been made. In § 200.212(a), the time limit has been extended to 90 days. The option of entering into a compliance agreement for up to 90 days is intended to provide SEAs an opportunity to avoid withholding funds in cases where the applicant agency needs a little time to correct the violation or the seriousness of the violation does not warrant withholding of funds. State compliance agreements are not intended to exempt applicant agencies from full compliance with Title I requirements for extended periods of time. In the rare cases where more than 90 days may be required to remedy the noncompliance, the SEA should request a Federal compliance agreement with the Department.

§ 200.213 *Effect of expiration of a State compliance agreement.*

Comment. One commenter recommended that the relationship between compliance agreements and hearings under § 200.200(b)(2) be clarified in this section.

Response. No change has been made. This issue is covered in § 200.213(b) as well as in §§ 200.200(b)(4) and 200.210(b).

§ 200.220 *Approval of State applications and annual program plans.*

Comment. One commenter recommended specifically mentioning confirmation of actions taken by SEAs to correct compliance problems as a written finding the Secretary must make prior to approving State applications.

Response. No change has been made. This section references § 200.20. In so doing, § 200.220 incorporates the requirement in question.

§ 200.221 *Opportunity for a hearing on disapproval of a State application.*

Comment. One commenter recommended revising paragraph (a)(2) to provide that SEAs shall have at least 30 days from the time that notice of a hearing is sent before the hearing is actually held.

Response. No change has been made. The 30-day time period must be calculated from the date of receipt in order to ensure that the SEA has a full opportunity to prepare for the hearing.

Comment. One commenter objected to relying on the Education Appeal Board regulations in 34 CFR 78 because they have been disapproved by Congress. This commenter concluded that they are therefore not binding on hearing procedures under Title I.

Response. No change has been made. A formal opinion from the Attorney General of the United States advised the Secretary that Congress cannot constitutionally disapprove regulations by means of a concurrent resolution. Therefore, the Secretary has instructed the Education Appeal Board to consider its regulations final and binding.

§ 200.230 *Secretary's evaluation procedures.*

Comment. One commenter questioned why the Secretary's role in providing technical assistance had been omitted from this section.

Response. A change has been made. Technical assistance has been added to the list of responsibilities of the Secretary in § 200.230(f).

§ 200.240 *Contents of a complaint.*

Comment. One commenter requested that this section include an address to which direct complaints and appeals to the Department should be mailed.

Response. No change has been made. An address might well become obsolete, thereby causing extended delays. Appeals, direct complaints, and related correspondence, therefore, should be sent to the Assistant Secretary for Elementary and Secondary Education at whatever address is then appropriate.

§ 200.241 *Procedures for receiving direct complaints.*

Comment. One commenter questioned the omission of procedures for disseminating information about the Secretary's complaint procedures.

Response. No change has been made. The publication of these final regulations constitutes dissemination of the Secretary's complaint procedures.

Comment. Several commenters felt that the language in this section may be interpreted to require complainants to exhaust administrative remedies at the local and State level before filing a complaint with the Department.

Response. No change has been made. The definition of a direct complaint in this section does not include the requirement that a complainant exhaust administrative remedies at the local and State levels before complaining to the Department. To the contrary, paragraphs (a) (1) and (3) of § 200.242 specifically describe situations in which neither the LEA nor the SEA have been involved in complaint resolution.

§ 200.242 *Procedures for handling direct complaints.*

Comment. One commenter objected to the provision that allows the Department to resolve complaints without referring them to SEAs for lower level resolution.

Response. No change has been made. The special circumstances under which the Department will resolve a complaint directly are specified in § 200.242(a). These circumstances are limited to those instances where it would be in the best interest of the complainant or program beneficiaries for resolution to be undertaken directly by the Department.

Comment. Several commenters requested that the language "appropriate for any other reason" in former paragraph (a)(3) be clarified.

Response. No change has been made. This provision is intended to authorize the Assistant Secretary to resolve complaints directly whenever the particular circumstances surrounding the complaint make Federal level direct resolution appropriate. A restrictive definition would limit the situations under which a direct complaint would be accepted, thereby weakening the provision.

Comment. Several commenters felt that the term "serious and immediate harm" in paragraph (a)(1)(i) should be clarified.

Response. A change has been made. Because the term "serious and immediate harm" is intended to cover a wide range of situations, it cannot be inclusively defined. However, the provision in § 200.242(a)(1)(i) has been broadened to include harm to program beneficiaries as a criterion for accepting a direct complaint.

Comment. One commenter recommended deletion of the criterion "probability of success on the merits of the complaint" in paragraph (a)(1)(ii).

Response. No change has been made. A complaint must meet both the "serious and immediate harm" and the "probable success on the merits" criteria to be accepted as a direct complaint under § 200.242(a)(1). The purpose of these requirements is to limit review of complaints at the Federal level. This is consistent with the Department's view that most complaints should be resolved at the State and local level.

Comment. One commenter recommended that the Department monitor the resolution of all complaints referred to SEAs under § 200.242(c).

Response. No change has been made. There is no statutory authority for requiring this type of monitoring. The requirements in §§ 200.180–200.188 provide for timely resolution at the local and State level and an opportunity to appeal an SEA's resolution to the Department.

Comment. One commenter requested that direct complaints be accepted for resolution by the Department if they include adequate allegations that either the SEA has ignored the problem, or that relief from the SEA is unlikely.

Response. A change has been made. Section 200.242(a)(3) now provides for direct resolution of a complaint by the Department if an applicant agency or SEA has implemented a policy or practice that violates a Title I requirement, and the agency acknowledges that fact but refuses to correct the practice or policy.

Comment. One commenter recommended including a time limit of less than 60 days for Departmental referral of a direct complaint to an SEA.

Response. A change has been made. Under § 200.242(c), the Department must now refer complaints to the SEA for resolution within 30 days.

Comment. One commenter recommended including, as acceptable direct complaints, complaints which allege that a policy violates Title I, and complaints for which no material facts are in dispute.

Response. A change has been made. Section 200.242(a)(3) permits the Department to accept a direct complaint showing that an agency has implemented a policy that violates Title I and that the agency has acknowledged this fact but refuses or fails to correct the noncomplaint practice. Complaints alleging violations that involve no dispute as to material facts are not accepted by the Department as direct complaints unless the complainant shows that delayed resolution would "result in serious and immediate harm to the complainant or to the program beneficiaries" and that the complainant "will probably succeed on the merits of the complaint." If these conditions are met, such complaints would be covered under paragraph (a)(1) of this section. This approach is consistent with the Department's view that most complaints should be resolved at the State and local level.

Comment. One commenter objected that this section does not specify that any time taken by the Department to decide whether to refer or resolve a complaint must be counted against the 60-day limit for the Department's resolution of the complaint.

Response. No change has been made. Section 200.245(b)(1) states that the Department's designated official issues a written resolution within 60 days of receiving a complaint. This time frame necessarily includes the time spent by the official in deciding whether to retain jurisdiction.

§ 200.243 *Appeals from final resolutions by SEAs.*

Comment. Several commenters objected to the requirement that appeals of SEA final complaint resolutions contain the exact words "Title I Appeal."

Response. No change has been made. The designation of an appeal as a "Title I appeal" is necessary for identification purposes to distinguish it from a direct complaint.

Comment. One commenter recommended deletion of paragraph (d)(4) which requires that appellants indicate what relief they seek from the Department.

Response. A change has been made. The term "relief" has been replaced with the more commonly used term "remedy." Appellants should be able to state the remedy they seek from the Assistant Secretary.

Comment. One commenter recommended requiring Departmental action on an appeal within five days.

Response. No change has been made. Section 184 of Title I provides the Secretary 60 days to investigate and resolve complaints and appeals.

§ 200.244 *Preliminary review of appeals.*

Comment. One commenter requested clarification of paragraph (b)(3), which states that dismissal of a complaint does not necessarily preclude further investigation of the issues raised in the appeal. Another commenter recommended that the Department inform complainants of their options if a complaint is dismissed under this section.

Response. A change has been made. Section 200.244(b)(3) has been revised to include the provision that resubmission of an amended appeal by the appellant is not precluded by dismissal of the appeal.

Comment. One commenter recommended adding a provision prohibiting the Department from dismissing an appeal solely because it is incomplete.

Response. A change has been made. Section 200.244(b)(3) indicates that an appellant may submit a revised appeal if the Department finds that a current appeal does not meet the requirements of § 200.243.

§ 200.245 *The designated official's procedures for resolving direct complaints and appeals.*

Comment. Several commenters felt that the 20-day limit for submission of evidence should be extended.

Response. No change has been made. Section 184 of Title I requires, in the absence of exceptional circumstances, that the Department resolve compaints and appeals within 60 days. If the Department received and reviewed an appeal, determined that submission of evidence was appropriate, requested the evidence, and provided 30 days for it to be submitted, 60 days would not be sufficient for the necessary review and resolution.

Comment. One commenter recommended revising this section to require the Department to hear testimony which the appellant, the SEA, or the applicant agency's representative wishes to present.

Response. No change has been made. Although the Title I statute requires a hearing at the State and local level, it does not require one at the Federal level. However, the language in § 200.245(a)(2) provides the opportunity for a hearing if the designated official determines that this presentation is appropriate.

Comment. One commenter requested that the term "research and investigations" as used in this section be clarified.

Response. No change has been made. The term "research and investigations" in § 200.245(a)(3) is intended to provide the designated official with the flexibility to acquire whatever additional information the official feels is necessary to resolve the complaint. A more restrictive definition of the term would take away some of the flexibility that the provision is intended to provide.

Comment. Several commenters objected to the inclusion of the term "if appropriate" in paragraph (b)(3) of this section.

Response. No change has been made. Inclusion of the phrase "if appropriate" in § 200.245(b)(3) is not intended to give discretion to the designated official to decide which, if any, of the named entities should be given notice of the resolution. Rather, it has been included in recognition of the fact that all of these entities may not be involved in a given complaint. Only those entities which have an interest must receive notice. For example, a complaint against the SEA may not involve a particular LEA or district advisory council.

Comment. Several commenters recommended adding a provision requiring the Department to consult with SEA personnel during the Department's resolution of complaints.

Response. No change has been made. Section 200.245(a)(1) provides that the SEA will be notified if a complaint is accepted for resolution by the Department. The SEA then has 20 days to submit any relevant written evidence or argument.

Comment. One commenter recommended adding a provision that complainants' and appellants' allegations shall be assumed to be true if the agency against which they are made does not respond to the Department's request for information under § 200.245(a)(1) within 30 days.

Response. No change has been made. The Department's designated official will issue a resolution under § 200.245(b) based on the information the official has gathered under § 200.245(a), which provides complainants, appellants, and agencies 20 days to submit written evidence or argument. Certainly, the agency's case will be impaired if it submits no evidence in its defense.

Comment. One commenter recommended requiring the Department to keep a public file of all complaints appealed to and filed directly at the Federal level.

Response. No change has been made. Such information is considered public information and is available for inspection on request with the Assistant Secretary.

Comment. One commenter questioned the omission from this section of the requirement that LEAs be given an opportunity to present evidence to the Department's designated official for complaint resolution.

Response. No change has been made. The LEA may present written evidence to the designated official under § 200.245(a)(1). In addition, § 200.245(a)(2) permits the presentation of oral evidence if the designated official determines that this presentation is appropriate.

Comment. One commenter recommended adding a provision in this section requiring the designated official's resolution to include notification of the parties right to administrative appeal.

Response. A change has been made. That provision has been added to § 200.245(b)(2)(ii).

§ 200.246 *Administrative appeals from the designated official's resolution.*

Comment. Several commenters objected to the requirement that parties specify the specific relief requested in appeals to the Assistant Secretary.

Response. A change has been made. The term "relief" has been replaced with the more commonly used term "remedy." Appellants should be able to state the remedy they seek from the Assistant Secretary.

Comment. One commenter questioned the rationale for the 30-day deadline for administrative appeals to the Assistant Secretary.

Response. No change has been made. The 30-day limit in § 200.246(b) is a reasonable one which is consistent with the time limits set by Sections 128 and 168 of Title I for appeals of applicant agency and SEA complaint resolutions.

§ 200.248 *The Assistant Secretary's procedures for resolving administrative appeals.*

Comment. Several commenters objected to the provision in this section which allows the Assistant Secretary to remand the appeal to the designated official for further factfinding when that official has already had 60 days to investigate and resolve the complaint.

Response. A change has been made. According to § 200.248(b), for further factfinding. Rather, if additional information is needed, the Assistant Secretary gathers it himself.

Comment. One commenter recommended allowing parties to the complaint to present any evidence they feel is necessary, rather than leaving the decision of whether to provide additional arguments to the Assistant Secretary.

Response. No change has been made. Under § 200.245(a), parties have the opportunity to present additional evidence at the Federal level to the designated official. This opportunity satisfies the requirement in Section 184(2) of Title I. If the Assistant Secretary needs further information, he may request it.

Comment. One commenter recommended either specifying that the Assistant Secretary's resolution is the final agency action, or provide for an appeal to the Secretary.

Response. A change has been made. Section 200.248(b)(4) provides that the Assistant Secretary's final resolution is the Department's final action concerning the appeal.

Comment. Several commenters objected to the phrase "if appropriate" in paragraph (b)(3).

Response. No change has been made. Inclusion of the phrase "if appropriate" in § 200.248(b)(3) is not intended to give discretion to the Assistant Secretary to decide which, if any, of the named entities should be given notice of the resolution. Rather, it has been included in recognition of the fact that all of these entities may not be involved in a given complaint. Only those entities which have an interest must receive notice. For example, a complaint against the SEA may not involve a particular LEA or district advisory council.

§ 200.250 *Audits by the Secretary.*

Comment. One commenter questioned why the NPRM charged the Secretary, rather than the Inspector General, with conducting audits under Section 185 of Title I.

Response. A change has been made. Section 200.250 has been revised and all references to the Secretary have been replaced with references to the Inspector General.

§ 200.251 *Audit resolution procedures.*

Comment. Several commenters recommended including time limits for Federal audit resolution.

Response. No change has been made. Significant variations in the scope and complexity of issues raised by audits make it extremely difficult to establish uniform time limits for each stage of the audit resolution process.

Comment. One commenter questioned why the regulations did not reflect the language in the House Report that these regulations explain the relationship between the various Federal administrative units involved in the conduct and resolution of audits.

Response. No change has been made. As revealed by the division of responsibilities that are described in §§ 200.250–200.251, the Inspector General has the responsibility for conducting audits and the Secretary is responsible for resolving the findings and recommendations resulting from those audits.

§ 200.252 *Judicial review of audit resolutions.*

Comment. One commenter recommended stating in this section that all Education Appeal Board decisions (including those related to audits) may be appealed to the United States Court of Appeals.

Response. No change has been made. Section 195 of Title I, the authority for this section, only affords the opportunity for judicial review from final actions concerning audit resolutions, withholdings, and application approvals. It is Section 455 of GEPA that affords judicial review of all Education Appeal Board decisions.

Comment. One commenter recommended providing LEAs and State agencies the right to appeal the Secretary's final action under § 200.215 to the court of appeals.

Response. No change has been made. Section 195 of Title I only authorizes appeals by the State.

§§ 200.253–200.254 *Repayment of funds.*

Special note: These sections are no longer included in the Title I regulations. Rather, they have been moved to the Debt Collection Regulations which will be published as an appendix to EDGAR. Comments on these provisions, therefore, have been considered when revising the Debt Collection Regulations.

§ 200.260 *Withholding of Title I payments.*

Comment. One commenter questioned why a 60-day time period is provided in paragraphs (b)(3)(ii) and (b)(3)(iii) before final decisions on withholding can become effective.

Response. No change has been made. Section 200.260(b)(3)(ii) implements Section 453(d) of GEPA, which provides that the Secretary has 60 days in which to modify or set aside a recommendation of the hearing officer. Section 200.260(b)(3)(iii) implements Section 453(d)(1) of GEPA, which provides that the decision as modified shall become final 60 days after modification by the Secretary.

Comment. One commenter recommended adding a provision including standards which give meaning to the term "failure to comply substantially with any assurances set forth in the application."

Response. No change has been made. Although the Secretary recognizes the desirability of uniform standards in making determinations of this type, it is impossible to anticipate every type and pattern of violation which may occur. Therefore, the phrase has been left to be interpreted on a case by case basis.

§ 200.261 *Suspension of Title I payments pending completion of withholding proceedings.*

Comment. Several commenters objected to the inclusion of "possible factual errors" and "hardship" as factors the Secretary considers in deciding whether to withhold funds.

Response. No change has been made. Each of the four factors listed in § 200.261(b)(2) are to be considered by the Secretary in relation to one another. Thus, "lack of necessity for the suspension" and "the nature of the

violation" must be weighed along with questions of hardship and possible factual errors to determine whether an SEA has shown cause why the proposed suspension action should not be taken.

Comment. One commenter questioned why the term "reasonable notice" in Section 186(a) of Title I has been interpreted to mean that 10 days notice should be provided under paragraph (b)(1)(ii).

Response. No change has been made. Because show cause hearings prior to suspension of funds are conducted by the Education Appeal Board, the Board's regulations governing such proceedings have been incorporated into the Title I regulations. Section 100d.25(b)(2) of the Board's regulations provides that suspensions become effective 10 days after the date on which the recipient receives written notice unless the recipient requests an opportunity to show cause.

§ 200.262 *Judicial review of withholding actions.*

Comment. One commenter questioned why this section did not contain the provision in Section 195 (b) and (c) of Title I regarding the court's options and the Secretary's response during judicial review of a final agency action.

Response. No change has been made. The regulations in this part are intended to apply only through the final action of the Department. Section 195 (b) and (c) govern the actions of the court of appeals. Therefore, they are beyond the scope of these regulations.

§ 200.263 *Notice to the public of the Secretary's withholding.*

Comment. One commenter requested clarification of the term "appropriate action" as used in this section.

Response. No change has been made. The term is intended to ensure that notice of the withholding is provided, but not to prescribe the manner in which it is provided.

§ 200.270 *Use of a Federal compliance agreement.*

Comment. Several commenters recommended including language in this section emphasizing the importance of agencies achieving compliance as soon as possible.

Response. No change has been made. The Department recognizes the importance of quickly achieving compliance. However, the Department also recognizes that, in some instances, additional time may be needed to make the compliance agreement workable and most likely to achieve meaningful results. Therefore, § 200.272(d)(2) provides the Secretary with discretion to establish a reasonable period for achieving full compliance.

Comment. One commenter requested clarification of the relationship between this section and 34 CFR 76.900 which prohibits Department officials from waiving any regulations which apply to a Departmental program.

Response. No change has been made. Paragraph (a) of 34 CFR 76.900 provides that Department officials may waive program regulations as long as the waiver is specifically provided for in the regulations. Section 186(c) of Title I and § 200.270 do authorize the Secretary to enter into compliance agreements.

Comment. One commenter recommended including a provision in this section stating that during the time that an agency is in compliance with an agreement, the agency is not subject to any other legal action for the violation covered in the agreement.

Response. No change has been made. Section 200.270(c)(2) relieves agencies of liability for repaying funds spent in violation of a Title I requirement that is covered by a compliance agreement during the time the agreement is in effect. It is beyond the authority of the Department to prohibit, by regulation, legal action by private individuals and organizations.

Comment. One commenter questioned the necessity of the particular reference in paragraph (d) to maintenance of effort.

Response. A change has been made. The reference to maintenance of effort has been deleted.

§ 200.272 *Time period for coming into compliance under a Federal compliance agreement.*

Comment. Several commenters recommended extending the maximum time period for a Federal compliance agreement from 60 days to 180 days.

Response. A change has been made. The 60-day limit for "immediate full compliance" has been changed to 90 days in § 200.272(a).

Comment. One commenter questioned the rationale for the 60-day time period allowed for SEAs to come into full, immediate compliance.

Response. A change has been made. Section 186(c) of Title I provides for two types of compliance agreements. One type must result in immediate compliance. Since compliance agreements cannot apply retroactively, the Secretary interprets the term "immediate" to mean within a limited period of time—that is, up to 90 days. It is anticipated that this period of time should be sufficient to permit agencies to remedy all but the most serious violations. The other type of compliance agreement—used to remedy these serious violations—permits the Secretary to defer full compliance until a future date. In order to enter into this type of agreement, the Secretary must—after a hearing—issue written findings that immediate compliance with the requirements is not feasible. In such an agreement, the Secretary would afford the affected agency a reasonable period of time for achieving full compliance.

§ 200.274 *Effect of expiration of a Federal compliance agreement.*

Comment. One commenter recommended specifically stating that agencies are entitled to hearings upon expiration of a compliance agreement.

Response. No change has been made. The provisions of § 200.260 apply upon the expiration of a compliance agreement. That section provides a right to a hearing prior to taking action to withhold funds.

Comment. One commenter recommended providing for extensions of Federal compliance agreements in the event that unforeseen circumstances occur.

Response. No change has been made. The provisions in § 200.272(d)(2) authorize the Secretary to establish a reasonable period of time for the SEA to come into compliance under a Federal compliance agreement. Although we do not anticipate that extensions of the original deadline will be granted frequently, the Secretary may consider granting an extension in circumstances where it is reasonable.

§ 200.280 *Procedures for issuing cease and desist orders.*

Comment. One commenter recommended initiating cease and desist orders whenever complaints to the designated official under § 200.243 indicate that an agency is not in substantial compliance with Title I requirements.

Response. No change has been made. If a complaint to the designated official indicated substantial noncompliance, the Department would require appropriate corrective action in its resolution of the complaint. The Department anticipates that affected agencies will comply with any corrective action required by a complaint resolution. However, if further enforcement action is necessary, cease and desist proceedings are but one of several alternatives available to Departmental officials.

Comment. One commenter recommended replacing the term "facts" with the term "charges" in this section.

Response. A change has been made. The word "facts" has been replaced

with "charges" in § 200.280(a)(1) and "stated" has been replaced with "charged" in § 200.280(c).

Comment. One commenter recommended revising the language in paragraph (a) to agree with the statutory language "causes to be served* * *a cease and desist order* * *."

Response. A change has been made. The statutory language has been added to § 200.280(a).

Comment. One commenter recommended providing the Secretary with the authority to initiate immediately a cease and desist order when a violation is found as part of the agency's final action under § 200.248 (Assistant Secretary's procedures for resolving administrative appeals of complaints).

Response. No change has been made. Although the Secretary recognizes the importance of quickly remedying any noncompliance that is discovered as a result of complaint resolution, she believes that, in most instances, grantees will voluntarily take the required corrective action without the need for formal enforcement proceedings. In those instances when formal enforcement action is required, the Secretary must determine which of the enforcement procedures is most appropriate.

Comment. Several commenters recommended clarifying that the petition for review referred to in paragraph (d) must be filed within 60 days of the Education Appeal Board's decision.

Response. No change has been made. Section 200.281 states that these reports and orders must be appealed, by petitioning for judicial review, within 60 days of the time copies are received.

Comment. One commenter expressed concern that this section specifies that appeals will be heard by panels of the Education Appeal Board, rather than the full Board.

Response. No change has been made. 34 CFR 78 indicates that panels of the Board hold hearings. This provision is necessary since it would be unworkable for the full 30 member Board to hold hearings.

§ 200.282 *Enforcement of cease and desist orders.*

Comment. One commenter recommended specifically stating that an SEA need not be granted a hearing before withholding is commenced if the SEA failed to comply with a cease and desist order.

Response. No change has been made. The Title I statute and regulations afford SEAs an opportunity for a hearing on the record before any withholding action is taken. A show cause hearing which may have been held under § 200.280 prior to issuance of a cease and desist order does not relieve the Department of its obligation to afford a hearing on the record before withholding funds. In addition to being legally required, we believe the issues raised by an action to withhold funds may differ from issues presented at a show cause hearing.

Comment. One commenter recommended specifically mentioning administrative costs in paragraph (a) as part of the Title I payment which can be withheld.

Response. A change has been made. Section 200.282(n) specifically authorizes the Secretary to withhold funds for State administration.

Subpart A—General

§ 201.4 *Definitions.*

Comment. One commenter requested that the number of children that institutions for neglected or delinquent children are designed to serve be reduced from 10 to 5.

Response. No change has been made. Institutions which are designed for the care of fewer than 10 children are so small that, in many cases, it is difficult for the resident children to be efficiently and effectively served under Title I. Moreover, many of these institutions closely resemble foster homes, which are not eligible institutions under § 201.4. Therefore, the current policy which limits the inclusion of these institutions as eligible institutions for the purpose of computing county aggregate grants under § 201.12(a) has been retained.

Comment. One commenter recommended including a definition of the term "magnet school" in this section.

Response. No change has been made. The term "magnet school" is used to refer to schools with any of a variety of enrollment patterns. A definition which includes only one or perhaps a few of those patterns would be unduly restrictive.

Comment. One commenter recommended revising the definition of "eligible school attendance area" to address the situations where students attend a public school other than the one to which they normally have been assigned.

Response. A change has been made. The definition of "school attendance area" is 34 CFR 200.5 has been revised to provide that children are considered to be in the attendance area of the school to which they would be assigned were they not attending a private school or another public school. In light of this change, the definition of "eligible school attendance area" has been retained without modification.

Comment. One commenter questioned to what situations the second sentence in the defintion of "eligible school attendance area" is intended to apply.

Response. A change has been made. That provision has been moved to the definition of "school attendance area" and revised specifically to include other public schools which children may be voluntarily attending, such as magnet schools.

Comment. One commenter recommended including a definition of "State and local funds" for the purpose of making comparability determinations.

Response. No change has been made. Section 201.114 specifies what expenditures are to be used in making comparability determinations.

Comment. One commenter questioned the inclusion of central office staff who assist instructional staff by performing strictly clerical and administrative functions within the definition of instructional staff.

Response. No change has been made. Staff members who perform clerical and administrative duties as direct assistance to staff members who provide instructional services are considered instructional staff because the functions they perform relate directly to the provision of instructional services.

Comment. One commenter questioned why the definition of "project area" omitted the provision that the area is designated without regard to the location of the project.

Response. A change has been made. The definition of "project area" was revised to include this statutory language.

Subpart B—Allocation of Title I Funds for Grants to Local Educational Agencies

Comment. A number of commenters recommended including a section to regulate Section 124(e) of Title I which requires Title I funds to be allocated among project areas and schools on the basis of the number and needs of the children to be served.

Response. A change has been made. This requirement is covered in § 201.15 of these regulations.

Basic Grants

§ 201.11 *Determination by the Secretary of basic grants.*

Comment. One commenter asked why children in institutions and foster homes were specifically mentioned in paragraph (b)(2) since these children are

included by the cross-reference to Section 111 of Title I in subsection (b)(1).

Response. No change has been made. Section 201.11(b)(2) is intended to remove any doubt that these children are included under the statutory reference in paragraph (b)(1) to Section 111(c) of Title I.

§ 201.12 *Allocation of county aggregate amounts by SEAs.*

Comment. One commenter stated that the regulations should set a minimum number of children to trigger the provisions of paragraph (b)(2)(i) (relating to school districts which overlap county boundaries).

Response. A change has been made. Section 201.12(b)(2)(i) has been revised to provide that SEAs shall make the separate allocation referred to in that section only if there are 10 or more children in the LEA.

Comment. One commenter recommended allowing a jail to submit counts based on the mean number of 17 year olds in that institution for the previous 12 months.

Response. No change has been made. The method of determining institutional counts in § 201.12(a) is designed to provide a count that corresponds to the average number of institutionalized children who reside in the institution long enough to benefit from services. Consistent with this intent, the 30-day requirement has been retained.

Comment. One commenter asked whether the option offered in paragraph (b)(2)(iii)(B) (relating to merger of school districts) would be available for three years if the district's application is in effect for the three years.

Response. A change has been made. Section 201.12(b)(2) (iii)(B) has been revised to permit an LEA that has been merged and has submitted a previously approved project application to carry out the approved project by itself or in cooperation with another LEA during the remainder of the fiscal year.

Comment. One commenter asked whether the term "local institution" refers only to institutions funded from local sources rather than State or private sources.

Response. No change has been made. This term is used so that local institutions, whatever their source of support, may be distinguished from State-operated institutions.

Comment. One commenter asked whether consideration had been given to providing more detailed guidance on subcounty allocation procedures, taking into account legislative history directing that such procedures should generally be consistent with the Federal formula requirements.

Response. No change has been made. The regulatory provisions dealing with subcounty allocation procedures incorporate applicable statutory language, and take into account legislative history, as well as practical problems.

Comment. One commenter questioned the rationale for first allocating funds generated by children in institutions, under paragraph (a), and then distributing funds based on the number of children from low-income families, under paragprah (b).

Response. No change has been made. Section 111(a)(3) of Title I indicates that funds generated by children in institutions for neglected or delinquent children may, in certain cases, be tranferred, according to § 201.12(a)(2), to agencies other than the LEA in which the institution is located. In order to make such a transfer or funds, it is necessary first to determine what portion of the LEA's allocation is based on the number of neglected or delinquent children in institutions.

Comment. One commenter asked why paragraph (a)(2) failed to provide more specific guidance concerning handling of funds generated by children in local institutions when no public agency will accept responsibility for providing them with Title I services.

Response. A change has been made. A new paragrpah (a)(3) was added to § 201.12.

Comment. One commenter asked why paragrpah (b)(2)(ii) describes a procedure which SEAs may follow in allocating funds to LEAs which serve children from other districts. The commenter stated that the Title I statute affords the SEA the authority to allocate such funds in whatever manner it feels will best carry out the purposes of Title I.

Response. A change has been made. Section 201.12(b)(2)(ii) has been revised to follow the language in Section 111(a)(2)(B) of Title I.

Comment. One commenter questioned the omission in § 201.12(a) of the statutory language that permits use of the most recent satisfactory data if data on the number of children residing in institutions for neglected or delinquent are unavailable.

Response. A change has been made. This statutory language has been added in § 201.12(a)(1)(ii).

Comment. One commenter questioned why the term "fiscal year" in Section 111(c)(2)(B) of Title I was changed to calender year" in § 201.12(a)(1)(i).

Response. A change has been made. The statutory term "fiscal year" is now used.

Comment. One commenter questioned why this section interpreted the term "the caseload data for October" used in Section 111(c)(2)(B) of Title I as 30 consectutive days, one of which is in October.

Response. A change has been made. This interpretation is consistent with the statutory language. As a continuation of current policy, it will enable the Secretary to make determinations for the purpose of making FY 1982 grants without having to ask applicants for additional information beyond what has already been submitted.

§ 201.13 *Exceptions to county aggregate amounts.*

Comment. One commenter recommended that SEA requests to allocate without regard to county aggregate amounts only be approved for a given fiscal year.

Response. A change has been made. The words "for a particular fiscal year" have been added to paragraph (b) after the language "the Secretary approves the SEA's request" in § 201.13(b).

Special Incentive Grants

§ 201.20 *Eligibility for special incentive grants.*

Comment. One commenter recommended that this section be revised to make clear that only those districts which participate in both Title I and in a State compensatory education (SCE) program must expend at least 50 percent of the SCE funds in areas eligible for Title I assistance.

Response. No change has been made. The statutory requirement that at least 50 percent of the SCE funds be spent in areas eligible for Title I assistance, applies to any LEA in the State, and not just those receiving both Title I and SCE funds.

Comment. One commenter recommended revising the language in this section to clarify that SCE funds expended in areas serving grade spans other than those served by the Title I program may nevertheless be counted towards the 50 percent requirement as long as those areas are eligible to receive services.

Response. A change has been made. Section 201.20(a)(2) uses the statutory language "school attendance areas of such agencies having high concentrations of children from low-income families."

Comment. Several commenters recommended stating that, when SCE funds are appropriated as part of a larger aggregate of funds, only those funds that are actually used to fund SCE programs may be counted as providing

matching funds as required under paragraph (a)(2) and Section 116 of Title I.

Response. No change has been made. Section 201.21 provides that entitlements are based on the amount of funds actually "expended for" programs meeting the requirements of § 201.20(a)(1), not for a broader class of programs. No change was, therefore, necessary.

Comment. One commenter questioned why this section omitted statutory language stating that, in order to be eligible, State programs must meet the requirements described in paragraph (a)(1) and (a)(2) "under State law."

Response. No change has been made. The phrase "under State law" is somewhat ambiguous. State laws may have the effect of meeting the requirements in Section 116 of Title I without having specific statutory language referring to those requirements. Therefore the regulations make it clear that compliance is determined on the basis of the manner in which the SCE is operated.

Comment. One commenter questioned why paragraph (a)(2) requires only 95 percent of the LEAs in a State to expend 50 percent or more of the SCE funds in school attendance areas eligible for Title I.

Response. A change has been made. The provisions has been revised to conform to the strict statutory language under which not less than 50 percent of the funds spent under the State program must be spent in school attendance areas that have high concentrations of children from low-income families.

§ 201.38 *Reallocation of Title I funds by SEAs.*

Comment. A number of commenters objected to the general authority of SEAs to reallocate applicant agency funds. These commenters cited a variety of reasons for their objections, including possible conflict with the Tydings amendments.

Response. No change has been made. SEAs are vested with authority to reallocate funds under Section 193(b) of Title I, and such action is not precluded by the Tydings amendment. This section of the regulations merely sets out dates and criteria to guide SEAs in their exercise of the applicable statutory authority.

Comment. One commenter requested clarification of the term "current projects" as used in paragraph (a)(1).

Response. A change has been made. Section 201.38(a)(1) has been revised and expanded.

Comment. One commenter felt that SEAs should be free to reallocate funds after February 1.

Response. No change has been made. Reallocation of funds on a date later than February 1 can be expected to interfere with agencies' planning, during the spring months, of programs for the next school year.

Comment. One commenter recommended that only carryover funds be considered available for reallocation.

Response. No change has been made. Restricting the reallocation authority would encourage excessive carrying over of funds.

Comment. One commenter recommended requiring SEAs to notify district advisory councils when the SEA is considering reallocating some of the LEA's funds to other agencies.

Response. A change has been made. According to § 201.38(a)(3), an LEA's district advisory council must be notified along with the LEA.

Comment. One commenter recommended adding to the list of factors SEAs may take into account when considering reallocation, the number of children from low-income families in the district who are not adequately reflected in current eligibility counts.

Response. A change has been made. Section 201.38(b)(1) has been revised to address this issue.

Comment. One commenter questioned the appropriateness of including the availability of funds from non-Title I sources as a factor to be considered in SEA reallocation.

Response. A change has been made. That factor has been deleted from § 201.38(a)(2).

Comment. One commenter requested clarification of the provision "the future availability of Title I funds" in § 201.38(a)(2)(v).

Response. No change has been made. This clause was included to permit the SEA to consider decreases in funding levels for the upcoming year as one factor that may warrant a reduction in the amount of funds that are considered "excess" under § 201.38(a)(1). In a situation where the amount of Title I funds is substantially reduced, it may be appropriate for an SEA to permit an increase in carryover funds to minimize the disruption to Title I services caused by a decrease in the level of funding.

Comment. One commenter questioned why the statutory language "to redress inequities or mitigate hardships" was omitted from paragraph (b)(1).

Response. A change has been made. Section 201.38(b)(1) has been revised to include this statutory language.

Comment. One commenter expressed concern that paragraph (a)(1)(vii) could be used to penalize LEAs for carrying over funds for reasons beyond their control (e.g., late appropriations).

Response. A change has been made. That factor has been deleted from § 201.38(a)(2).

§ 201.39. *Reallocation of Title I funds by the Secretary.*

Comment. One commenter recommended including specific criteria by which the Secretary will determine need as a basis for reallocation of Title I funds among States.

Response. No change has been made. Although the Secretary is granted reallocation authority, it is expected that this authority will be rarely exercised. Where the reallocation is exercised, however, it is anticipated that the Secretary would use the criteria in Section 193(b) (relating to reallocation of Title I funds by SEAs).

Subpart D—Designating Schools and School Attendance Areas for Title I Projects

Identifying Eligible Schools and School Attendance Areas

§ 201.50. *Overview of the regulations in this subpart.*

Comment. Several commenters recommended citing Section 123 as well as Section 122 in paragraph (a) of this section.

Response. A change has been made. Both sections are now cited in § 201.50(a).

Comment. One commenter asked why paragraph (a)(1) (relating to the selection of children) is included in Subpart D (relating to the selection of schools and areas).

Response. A change has been made. Section 201.50(a)(1) has been deleted. However, the reference to educationally deprived children in paragraph (a) has been retained since, in some cases, educational deprivation may be a factor in the selection of project areas and project schools.

Comment. One commenter questioned the use of the term "highest concentration" in paragraph (a)(2). The commenter stated that this term might be interpreted as meaning that all eligible areas cannot be served.

Response. A change has been made. The term "high concentration" has been adopted in § 201.50(a)(2).

§ 201.51 *Identifying eligible school attendance areas.*

Comment. One commenter recommended including a specific statement that an attendance area with

more than one building is considered a single attendance area.

Response. No change has been made. The number of school buildings does not control whether an area is a single attendance area for purposes of Title I.

Comment. One commenter recommended that the regulations explain how eligibility based on residency is determined for children who attend kindergarten, pre-kindergarten, or special education centers which serve the entire district.

Response. No change has been made. The eligibility of such centers may be determined on a school basis (see §§ 201.4 and 201.52). Alternatively, children attending such centers may be considered to be in the attendance areas of the schools they will attend in a following year or of the schools they would have attended if they were not attending the special centers.

Comment. One commenter recommended that this section address the issue of selection of project areas when attendance areas have no defined boundaries.

Response. No change has been made. The definitions of school attendance area and eligible school attendance area in § 201.4 address this issue.

Comment. One commenter recommended allowing LEAs to target Title I funds to school attendance areas and schools based on educational criteria only.

Response. No change has been made. Section 122 of Title I requires, with certain exceptions, that LEAs first serve areas with high concentrations of children from low-income families. The exceptions to this requirement included in Section 122(a)(2) and (d) of Title I are restated in §§ 201.51–201.52 and 201.60–201.66.

Comment. One commenter recommended permitting children who reside in non-project areas but who attend schools serving project areas to participate in Title I projects so long as services are not diluted for children who reside in the project area.

Response. No change has been made. Children assigned to schools serving project areas are considered as being in the attendance areas of those schools.

Comment. One commenter recommended that measures of low-income status be used consistently throughout an LEA's district.

Response. No change has been made. This requirement is already included in § 201.51(b)(3).

Comment. One commenter recommended clarifying whether this section authorized the use of three or four grade span groupings for selecting project areas.

Response. No change has been made. This issue is addressed in § 201.117.

Comment. One commenter recommended that, in determining whether an LEA has maintained Title I expenditures so as to fall within the 25 percent rule in paragraph (d)(ii), expenditures be measured for the district as a whole, rather than in previously served project areas and schools.

Response. No change has been made. The requirement that LEAs maintain Title I and State compensatory education (SCE) program expenditures in previously served project areas and schools is required in Section 122(a)(1) of Title I.

Comment. One commenter recommended deletion of paragraph (d)(3)(ii) which prohibits an LEA's use of percentages and numbers to identify more school attendance than would have been the case if eligibility were determined using either the percentage or number method alone.

Response. No change has been made. Section 201.51(d)(3)(ii) is consistent with pertinent legislative history. It is also designed to ensure that only areas with a high concentration of children from low-income families will be served. Paragraph (d)(3)(ii) adds flexibility, while maintaining the basic concept that LEAs serve a limited number of areas or schools.

Comment. Several commenters recommended expanding the no wide variance latitude in § 201.51(d)(4) from five percent to ten percent. Another commenter recommended that the Secretary be empowered to approve use of the no wide variance option even where the requirements in paragraph (d)(4) are not met.

Response. No change has been made. The five percent provision was included so that LEAs that have very low percentages of children from low-income families in each of their school attendance areas need not be constrained, in their selection of project areas, by economic criteria which are not statistically significant. Increasing this variance to ten percent would unduly dilute the concentration of Title I services.

Comment. One commenter recommended adding an additional section covering actual selection of areas, as well as identification of eligible areas.

Response. No change has been made. Sections 201.60–201.61 and 201.63–201.66 address selection of project areas.

Comment. One commenter recommended including guidance on how LEAs may serve students from local institutions for neglected or delinquent children when those children reside in a non-project area.

Response. No change has been made. Under § 201.75, children who have generated Title I funds as a result of their residence in such institutions must be served regardless of whether the institution is in a project area.

Comment. One commenter questioned the use of the term "aggregate per pupil amount" in paragraph (d)(1)(ii)(B).

Response. No change has been made. The level of expenditures which must be maintained is the aggregate of Title I and SCE funds. This level is determined on a per pupil basis because, where there may be shifts in school populations, the only meaningful comparison is based on expenditures per child.

Comment. One commenter questioned the justification for the options offered in paragraphs (d)(1)(iii) and (d)(2)(ii) concerning the use of grade span groupings.

Response. No change has been made. The option of using grade span groupings gives LEAs more flexibility in providing Title I assistance in those schools and areas which the LEA has determined should be served.

Comment. One commenter asked whether additional paperwork is required by paragraphs (d)(1)(iii) and (d)(2)(ii).

Response. No change has been made. No additional paperwork is required; these sections only apply if the LEA selects the option under § 201.51(c) of grouping areas and schools by grade span. The provisions are necessary to ensure that the grade span grouping option is not used to contravene the statutory intent of the requirements for the selection of schools and areas for Title I services.

Comment. One commenter asked why the no wide variance option applies only to the percentage method and not to the numerical method.

Response. No change has been made. The purpose of the no wide variance option is to relieve agencies of the requirement that they target funds based on relative economic status when the difference between areas, based on incidence of children from low-income families, is insignificant. This is the case when the percentage of children from low-income families in each area is approximately equal. This may not be the case when only the numbers of these children are equal. For instance, two areas may each have 175 children from low-income families, where the total number of children in each area is 500 and 200, respectively. In this case, the two areas are significantly different with respect to economic status.

Comment. One commenter asked how the one-third and five percent figures in paragraph (d)(4) (relating to the no wide variance rule) were derived.

Response. No change has been made. The one-third figure is based upon current policy. This figure is sufficiently restrictive to assure that funds will be targeted consistent with statutory intent. The five percent figure is intended to address the situation in districts where the average proportion of children from low-income families is very low and the one-third standard becomes overly restrictive (*e.g.*, in an LEA with a districtwide average of three percent and attendance areas with averages of two, three, and four percent).

§ 201.52 *Identifying eligible schools*

Comment. One commenter recommended determining eligibility of a school based on enrollment, or average daily membership (ADM), rather than average daily attendance (ADA).

Response. No change has been made. The provision for the use of ADA is statutorily required by Section 122(b) of Title I.

Comment. One commenter recommended requiring LEAs which use the 25 percent rule as a basis for identifying eligible school attendance areas to use this rule as a means of identifying eligible schools.

Response. A change has been made. Section 201.52 has been revised consistent with § 201.51(d)(1).

Comment. One commenter recommended requiring LEAs which qualify schools using the 25 percent rule to adhere to the maintenance of Title I effort requirement in § 201.51(d)(1)(ii).

Response. A change has been made. Section 201.52(b)(2)(ii) now specifically requires LEAs to meet the requirements of § 201.51(d)(1)(ii) in order for schools to qualify under the 25 percent rule.

Comment. One commenter recommended clarifying how the use of grade span groupings affects the selection of schools for Title I projects.

Response. A change has been made. Section 201.52(c) has been added specifically to permit the use of grade span groupings in designating schools as well as areas for Title I services.

Comment. One commenter asked why paragraph (a)(2) permits the use of ADA data in identifying eligible schools which serve children from more than one school attendance area. Another commenter asked why schools could be found eligible using the 25 percent rule and numerical method.

Response. No change has been made. These provisions are included to ensure that the eligibility of schools is determined on the same basis as school attendance areas so as not to discriminate against children attending such schools.

Comment. One commenter asked why the statutory language "substantially the same" was interpreted as "at least equal" in paragraphs (b)(1) and (b)(3).

Response. A change has been made. Sections 201.52(b) (1) and (3) have been revised to include the statutory language "substantially the same."

Selecting Schools and School Attendance Areas for Title I Projects

§ 201.60 *Overview of the process of selecting school attendance areas and schools for Title I projects.*

Comment. One commenter recommended allowing LEAs to select attendance areas and schools based on the number and percentage of children with the greatest educational need in each area and school.

Response. No change has been made. Procedures for ranking on the basis of educational deprivation and selection of attendance areas and schools are dictated by Sections 122(a)(2) and 122(d) of the Title I statute. Sections 201.63 and 201.66 of these regulations implement those statutory provisions.

Comment. One commenter asked why the phrase "for a particular grade span" is included in paragraph (a) where LEAs do not have to use grade span grouping when selecting project areas and schools.

Response. A change has been made. The reference to "a particular grade span" has been deleted from § 201.60(a).

Comment. One commenter asked why the language in this section implies that LEAs will normally select all eligible areas for projects.

Response. A change has been made. The language in § 201.60(a) has been revised to avoid that implication.

Comment. One commenter recommended revising paragraph (b) to clarify that an LEA's decision on how many eligible areas it will serve is based solely on the availability of Title I funds.

Response. A change has been made. Section 201.60(c) has been added to provide that LEA's shall select project areas and schools from those which are eligible if Title I funds are insufficient to serve all educationally deprived children in all eligible areas and schools.

§ 201.61 *Selecting project areas by ranking the eligible school attendance areas according to their concentration of children from low-income families.*

Comment. One commenter recommended clarifying that this section applies only when Title I funds are insufficient to serve all eligible areas and schools.

Response. A change has been made. Section 201.61(a) has been revised to provide that an LEA shall rank and select from eligible areas only if it does not select all eligible school attendance areas for project areas.

§ 201.62 *Selecting project schools from among the schools that the LEA identified as eligible schools.*

Comment. One commenter recommended clarifying how the rankings of schools and areas should be consolidated.

Response. No change has been made. The consolidation of eligible areas and schools into a single ranking is done by identifying the area or school with the highest concentration of children from low-income families, and then, in turn, identifying each area or school with the next lowest concentration until all eligible areas and schools have been listed.

Comment. One commenter questioned the necessity of the provisions in this section.

Response. No change has been made. The section is included to clarify the requirement that eligible schools and areas be treated consistently.

§ 201.63 *Selecting a limited number of lower ranked eligible school attendance areas or eligible schools having substantially greater incidences of educational deprivation than higher ranked eligible school attendance areas or eligible schools.*

Comment. One commenter recommended revising this section to more clearly implement the distinct requirements of Sections 122(a)(2) and 122(d) of the Title I statute.

Response. A change has been made. Regulations implementing Section 122(a)(2) are included in § 201.66. Regulations implementing Section 122(d) are retained in § 201.63.

Comment. One commenter recommended deletion of the requirement that the substitution of a lower ranked eligible area not substantially impair the delivery of compensatory education services to children from low-income families.

Response. A change has been made. The options provided under Sections 122(a)(2) and 122(d) of Title I are now treated separately. District advisory council approval and the restrictions against substantial impairment as set forth in § 201.66 apply only to the substitution of an ineligible area or school for an eligible one as required by Section 122(a)(2) and not to the

substitution under Section 122(d) of a lower ranking eligible area or school for a higher ranking eligible area or school, as set forth in § 201.63.

Comment. One commenter recommended including the provision that areas and schools ranked according to educational deprivation but not served are not considered eligible.

Response. A change has been made. That provision has been added as § 201.66(e).

Comment. One commenter asked why this section does not state that an LEA employing this option specifically assure compliance with all statutory and regulatory provisions governing its use of the option consistent with language in the House Report.

Response. No change has been made. Since applicant agencies must comply with all applicable statutory and regulatory requirements, this special assurance is unnecessary.

Comment. One commenter asked why the standard 1.2 times the percentage or number of educationally deprived children is used as a proxy for the statutory language "substantially greater educational deprivation."

Response. No change has been made. The term, "substantially greater educational deprivation" must be translated into some objective standard in order to provide guidance to State and local administrators. The 1.2 figure is believed to provide a fair benchmark for this purpose.

§ 201.64 *Continuation of eligibility for certain school attendance areas of schools.*

Comment. A number of commenters recommended that Section 122(c) of Title I be interpreted as conferring not one, but two, additional years of eligibility for areas and schools which were previously eligible and served.

Response. A change has been made. Section 201.64(b) now permits services to be continued for two additional years in areas and schools which were previously eligible and served.

Comment. A number of commenters objected to paragraph (d) limiting the number of areas and schools which can qualify under this section.

Response. A change has been made. Paragraph (d) was revised to provide that, as long as an LEA does not change its method of determining eligibility of areas and schools (*e.g.*, percentages or numbers, or grade spans), there is no restriction on the number of additional areas or schools which may be served under the grandfather clause. However, if the method is different than that used in the previous year, the restriction applies and a district may qualify, with the grandfather clause, no more areas than its current method of identifying eligible areas and schools would permit.

Comment. One commenter requested inclusion of an operational definition of "substantially different" as used in paragraph (c) of this section.

Response. No change has been made. An example of an area which has substantially changed is one which serves a different geographical area than before. An example of a school that has substantially changed is one which is serving a different population than it was in the previous year due, perhaps, to changes in grade levels, the reassignment of children under a desegregation plan, or a change from service as a general to a special purpose school.

Comment. One commenter asked why this section permitted the provision of Title I services in ineligible areas and schools.

Response. No change has been made. Section 122(c) of Title I is entitled "Continuation of eligibility for certain school attendance areas or schools." This title clearly indicates that the section is intended to continue the eligibility of areas and schools which, but for this provision, would be ineligible. This interpretation is further bolstered by the section's references to Sections 122(a) and 122(b) of Title I, suggesting that its provisions were intended to render eligible, areas and schools that would not otherwise be eligible.

§ 201.65 *Skipping higher ranked school attendance areas and schools receiving services of the same nature and scope from non-Federal sources.*

Comment. A number of commenters recommended permitting areas to be skipped which are served by other Federal programs.

Response. No change has been made. While coordination of services and avoidance of duplication of services are encouraged, no statutory authority exists for skipping an area which receives services under another Federal program. However, Section 124(f) of Title I and 34 CFR 200.40 require that applicants consider services available from other publicly and privately funded programs in order to avoid duplication of effort.

Comment. One commenter recommended including in the definition of "same nature and scope" language indicating that the program must meet the requirements in Section 131(c) of Title I.

Response. A change has been made. That requirement has been added to the standard for same nature and scope in § 201.65(b)(2).

Comment. One commenter recommended requiring the approval of the district advisory council if any area is skipped under this section.

Response. No change has been made. The statute provides no authority for requiring district advisory council approval before an LEA may exercise the option provided in this section.

Comment. One commenter recommended revising the language in this section to clarify its application where public school children are skipped because they receive services of the same nature and scope from non-Federal sources, while children who reside in such an area but attend private schools are not skipped.

Response. No change has been made. Under this section and Section 122(e) of Title I, school children in an area or school that is skipped must still be identified and served.

Comment. One commenter asked why this section does not more clearly specify requirements regarding services to be provided private school children in skipped areas, where the need for specific guidance is noted in the House Report.

Response. No change has been made. The language in the House Report does not preclude the use of cross-referencing to explain the requirements.

Comment. One commenter inquired as to the basis of paragraph (c)(1) concerning comparability requirements for attendance areas skipped because they receive services of the same nature and scope from non-Federal sources.

Response. No change has been made. This provision is based on very clear direction in the House Report on Pub. L. 95–561 (H.R. Rep. 95–1137 at 22).

§ 201.66 *Selecting a limited number of project areas through the use of alternative rankings of school attendance areas according to their concentration of children from low-income families and the incidence of educational deprivation.*

Comment. One commenter asked why a standard of 90 percent was used in the definition of "substantial impairment" included in paragraph (d)(3)(i).

Response. No change has been made. The Department considered simply repeating the statutory provision that the delivery of compensatory education services to children from low-income families not be substantially impaired, but decided that for purposes of consistency, an objective standard should be introduced. The 90 percent figure is considered to be an appropriate interpretation of the statutory language.

Subpart E—Identifying and Selecting Children To Be Served

§ 201.70 *General rules for identifying eligible children and selecting children to be served.*

Comment. One commenter suggested cross referencing § 201.140 in this section concerning the participation of handicapped children.

Response. No change has been made. The purpose of this section is to present general rules for identifying and selecting children to be served. There is no need to duplicate the language in § 201.140 at this point in the regulations.

Comment. One commenter recommended including more prescriptive rules to ensure that all children who are eligible for services and are among those in greatest need are served.

Response. No change has been made. The current language is consistent with the law and legislative history which indicate that while certain rules must be followed in selecting participants for Title I programs, local officials should have some discretion in determining the instruments and the specific criteria by which participants are selected.

Comment. One commenter recommended deleting the words "and selected" from § 201.70(c). This commenter also suggested clarifying the term "greatest need."

Response. No change has been made. The words "and selected" have been retained because the process referred to in § 201.70(c) has two steps: once the population of eligible children is identified, the LEA must select those children as currently having the greatest need of special assistance. Likewise, the regulations permit LEAs to exercise their discretion in determining which children are in greatest need so long as the method they choose is reasonable.

§ 201.71 *Special rules for identifying and selecting children to be served.*

Comment. One commenter objected to the language in paragraph (b)(2)(ii) and recommended using the statutory language in Section 123(c) of Title I instead. This statutory language, the commenter asserted, implies that children may not be dropped from a Title I project in mid-year.

Response. No substantive change has been made. Section 123(c) of Title I provides that the LEA may, at its discretion, continue Title I services to children who were transferred from a project area school during mid-year. The language in § 201.71(b)(2) was revised to parallel the Title I statute.

Comment. One commenter recommended that paragraph (a) be amended to include a maximum percentage of participants who could be served, even though they are not among those in greatest need, under the provision in Section 124(k) of Title I (requiring LEAs to give due consideration to components designed to sustain the gains of students beyond the school year in which a project was conducted).

Response. No change has been made. The number of children in a project component designed to sustain the gains they have already made must be determined by the LEA. The statute does not authorize the imposition of limits on the number of those children.

Comment. One commenter recommended deletion of the infrequent participation provision in this section as causing problems in monitoring which outweigh benefits to the program.

Response. No change has been made. The provision in § 201.71(d) is sufficiently restrictive and limited so as not to impose severe monitoring responsibilities. Moreover, it is limited by Section 124(a) of Title I which requires that projects be designed to meet the special educational needs of educationally deprived children. This provision is needed, however, to avoid counter-productive exclusion of non-project children in situations where their inclusion would not reduce benefits to participating children.

Comment. Several commenters objected to the five percent limit on the proportion of students who may participate in the project on an incidental basis.

Response. No change has been made. This provision was intended to provide some flexibility for situations where LEAs do find that the inclusion of non-project children does not detract from the effectiveness of the project and their exclusion could be counter-productive. Although Section 123(a) of Title I requires Title I funds to be used for educationally deprived children in greatest need of special assistance, it does not preclude the inclusion of a limited number of non-project children. The five percent limit is necessary to prevent abuse of this option.

Comment. One commenter recommended deletion of the requirement in § 201.71(d)(5)(i) that LEAs include an estimated number of non-project children who may be expected to participate in Title I services.

Response. No change has been made. An LEA should be able to determine from its plans for each project activity whether and to what extent it is likely to include non-project children as participants.

Comment. One commenter stated that paragraph (b) should be revised to permit children whose eligibility is based on selection prior to transfer to a non-project area or school to continue to be eligible for one year only.

Response. No change has been made. Section 123(c) of Title I clearly specifies that educationally deprived children who have begun to participate in a Title I project but are transferred to an ineligible area or school may, at the LEA's discretion, continue to participate in the LEA's Title I project for the duration of the current school year.

Comment. Several commenters recommended permitting LEAs to skip children who are receiving services of the same nature and scope from other Federal sources.

Response. No change has been made. The statute does not authorize the skipping of these children, although coordination of services and the avoidance of duplication of services must be considered under 34 CFR 200.40 and Section 124(f) of Title I.

Comment. One commenter recommended including an example of how a project could be structured to serve childern who began participating in a project but were transferred in mid-year to an ineligible area or school.

Response. No change has been made. An LEA should refer, in such cases, to the model it was using and in many cases is continuing to use at the schools from which the children are transferred.

Comment. One commenter recommended revision of paragraph (b) to provide that LEAs may "continue to serve" children, rather than simply "serve" them.

Response. A change has been made. The words "continue to" have been added before "serve children" in §201.71(b)(1).

Comment. One commenter recommended revising paragraph (b)(1) to provide that children must begin participation in a Title I project in order to retain their eligibility under this section.

Response. A change has been made. Section 201.71(b)(1)(ii) states that a child must actually begin to participate in a Title I project in order to be eligible under §201.71(b).

Comment. One commenter recommended that paragraph (b)(1)(ii) be revised to provide that the children be transferred to a school or area that "is not receiving services," rather than one that "was not receiving services."

Response. A change has been made. Paragraph (b)(1)(iii) now refers to children who are transferred to an area

or school that "is not receiving services."

Comment. One commenter asked how often the Department expects LEAs to take advantage of the participation authorized by paragraph (d).

Response. No change has been made. The Department has no specific data on which to make an accurate estimate of how often LEAs will actually use this option. Based on past experience, it appears that this option will be used primarily for such purposes as allowing non-Title I students to participate in a limited number of field trips or other similar activities. The Department expects to review use of this authority on an ongoing basis to ensure that it is not abused.

Comment. One commenter inquired whether the reference in paragraph (c)(1) (relating to children determined to be in greatest need under §201.103) included only participants, or educationally deprived children generally.

Response. A change has been made. Paragraph (c)(1) has been amended to refer to educationally deprived children in general.

§201.72 *Use of Title I funds for a schoolwide project.*

Comment. Several commenters recommended revising the exemption in paragraph (b)(3) to avoid exempting LEAs which operate schoolwide projects from the requirement that special State and local funds be equitably distributed between schools that operate schoolwide projects and those that do not.

Response. A change has been made. Section 201.72(b)(3) exempts LEAs from demonstrating that the particular *services* paid for with Title I funds supplement the *services* regularly provided in schools that operate schoolwide projects. However, that section also specifically refers to §201.74(d), which requires that Title I *funds* supplement the amount of non-Federal *funds* that are provided to such schools. Therefore, each school that is selected for a schoolwide project must receive all non-Federal funds that it would have received had it not been selected for a schoolwide project.

Comment. One commenter asked why paragraph (a) omitted the statutory language indicating that the purpose of schoolwide projects is to up-grade the entire educational program in a school.

Response. A change has been made. That statement has been added to §201.72(a).

§ 201.73 *Required plan for each school selected for a schoolwide project.*

Comment. One commenter recommended adding parents to the list of persons who are to be trained in order to carry out a schoolwide project.

Response. No change has been made. The requirement that teachers and aides be trained in order to carry out schoolwide projects is contained in Section 133(b)(5) of Title I. The statute does not require that parents be specially trained to aid in carrying out such projects. Parents must, however, be provided training to the extent required by § 201.161.

§ 201.74 *Financial requirements for a schoolwide project.*

Comment. One commenter recommended including a definition of special supplementary State and local funds as used in § 201.74(b).

Response. No change has been made. The required special supplementary State and local funds must be above and beyond the amount of funds the school would receive if it not operate a Title I schoolwide project.

Comment. One commenter asked whether amounts spent under local compensatory education programs should be exempted from the provision in § 201.74(c) requiring maintenance of State and local effort in schools that operate schoolwide projects.

Response. No change has been made. Amounts spent under local compensatory education programs are not exempt under Section 133(b)(7)(C) of Title I which only authorizes the exclusion of funds expended under State compensatory education programs.

Comment. One commenter questioned why § 201.74(c) requires that fiscal effort be maintained in *each* school when the law merely refers to expenditures in *schools.*

Response. Section 201.74(c) requires that maintenance of effort be determined on a school-by-school basis to ensure that the level of expenditures in a schoolwide project is maintained. To permit LEAs to determine maintenance of effort on an aggregate basis could undermine the intent of the maintenance of effort provision in a specific school by permitting increased expenditures in one school to balance decreased expenditures in another school.

Comment. One commenter recommended revising this provision to clarify that paragraph (a) only applies to LEAs which both operate schoolwide projects and provide Title I funds to other schools that serve project areas.

Response. No change has been made. The use of the term "if any" in paragraph (a) makes it clear that the equitable distribution requirement applies only if the LEA provides Title I services in both a school selected for a schoolwide project and at least one other school serving a project area.

§ 201.75 *Serving children in local institutions for neglected or delinquent children.*

Comment. One commenter asked why LEAs were excused from the requirements in Subpart E concerning selection of children.

Response. No change has been made. Although LEAs remain exempt from the requirements of Subpart E, program requirements relating to needs assessment have been added in paragraph (d).

Comment. One commenter asked who would monitor the projects operated for children in local institutions for neglected or delinquent children.

Response. No change has been made. The LEA operates and monitors the project itself, but the SEA is also responsible for monitoring the LEA's implementation of the project.

Subpart F—Participation of Children Enrolled in Private Schools

General Requirements

§ 201.80 *Required opportunity for participation of private school children in Title I projects.*

Comment. One commenter reqested clarification on how LEAs are to collect economic and educational data on students attending private schools if private school officials do not cooperate.

Response. No change has been made. Each LEA must use the best data that are available for determining eligible areas and for assessing the needs of public and private school children in eligible areas that have been designated for projects.

Comment. One commenter requested clarification on how an LEA would provide assurances that it has provided private school students an adequate opportunity to participate in the program.

Response. No change has been made. 34 CFR 76.660–76.662 provide detailed guidance concerning how private school officials and students are to be involved in Title I projects, as well as other federally assisted education programs. Compliance with these requirements constitutes provision of adequate opportunity to participate.

Comment. One commenter recommended either defining size, scope, and quality of programs for

students attending private schools, or authorizing SEAs to make this determination.

Response. No change has been made. In general, the same standards for size, scope, and quality apply to projects for private school students. 34 CFR 76.653–76.655 provide detailed guidance on the levels of services to be provided for private school children.

§ 201.81 *Determining the eligibility of private school children.*

Comment. One commenter objected to the inclusion of the option that LEAs select private school children for participation in a Title I project on a basis identical to, rather than simply comparable to, the basis on which public school students are selected.

Response. No change has been made. Selection of private and public school children on the basis of identical criteria is an acceptable method of ensuring that private school children receive equal consideration with public school children in the selection of participants for the Title I program.

Comment. One commenter inquired as to the necessity for paragraph (c), which provides that an LEA may arrange with another LEA to provide Title I services for private school children who reside in project areas in one district and attend school in the other.

Response. No change has been made. Such factors as the distance between the private school and the district and number of children involved may justify this type of arrangement.

§ 201.82 *Prohibition concerning noninstructional duties.*

Comment. One commenter recommended clarifying the prohibition contained in this section.

Response. No change has been made. The section simply prohibits personnel paid with Title I funds from performing the limited, rotating, supervisory duties that Section 134 of Title I and 34 CFR 200.61 of these regulations otherwise authorize. This provision is needed since Title I funds may not be used to provide non-Title I services in private schools.

Comment. One commenter questioned the rationale for this section (prohibition of any noninstructional duties by Title I personnel in private schools).

Response. No change has been made. Allowing Title I staff to perform non-Title I duties would create a situation where Federal funds were being used to benefit a private school in contravention of 34 CFR 76.658.

Comment. One commenter objected that the reference to 34 CFR 76.659–76.660 of EDGAR was not in keeping with the aim of making the Title I regulations a self-contained document.

Response. No change has been made. Since EDGAR includes specific requirements respecting the provision of services to private school children under a program of Federal assistance, it is not considered necessary to repeat those requirements in the Title I regulations.

Bypass Provisions

§ 201.90 *General standards for by-pass actions.*

Comment. One commenter recommended that SEAs be authorized to make direct grants to private schools where private school staff would provide services directly.

Response. No change has been made. Only the Secretary is authorized to initiate by-pass actions. In arranging for provision of services under a by-pass, the Secretary normally awards a contract using competitive bidding, and does not make a direct grant to a private school. Contract procedures are necessary to maintain public control in the provision of Title I services to private school children.

Comment. One commenter recommended that the regulatory sections dealing with by-pass actions simply repeat the statutory language.

Response. No change has been made in these final regulations. However, in a separate notice of proposed rulemaking, the Secretary is publishing regulations governing show cause hearings for by-pass actions.

Comment. One commenter objected to paragraph (a)(1) which interprets the statutory standard "participation on an equitable basis" to require the provision of "equitable services."

Response. A change has been made. Section 201.90(a)(1) has been revised to conform more closely to the statutory language.

Comment. One commenter recommended revising paragraph (a)(2) to refer to situations where the LEA is prohibited by law from providing for the "equitable participation" of private school students, rather than from providing "equitable services."

Response. A change has been made. Section 201.90(a)(2) has been revised to refer to equitable participation rather than equitable services.

Comment. Several commenters objected to paragraph (b) as providing overly broad discretion which could be employed in contravention of the statutory intent.

Response. A change has been made. Section 201.90(b) was revised to provide that the Secretary may decide not to implement a by-pass only if the number of private school children in the LEA who would participate is fewer than 10 and the by-pass would result in the wasteful and extravagant expenditure of Title I funds. Therefore, both of these criteria must be present before the Secretary may decide not to implement a by-pass.

§ 201.94. *Judicial review of by-pass actions.*

Comment. One commenter questioned the omission from this section of any reference to the Secretary's and court's duties as outlined in Section 130(b)(4)(B) through (D) of Title I.

Response. No change has been made. These regulations are intended to apply only through the Secretary's final determination regarding by-pass actions.

§ 201.95. *Effect of a by-pass action.*

Comment. One commenter recommended including the phrase "and arrangements" in paragraph (c) (relating to costs which may be deducted in connection with a by-pass).

Response. No change has been made. Paragraph (c) already refers to "administrative costs of arranging" for by-pass services.

Comment. Several commenters objected to the use of the phrase "equitable provision of services" in lieu of the statutory language "participation on an equitable basis."

Response. A change has been made. Section 201.95 now uses the term "participation . . . on an equitable basis."

Comment. One commenter objected to the use of the term "alternative services" as implying that the by-pass services will be different in nature from other Title I services.

Response. A change has been made. The word "alternative" has been deleted in § 201.95(b).

Comment. One commenter questioned the authority for deducting the cost of services under a by-pass from the LEA or State allocation.

Response. No change has been made. Section 130(b)(3)(B) of Title I authorizes the Secretary to withhold from the affected State or LEA the amount of funds required to pay the cost of services under a by-pass.

§ 201.96 *Withholding funds pending resolution of a by-pass action.*

Comment. One commenter questioned why this section did not provide that funds may also be withheld when a complaint or investigation is pending, rather than only when a resolution under the by-pass procedures is pending.

Response. A change has been made. Section 201.96 has been revised to adhere more closely to the statutory language.

Comment. One commenter objected to the use of the word "alternative" to describe services under a by-pass.

Response. A change has been made. The word "alternative" has been deleted from § 201.98.

Subpart G—Needs Assessment

§ 201.100 *Purpose of the required needs assessment.*

Comment. Several commenters pointed out that LEAs need only identify educationally deprived children who have the greatest need for assistance in project areas and project schools, not in all areas.

Response. A change has been made. Section 201.100(c) now requires identification of educationally deprived children who have the greatest need for assistance only in the instructional areas selected by the LEA. Section 201.100(a) requires an LEA to identify educationally deprived children in all eligible school attendance areas and eligible schools.

Comment. One commenter questioned why this section did not specifically state that the LEA must conduct an educational needs assessment, rather than simply a needs assessment.

Response. A change has been made. The section has been revised to more closely conform to the statutory language requiring an assessment of educational need.

§ 201.101 *Identification of educationally deprived children.*

Comment. Several commenters recommended that former §§ 116a.101 and 116a.102 be reversed to clarify that LEAs should first identify all educationally deprived children in all eligible areas and schools, and then identify general instructional areas, grade levels, and types of needs to be addressed.

Response. A change has been made. The order of the two sections has been reversed.

Comment. One commenter recommended deletion of the reference to age levels in former § 116a.101(a).

Response. A change has been made. The term age levels has been deleted from § 201.102(a).

Comment. One commenter recommended specifically requiring project area and project school advisory council consultation when deciding on the general instructional areas on which the project will focus.

Response. No change has been made. However, § 201.159 requires that the project area and project school advisory councils be given responsibility for advising the LEA on the planning of its project.

§ 201.102 *Identification of general instructional areas and needs.*

Comment. One commenter suggested specifically mentioning standardized tests and language achievement tests as examples of the objective data referred to in this section.

Response. No change has been made. LEAs are free to use whatever measures of educational deprivation that are felt to best identify the needs of students. The Department does not wish either to persuade or dissuade LEAs from selecting any particular type of data by mentioning only one or two specific types.

Comment. One commenter asked why a reference to objective data is included in § 201.101 when that term is not used in the Title I statute.

Response. No change has been made. Title I funds may be used to select participants from among the children identified as educationally deprived under this section. It is therefore important that the designation of these children as educationally deprived have a substantial basis in fact, to the extent possible.

§ 201.103 *Selection of children to participate in a project.*

Comment. Several commenters recommended that this section be amended to include a definition of children in greatest need.

Response. No change has been made. The term "educationally deprived children" is defined in § 201.4. Children in greatest need are those educationally deprived children who rank lowest based on whatever educational criteria an LEA uses under this section to identify and select Title I participants.

Comment. One commenter recommended including a specific statement that, once grade levels have been determined, LEAs need not document differences in individual need between children in grades being served and children in other grades.

Response. No change has been made. This section refers to instructional areas determined under § 201.102 (including identification of grade levels). There is therefore no requirement, at this point, that LEAs continue to consider children at grade levels other than the ones at which a project will operate.

Comment. Two commenters recommended including a reference to educationally deprived children who were, during a previous year, among those in greatest need.

Response. A change has been made. Section 201.103(a)(2) has been added indicating that LEAs should consider such children when selecting project participants.

Comment. Two commenters recommended stating in paragraph (a) that educationally deprived children in greatest need are to be selected first, and then if there are sufficient funds, other less severely educationally deprived children may be selected.

Response. A change has been made. Section 201.103(a) has been revised to clarify that the most severely educationally deprived children must be selected prior to selecting less severely educationally deprived children.

Comment. One commenter objected to the reference to objective data which does not appear in the Title I statute.

Response. Section 123(a) of Title I requires that Title I services be provided educationally deprived children in greatest need. A reference to objective data is included in § 201.103 to ensure compliance with this requirement by eliminating reliance on subjective considerations which cannot be justified.

Comment. One commenter asked why it was necessary to cross-reference §§ 201.130–210.143 in paragraph (b).

Response. No change has been made. Cross-referencing of these provisions is believed desirable so as to ensure that selection of participants will be done correctly, thereby avoiding unlawful supplanting of State and local funds.

Comment. One commenter questioned the authority for paragraph (c), which permits the use of Title I funds to select participants from among educationally deprived children.

Response. No change has been made. This provision is supported by the legislative history of the Education Amendments of 1978 (H. Rept. 95–1137 at 24).

§ 201.104 *Determination of the special educational needs of participating children.*

Comment. One commenter objected to the omission of the qualifier "special" before the term "educational needs" in paragraph (c) of this section.

Response. A change has been made. Section 201.104(b) now requires LEAs to identify certain special eductional needs that are best addressed through noninstructional support services.

Comment. One commenter objected to the reference to "objective data" in this section.

Response. No change has been made. The legislative history for Title I

indicates that in this step in the needs assessment the LEA discovers the precise needs of project participants. Use of objective data is recommended to guide the LEA in its efforts accurately to diagnose and assess these needs.

Comment. One commenter recommended moving the provision in paragrah (b) to § 201.105.

Response. A change has been made. That provision is now found in § 201.105.

§ 201.105 *Establishment of eductional objectives and instructional strategies.*

Comment. One commenter recommended adding a statement that no Federal Title I requirement is intended to favor any particular instructional strategy.

Response. A change has been made. Section 201.105(b) was added which states that "an LEA is not required to use any particular instructional strategy in its Title I project."

Subpart H—Fiscal Requirements

Comparability

§ 201.112 *Basic standards for determining comparability of services.*

Comment. One commenter objected to the requirement that each Title I school serving a project area be compared to the average of all non-Title I schools.

Response. No change has been made. This approach was recognized and approved by the Congress in Section 102 of Pub. L. 95–561 and the accompanying legislative history.

Comment. One commenter questioned why the term "project areas" rather than "schools serving project areas" was used in paragraph (a) of this section.

Response. A change has been made. The term "schools serving project areas" is used rather than "project areas."

§ 201.113 *Submission of comparability reports.*

Comment. One commenter objected to the requirement that comparability reports be filed annually.

Response. No change has been made. Section 126(e) of Title I requires, with some specific exceptions which are incorporated in these regulations, that LEAs file comparability reports annually.

Comment. Several commenters recommended extending the date by which LEAs must demonstrate comparability in order to avoid a penalty from December 1 to February 1 in districts that experience high mobility or are undergoing major court ordered desegregation.

Response. No change has been made. In unusual cases where LEAs need additional time beyond December 1 to achieve and demonstrate comparability, a compliance agreement would provide a possible basis for relief from this requirement.

Comment. One commenter asked why the statutory requirement that LEAs report on or before July 1 was not reflected in this section.

Response. No change has been made. Section 126(e) of Title I requires an LEA to report *on or before* July 1 of each year regarding its compliance with the comparability requirements. That section also permits the Secretary to "otherwise provide by regulation." In light of this statutory authority, therefore, Section 201.113 requires an LEA to submit its comparability report on or before December 1 of each fiscal year. A December date was selected in order to permit the SEA to determine which LEAs are out of compliance in time to achieve compliance before the end of the school year. In order to permit SEAs to make the necessary determinations in reviewing project applications from LEAs, § 201.119 requires LEAs to submit comparability assurances to the SEA on or before July 1.

Comment. One commenter questioned why paragraph (b)(3) refers to December 1, 1978 when the Title I statute refers to November 1, 1978.

Response. A change has been made. Section 201.113(b)(3)(i) now exempts LEAs that were not required, as of November 1, 1978, to file a comparability report.

Comment. One commenter asked whether the use of the phrase "because at that time, all of its school attendance areas were Title I project areas" in paragraph (b)(3) excludes any LEA which would otherwise be covered by the exemption in that paragraph.

Response. A change has been made. That phrase has been deleted and replaced with new language which conforms more closely to the statute.

Comment. One commenter questioned the necessity of the second sentence in paragraph (b)(3).

Response. A change has been made. This paragraph has been restructured for greater clarity. However, the provision in question has been retained to ensure that LEAs are aware that, although they have never previously complied with comparability requirements, they are now required to do so by Section 126(e) of Title I.

Comment. One commenter asked whether the Department had considered including provisions concerning the Secretary's authority to waive the comparability reporting exemption for certain types of LEAs.

Response. A change has been made. Section 201.113(c) has been added to include a provision whereby the Secretary may require an LEA to report even though it is otherwise exempted from that requirement.

Comment. Several commenters objected to the requirement that certain LEAs must maintain, but not report on, comparability.

Response. No change has been made. Section 126(e) of Title I exempts certain LEAs from the requirement that they report on comparability but it does not relieve them of the responsibility for maintaining comparability. Accordingly, the regulations implement the statutory authorization exempting certain LEAs from reporting to the SEA, but do not exempt them from the requirement that comparability be maintained.

Comment. One commenter recommended revising this section to require that LEAs, which would have had to submit comparability reports pursuant to requirements which were in effect on December 1, 1978, continue to submit such reports.

Response. A change has been made. Paragraph (b)(3) of this section has been revised to require comparability reports from these districts.

Comment. One commenter recommended adding a provision requiring comparability reports from LEAs which have modified their policies to circumvent the comparability requirement.

Response. No change has been made. Such a provision would require a determination of intent underlying policy changes that would be impractical, if not impossible, to make. In any event, under the 1978 statutory amendments, every LEA is now required to determine the comparability of all schools serving project areas.

§ 201.114 *Data to be included in a comparability report.*

Comment. Several commenters recommended including schools skipped under § 201.65 in paragraph (b)(1)(i).

Response. A change has been made. These schools have been included as schools for which comparability must be demonstrated.

Comment. One commenter recommended including an explanation of how LEAs are to count children and staff who spend less than a full day at a given school.

Response. A change has been made. Under paragraph (c)(1)(i), children and staff are to be counted on a full-time equivalent basis—that is, on the basis of the percentage of time they are assigned to a particular school.

Comment. One commenter recommended excluding staff members who provide services under special State and local programs.

Response. No change has been made. Section 201.118 provides for the exclusion of certain State and local program data from comparability determinations, as authorized by the statute.

Comment. Several commenters recommended that the Secretary rather than the SEA prescribe the format of the report referred to in paragraph (a) of this section.

Response. No change has been made. The information required for comparability determinations is clearly defined in the regulations. Each SEA's form for comparability, as well as project applications and reports, is subject to review by departmental staff.

Comment. Several commenters recommended including in § 201.114(b)(2) the requirement that LEAs with no non-project areas submit data on a combined basis for the school or schools serving areas with the lowest concentrations of children from low-income families.

Response. A change has been made. That requirement has been added to paragraph (b)(2).

Comment. One commenter recommended revising the language in paragraph (c) to cover the situation where districts have no non-project areas.

Response. A change has been made. Section 201.114(c) has been revised to cover both districts with and districts without non-project areas.

Comment. Several commenters recommended revising paragraph (d) of this section to provide that LEAs need file an assurance only if they operate schools in both project and non-project areas.

Response. No change has been made. Section 126(e) of Title I requires that, in LEAs where all school attendance areas are designated for projects, each area must receive State and locally funded services that are comparable. Therefore, the assurance is as important as a tool for ensuring comparability in such LEAs as it is in LEAs that have both project and non-project areas.

Comment. One commenter asked why paragraph (d) required LEAs to submit an assurance that it will allocate staff without regard to the availability of Title I funds.

Response. No change has been made. Allocation without consideration of the availability of Title I funds is consistent with both Sections 126(e) and 174 of Title I.

Comment. One commenter questioned why paragraph (c)(1)(ii) authorized weighing comparability data based on requirements that different amounts of funds be spent on different categories of children, age groupings, or grade levels but not based on requirements for different levels of non-financialresources, e.g., staff.

Response. A change has been made. Section 201.114(c)(1)(ii) has been revised to provide that agencies may weigh data when State or local law specifies that different levels of support are required for different categories of children, age groupings, or grade levels.

§ 201.115 *The date on which the data included in the comparability report must be collected.*

Comment. One commenter recommended adding a requirement that LEAs collect the data required by § 201.114 on a date as close as possible to October 1, or when other similar data are required by the SEA to be collected.

Response. No change has been made. SEAs are free to use the date as of which other similar data is collected.

Comment. One commenter questioned the rationale for selection of a November 1 date for collection of comparability data.

Response. No change has been made. November 1 was selected because it is late enough in the school year for enrollemtn and staffing patterns to have stabilized, but not so late that little time remains in the school year to attain comparability, if necessary.

§ 202.116 *Criteria for determining comparability of services.*

Comment. Several commenters recommended that the permissible variation from the criteria by which project area schools' comparability is measured be increased from five percent to ten percent.

Response. No change has been made in this section. However, a change has been made in § 201.120 to provide for an increase in the variation permitted once comparability has been demonstrated at the five percent level.

Comment. One commenter objected to the requirement that small LESa must maintain and report comparability.

Response. No change has been made. There is no statutory authority for exempting an LEA from the comparability requirement solely on the basis of its size.

Comment. Several commenters objected to the requirement that LEAs with no non-project areas must report comparability.

Response. No change has been made. Section 126(e) of Title I requires that, in LEAs where all school attendance areas are designated for Title I projects, each area must receive State and locally funded services that are substantially comparable.

Comment. One commenter recommended that some measure of level of services other than staff/student ratios and per pupil expenditures for instructional services be used to measure comparability.

Response. No change has been made. Section 102 of Pub. L. 95–561 requires the Department to conduct a study of alternative methods of determining comparability. The study is being conducted during the 1980–1981 school year. Until the results of the study are known, changing the basis for determining the comparability of schools serving project areas would be inappropriate.

Comment. Several commenters recommended including a specific reference to schools skipped under § 201.65 in this section.

Response. A change has been made. These schools are specifically included in § 201.116(a) as schools for which comparability must be demonstrated.

Comment. One commenter questioned the adoption of the 105 percent and 95 percent standards in this section.

Response. No change has been made. Section 102 of Pub. L. 95–561 authorizes a study of alternatives for demonstrating comparability. Section 102(c)(3) indicates that, whatever criteria are used, the maximum variance must be no more than five percent. Consistent with this provision, the five percent tolerances previously used have been retained.

§ 201.117 *Grouping schools by corresponding grade levels.*

Comment. One commenter objected to the restriction on grade span groupings that prevents LEAs with schools serving many different grade spans from comparing only those schools which serve exactly the same grade spans.

Response. No change has been made. Allowing LEAs to employ and compare only those grade spans that are actually served by different schools could have the effect of exempting many schools from demonstrating comparability.

Comment. Several commenters recommended deletion of the requirement that LEAs justify the size split grouping for comparability purposes.

Response. No change has been made. The option of splitting grade spans into two size groups is intended to provide relief for districts which actually experience differences in costs in providing comparable services in larger

and smaller schools. Where this is the case, a justification can easily be provided. Submission of such a justification is necessary to ensure that this option is not abused.

Comment. One commenter objected to inclusion of a provision for grouping on the basis of size. The commenter expressed concern that this provision could be used to exempt any project area schools from demonstrating comparability.

Response. A change has been made. Paragraph (c)(3) now prohibits LEAs from using the size grouping option to exempt a school from the comparability requirement.

Comment. One commenter questioned the justification for requiring LEAs to use grade span groupings.

Response. No change has been made. Direct comparisons between areas which serve widely different grade levels do not accurately indicate whether particular areas are being discriminated against in the allocation of State and local resources. This is because different amounts are often spent per student at different grade levels.

Comment. One commenter inquired as to the rationale for the particular grade span groupings contained in paragraph (d).

Response. No change has been made. The particular grade span divisions in § 201.117(d) are based on common patterns of organization of schools within districts.

§ 201.118 *Exclusions from the excess costs and comparability requirements.*

Comment. One commenter recommended revising the language in paragraphs (e) and (f) to make it clear that an advance determination by either the Secretary or the SEA is required in order to exclude expenditures under programs described in subsections (b)(1) through (b)(3), and (c)(1) of this section.

Response. No change has been made. Paragraphs (b) and (c) of this section clearly state that advance determinations must be made in order to exclude expenditures made under these programs from excess costs and comparability determinations.

Comment. One commenter questioned the authority for the Secretary or the SEA to request other information under paragraph (e)(2) or (f)(2).

Response. No change has been made. Section 131 (e) and (f) of Title I implicitly authorizes the Secretary or the SEA to request whatever information may be needed to make the determinations contemplated by the statute.

Comment. One commenter asked why paragraph (c)(2)(iii) omitted the requirement that the program be based on objectives, including, but not limited to, performance objectives related to educational achievement.

Response. A change has been made. Section 201.118(c)(2)(iii) was revised to provide that programs be based on objectives, including performance objectives.

Comment. One commenter recommended revising paragraph (c)(2)(ix) to clarify that this requirement applies to SEAs, rather than the LEAs.

Response. No change has been made. The requirement that LEAs be separately accountable to the SEA for funds spent for the SCE program applies to both LEAs and SEAs.

Comment. One commenter questioned why paragraph (d) specified that a State or LEA program is considered to be similar to the Title I program for an LEA when the phrase "for an LEA" is not found in the law.

Response. A change has been made. The phrase "for an LEA" has been deleted from § 201.118(d).

Comment. One commenter recommended revising paragraphs (e) and (f) to provide that the Secretary or the SEA shall make an advance determination whether or not a request is made.

Response. No change has been made. Until a request for a determination is made, the Secretary or SEA may not even be aware that the agency wants a determination and, therefore, cannot be expected to make any determination concerning the program's similarity to Title I. Moreover, such a provision would be unduly burdensome for the Secretary and SEAs.

Comment. One commenter objected to the provisions in paragraphs (e)(3) and (f)(3) which provide that significant changes in implementation of a State law must be submitted to the Secretary or the SEA.

Response. No change has been made. Any change in implementation of a program, which may affect its continued similarity to Title I, must be reported to the Secretary or SEA to ensure that the requirements of Section 131 of Title I continue to be met.

§ 201.119 *Required annual assurance.*

Comment. One commenter questioned why the regulations require two annual comparability submissions; one by July 1 and one by December 1.

Response. No change has been made. The statute requires a July report. Such a report is not useful in assessing current comparability compliance, however, since most schools are not operating before July 1. Thus, a fall determination provides comparability data at a time in the year when corrections can be made which will help ensure continued compliance throughout the school year.

§ 201.120 *Maintaining comparability.*

Comment. Several commenters recommended adopting a ten percent rule—that is, allowing a variation of ten percent before adjustments must be made, once an LEA has achieved and demonstrated compliance with the five percent standard under § 201.116.

Response. A change has been made. This section has been revised to provide that once an LEA has achieved comparability on the basis of the standards in § 201.116, it need not make adjustments to maintain comparability unless the data for a school serving a project area show that it does not meet the comparability criteria with a ten percent allowable variation. If in one school serving a project area, the expenditures ratio is less than 90 percent or the pupil/teacher ratio is more than 110 percent of the prescribed criteria, adjustments must be made to bring that school to the levels required under § 201.116. This change in policy ensures that comparability will be maintained within basic parameters, yet allows some variation where changes in teacher or student assignments may be disruptive (*e.g.*, in areas of high student mobility).

Comment. Several commenters requested clarification as to the frequency with which they must check to determine whether they are maintaining comparability.

Response. A change has been made. Section 201.120(a) now requires that LEAs determine whether they are maintaining comparability at least once during the period between January 1 and April 30.

§ 201.121 *Comparability data must be for the same date.*

Comment. One commenter recommended revising the language for added clarity.

Response. A change has been made. Clarifying language has been added to ensure that, for example, enrollment may not be determined as of one date, while the number of staff is determined on another date.

§ 201.122 *Retention of records concerning comparability.*

Comment. One commenter requested clarification regarding records which must be kept, and applicable access requirements. Another commenter stated that work sheets should be

retained, as has been the practice in the past.

Response. A change has been made. Work sheets have been listed in paragraph (a). In other respects, the language of the section is sufficiently specific to require LEAs to keep whatever records that may be necessary to demonstrate compliance. The issue of access is specifically addressed in 34 CFR 200.141–200.142.

Comment. One commenter recommended specifically requiring records to be kept in usable form.

Response. No change has been made. The requirement that the records be sufficient to demonstrate compliance with the comparability requirements implies that they be in usable form.

§ 201.123 *Actions to be taken by an SEA if an LEA violates the comparability requirements.*

Comment. One commenter recommended including a statement of the action an SEA should take if an LEA is found not to be maintaining comparability.

Response. No change has been made. The LEA is subject to the same compliance actions as an LEA that fails to demonstrate comparability by December 1.

Comment. One commenter recommended including language clarifying how State compliance agreements may be applied to comparability violations.

Response. A change has been made. A new paragraph (c)(2) has been added which indicates that compliance agreements signed before December 1 may be used to extend the deadlines for achieving comparability until the date specified in the agreement. If the LEA fully complies with the terms of the compliance agreement, the LEA is not liable for funds expended in non-comparable schools for the period of time from the beginning of the fiscal year until the date specified in the compliance agreement for the LEA to achieve comparability.

Comment. Several commenters recommended revising this section to specify that upon finding an LEA non-comparable, an SEA will withhold funds only from the non-comparable school or schools.

Response. No change has been made. The Title I statute requires that services in all project schools must meet the comparability requirements as a condition to receiving Title I funds. The statute does not provide for the withholding of Title I payments only from non-comparable schools. To do so would only penalize those schools that have already been deprived of comparable State and local services.

Comment. One commenter questioned the rationale for the 30-day limit in paragraph (a) for SEA action upon discovering a comparability violation.

Response. No change has been made. The 30-day limit by which compliance action must be taken is intended to ensure prompt compliance action and yet allow the LEA and SEA time to negotiate a compliance agreement if that is appropriate.

Comment. One commenter asked why a January 1 date is included in paragraph (a).

Response. No change has been made. Since December 1 is the deadline for demonstrating compliance with the comparability requirements and § 201.123 requires SEA enforcement action within 30 days of discovering a violation of a comparability requirement, January 1 is the latest date on which such enforcement action must be taken.

Comment. One commenter asked for clarification concerning the relationship between paragraph (a)(2) which indicates that an LEA and SEA may enter into a compliance agreement for a comparability violation and paragraph (c) which requires reallocation of unobligated funds by the SEA if an LEA fails to demonstrate full compliance by March 1.

Response. No change has been made. A State compliance agreement could extend the deadline for achieving comparability for ninety days. Since that agreement must be entered into on or before December 1, the deadline for achieving comparability cannot be extended beyond March 1. If comparability cannot be achieved by that date, the LEA's Title I funds must be reallocated.

Comment. One commenter asked why a March 1 date is included in paragraph (d).

Response. No change has been made. The March 1 deadline for achieving comparability is intended to provide incentive to LEAs with comparability problems to achieve full compliance. It is also intended to provide an opportunity for the SEA, before the end of the school year, to reallocate funds for use by LEAs which are in compliance with the comparability requirements.

Comment. One commenter asked why it was necessary to spell out actions to be taken for violations of the comparability requirement.

Response. No change has been made. This section is needed to ensure that LEAs are aware of the action which will be taken if even one project area is found to be non-comparable.

§ 201.124 *Amount of funds that an SEA shall refund for a violation of the comparability requirement.*

Comment. One commenter objected to the provision requiring SEAs, rather than LEAs, to refund Title I funds which an audit reveals were expended for project area schools during a period when such schools were non-comparable.

Response. No change has been made. The SEA is responsible for the recovery. It is not, however, precluded from seeking reimbursement from the LEA that was found to have violated a requirement.

Comment. One commenter questioned the necessity for including in the regulations the procedures for repaying funds expended while in violation of the comparability requirement.

Response. No change has been made. The actions to be taken upon discovering a comparability violation differ depending upon whether the violation is discovered during the school year in question or at a later date, during a post-expenditure audit. Procedures applicable in both these situations are therefore included in the regulations.

Comment. One commenter asked how the procedures in this section are related to the repayment procedures in 34 CFR 200.195.

Response. No change has been made. The funds referred in 34 CFR 200.195 are those which are repaid during the period for which they are still available for obligation. For purposes of 34 CFR 200.195, funds misspent due to comparability violations are treated no differently than those misspent in violation of any other requirement. Section 201.124 refers only to funds which are recovered after the period during which they were available for obligation.

§ 201.125 *SEA reports to the Secretary.*

Comment. One commenter questioned the authority for requiring the report referred to in this section.

Response. No change has been made. Section 172 of Title I authorizes the Secretary to require whatever reports are reasonably necessary to enable the Secretary to perform the duties imposed by Title I. Section 172 has therefore been cited as authority for this requirement, along with Section 126(e).

Supplement, Not Supplant: General

§ 201.131 *Definitions.*

Comment. One commenter questioned why the definition of "limited proficiency in the English language" in paragraph (d) differs from the definition included in the Bilingual Education Act.

Response. No change has been made. The definition included in this section is designed to reference requirements under Title VI of the Civil Rights Act of 1964, as interpreted in *Lau v. Nichols*, 414 U.S. 563 (1974).

The Bilingual Education Act describes a discretionary program of Federal assistance to provide bilingual education. Since services are not required to be provided under that Act, as they are under Title VI, the Title VI definition is the appropriate reference point for describing services that would be available, from non-Federal sources, in the absence of Title I.

Comment. One commenter recommended that students who speak substandard English be included under the definition of "limited proficiency in the English language."

Response. No change has been made. The definition of limited proficiency in the English language is based on Title VI of the Civil Rights Act of 1964, as interpreted in *Lau v. Nichols*, 414 U.S. 563 (1974). Use of a broader definition is not warranted under that Act as a measurement of an LEA's obligation to avoid discrimination on the basis of race or national origin.

Comment. One commenter recommended that definitions of a number of terms be included. Definitions were requested for "handicap," "equal opportunity," "limited proficiency," "reasonably," "substantial progress," and "project objectives."

Response. No change has been made. The definition section includes definitions of "handicapped children" and "limited proficiency in the English language." The other terms mentioned by the commenter are very basic ones which have, in most cases, been defined by past practice. Accordingly, the Secretary has determined that providing definitions of these terms is unnecessary.

§ 201.132 *Assurance of equal opportunity.*

Comment. One commenter recommended specifying in paragraph (c) that Title I funds may only be used to provide assistance that the LEA would not otherwise provide.

Response. No change has been made. The purpose of this section is to require LEAs to provide an equal opportunity for all children to participate in and benefit from Title I services, and to provide examples of what may be required to ensure that handicapped and limited English proficient children have this equal opportunity. Section 201.141(a) specifically prohibits LEAs from using Title I funds to provide services that they are otherwise required to provide using State and local funds. Additional guidance has been provided in § 201.141 in response to the commenter's concern.

Comment. One commenter recommended that § 201.132(a) be revised to state that LEAs may not, on the basis of handicap, exclude a child from participation in Title I services, except as provided in § 201.140(c)(1)(iii).

Response. No change has been made. The Secretary believes that § 201.140(c)(1)(iii) clearly establishes that handicapped children may be selected for participation in Title I programs only if they can reasonably be expected to make substantial progress toward accomplishing project objectives without the LEAs substantially modifying the educational level of the subject matter or the intensity of instruction. Incorporation of this standard into § 201.132 would be duplicative and is therefore unnecessary.

Comment. One commenter recommended that the relationship between § 201.132(a)(2) and the prohibition in § 201.141(d)(1)(v) (former § 116a.141(c)(2)(v)) (relating to the intensity of services provided children whose primary or home language is other than English, and children whose primary or home language is English) be clarified.

Response. No change has been made. Section 201.141(d) provides one model of compliance. Children with limited proficiency in the English language may be ensured equal access to Title I services in cases where this model is used by, for example, providing bilingual assistance to the extent necessary to benefit from Title I services. Other models are included, as described in § 201.141 to assist LEAs in designing Title I projects which complement special instructional services they provide, using non-Title I funds, to meet obligations under Title VI of the Civil Rights Act of 1964.

Comment. One commenter recommended that § 201.132 provide for teaching non-Spanish speaking children Spanish.

Response. No change has been made. While the proposed instruction might be seen by some LEAs as desirable, it is not required under the civil rights laws, in cases where the normal language of instruction is English.

Comment. One commenter recommended that § 201.132(c) be revised so as to parallel the provisions of § 201.132(b)(2) (relating to special assistance under Title I in addition to that required to be provided to accommodate the participation of handicapped children in non-Title I activities).

Response. No change has been made in the regulatory language. The distinction between paragraph (b)(2) and paragraph (c) is based on the difference in services provided by a sign-language interpreter and a bilingual teacher. If required for an individual child to benefit from instruction, a sign-language interpreter may, in many cases, go with that child from class to class throughout the school day. The interpreter should therefore accompany the child to a Title I class which substitutes for another part of the child's regular program, and continue to serve the handicapped child on the same basis as he or she would during any other part of the school day. A bilingual teacher or aide who provides instruction as part of a child's regular program is not similarly free to follow the child to the Title I class. Accordingly, the excess costs of making a Title I class available in accessible form to children with limited proficiency in the English language may be borne by Title I.

However, the previous example has been modified and a new example added to clarify the application of the excess cost requirements in 34 CFR 200.94 in this context. As the second example now illustrates, there are certain cases in which an LEA is obliged to allocate non-Title I resources toward provision of Title I services in bilingual form. Under 34 CFR 200.94, an LEA is required to allocate to a Title I project incremental savings in instructional costs resulting from substantial reductions in ordinary teaching loads. If, in these cases, there are cost savings which result from limiting the teaching load of personnel used to meet obligations under Title VI, allocation of non-Title I funds or staff to Title I programs would be required just as where cost savings are solely attributable to a reduced teaching load for other members of the LEA's instructional staff. Additional related examples are provided in § 201.141(e) and (f).

Supplement, Not Supplant: Regular State and Local Funds and State and Local Funds for State Phase-in Programs

§ 201.133 *Introduction (regular State and local funds and State and local funds for State phase-in programs).*

Comment. One commenter recommended defining "regular funds," as used in this section.

Response. Section 201.131(f) includes a definition of "regular funds." Section 201.131(h) has been revised to clarify the relationship between regular funds and funds for special State and local programs.

§ 201.135 *Provision of services required by law: Regular funds funds and funds for State phase-in programs.*

Comment. One commenter recommended eliminating the distinction between regular and phase-in funds, and funds for special programs for purposes of determining compliance with the services required by law test.

Response. A change has been made in § 201.131(h) to clarify the application of the provisions relating to use of regular funds and those relating to use of State and local funds for special programs. This change emphasizes that the provisions relating to supplementing funds for special programs apply wherever State or local funds are appropriated for or otherwise specifically earmarked for special programs, and where other funds, including funds which may be available for other educational purposes, are used for this purpose.

This approach was adopted, and the distinction preserved between regular and phase-in funds, and funds for special programs, to ensure that the regulations parallel as closely as possible the Title I statute, with its discrete provisions governing use of each of these types of funds.

Comment. One commenter objected to the example in paragraph (b)(2) which indicates that it is inappropriate to use Title I funds to provide remedial assistance required as part of a judicial desegregation order. Another commenter stated that the example did not go far enough to precluded use of Title I funds to meet court-imposed obligations.

Response. No change has been made. Section 126(c) of Title I prohibits the use of Title I funds to supplant funds which would, in the absence of Title I funds, be made available from regular, non-Federal sources. If the LEA has been ordered to provide the remedial services indicated in the example in § 201.135(b)(2), then clearly they would be provided in the absence of Title I funds. To provide those services with Title I funds would amount to supplanting the regular, non-Federal funds the agency would have made available were Title I funds not available.

The Secretary believes that inclusion of more detailed guidance at this time is inadvisable since the use of Title I in each case, will depend on the facts of individual cases and the wording of individual court orders.

Comment. One commenter recommended that this section refer to expenditures required to be made under an approved voluntary plan of compliance, as well as to expenditures required under court orders.

Response. A change has been made. This section now refers both to approved voluntary plans of compliance and court orders.

Supplement, Not Supplant: Special State and Local Programs

§ 201.136 *Introduction.*

Comment. One commenter objected that this section, which requires agencies to comply with §§ 201.137–201.139, is overly cumbersome and complicated.

Response. No change has been made. The function of this section is to call attention to the requirement for compliance with both, §§ 201.137 and 201.139.

Comment. One commenter recommended revising paragraph (c) to provide that agencies must comply with the requirements of either § 201.137 or 201.139 rather than both of them.

Response. No change was made. Section 126(d) of the Title I statute requires that Title I funds be used to supplement non-Federal funds which would, in the absence of Title I be available for special programs. Failure to distribute available funds equitably would violate this requirement. So, too, would failure to allocate funds which are legally required to be made available. The Secretary has therefore concluded that the requirements of §§ 201.137 and 201.139 must both apply, and that compliance with, for example, § 201.137 alone, would not satisfy statutory requirements.

Comment. One commenter suggested that § 201.136 is too restrictive, and that services to students in special programs may be unduly limited as a result.

Response. No change has been made. The regulations implementing the anti-supplanting requirements have been structured to allow LEAs flexibility in providing services to students also entitled to services under other programs, without undermining Title I as a program of categorical aid to educationally deprived children. Several alternative approaches to implementing the statutory requirements were considered, but each seemed more imprecise or more difficult to implement than that adopted in these regulations. The Secretary intends carefully to evaluate the effectiveness with which the new regulations are implemented to ensure that children are not denied services as a result of discrimination, and that the anti-supplanting prohibitions are not violated.

Comment. One commenter recommended that the relationship between the required by law standard and the excess cost concept be clarified.

Response. A change has been made. 34 CFR 200.94 has been substantially expanded to provide additional guidance regarding the implementation of the excess cost requirements which prohibit intra-school supplanting. Examples have also been added in §§ 201.140–201.141 to illustrate situations in which both the excess cost requirements and the anti-supplanting requirements might be implicated.

§ 201.137 *Equitable distribution: special State and local programs.*

Comment. One commenter pointed out that paragraph (c)(2)(ii) incorrectly interprets the statutory requirement that special State and local funds, when added to Title I funds, equals or exceeds the amount the agency is eligible to receive under Section 111 of Title I.

Response. A change has been made. The words "does not exceed" have been replaced with "equals or exceeds."

Comment. One commenter recommended reviewing the formula in paragraph (c)(3) for consistancy with the standard stated in paragraphs (c)(1) and (2).

Response. A change has been made. The formula has been revised to restate statutory requirements more clearly.

Comment. One commenter questioned why the computation in paragraph (c)(3) must be done on a per pupil, rather than aggregate, basis.

Response. A change has been made. Section 132 of the Title I statute refers to amounts "per child" in ineligible areas and amounts "per child participating in programs in project areas." However, the formula, as included in NPRM was confusing, and has been revised.

Comment. One commenter recommended qualifying paragraph (a) by adding the provision that the requirement in that paragraph is subject to the exemption in paragraph (c).

Response. A change has been made. Section 201.137(a) has been revised to

mention specifically the exemption in § 201.137 (c).

Comment. One commenter recommended adding the word "additional" before "State and local funds" in paragraph (c)(1) in order to conform to the statutory language. Another commenter suggested clarifying this section by referring to "a portion of State and local funds."

Response. A change has been made. Section 201.137(c)(1) now provides that LEAs may use "additional State and local funds . . . if the conditions of § 201.137(c)(2) are met."

Comment. One commenter objected to the inclusion of requirements concerning an LEA's distribution of bilingual and special education funds.

(i) The deadline for achieving comparability may be extended until the date specified in the agreement; and

(ii) The LEA is not liable for the Title I obligations it incurred in noncomparable schools during the fiscal year involved and prior to the date specified in the compliance agreement.

(d) If an LEA determined to be in violation of the comparability requirements fails to submit to its SEA by March 1 of the fiscal year involved a revised comparability report that demonstrates full compliance with the comparability requirements, the SEA shall, under the procedures in § 201.38, reallocate the balance of the LEA's unobligated Title I funds to other LEAs in the State that are in full compliance.

(e) Within 30 days of discovering that an LEA has failed to maintain comparability as required by § 201.120, an SEA shall—

(1) Initiate a withholding proceeding under 34 CFR 200.200 and spend all further Title I payments to the LEA under 34 CFR 200.200(c); or

(2) Enter into a compliance agreement with the LEA under 34 CFR 200.210–200.214.

(Sec. 126(e), 20 U.S.C. 2736(e))

§ 201.124 *Amount of funds that an SEA shall refund for a violation of the comparability requirement.*

(a) Except as provided in paragraph (e) of this section, if the Secretary or an SEA finds, on the basis of an audit, that an LEA failed to comply with the comparability requirements in section 126(e) of Title I and §§ 201.112–201.123, the SEA shall refund to the Department the total amount of Title I funds spent to operate a project in each noncomparable school of the LEA during the period of noncomparability. These funds must include—

§ 201.139 *Provision of services required by law: special State and local programs (general).*

Comment. One commenter questioned the meaning of the word "otherwise" in paragraph (a)(1).

Response. A change has been made. The word "otherwise" has been deleted.

§ 201.140 *Provision of services required by law: special State and local programs (Handicapped children).*

Comment. One commenter objected to the selection exemption whereby handicapped students may be selected for participation in Title I projects only if they can reasonably be expected to make substantial progress toward meeting Title I project objectives without substantially modifying the level or intensity of the instruction. The commenter also expressed concern that examples limiting selection of children at the very lowest levels of achievement would ensure selection of children other than those in greatest need. Another commenter stated that rather than applying only to handicapped students, this exemption should apply to either both handicapped and limited English proficient students, or to neither of these groups. Another commenter recommended clarifying the relationship between the requirements governing selection of children in greatest need and the limitation on selection of certain handicapped children.

Response. No change has been made. The limitation on selection of certain handicapped children is included to ensure that Title I funds will continue to be used for educationally deprived children, generally, and that these funds will not be diverted for use primarily to provide severely handicapped children with basic special education services which are required to be provided under Section 504 of the Rehabilitation Act, Pub. L. 94–142, and other laws. Substantial modification of Title I programs to meet the needs of the most severely handicapped children who could not otherwise benefit from participation, is therefore neither required nor permitted.

No similar restriction on selection of children with limited proficiency in the English language is included for two reasons. First, English poficiency can be expected to increase, on an ongoing basis, and not constitute a permanent impediment to the ability of children to benefit from Title I instruction comparable to certain severe and permanent handicap conditions which preclude effective participation. In addition, Title I instruction may be provided, through bilingual teachers or aides, so as to require no modification in the level or intensity of instruction.

In some cases, examples which illustrate selection of only children above the 5th percentile of achievement have been included as a means of illustrating the requirement that handicapped children may be selected only if they can reasonably be expected to make substantial progress toward meeting project objectives without modifying the level or intensity of instruction. These examples are in no way intended to sanction "creaming," the practice of selecting as Title I participants only those children who can be expected to make substantial progress in a relatively short period of time. Instead, LEAs must continue to select children with the greatest need, taking care, however, not to select children who, because of their handicap, cannot be expected to make progress comparable to their non-handicapped peers without substantial modification of the instruction otherwise available through the Title I project.

Comment. One commenter recommended including examples of how the distinction in paragraph (c)(1) between programs designed to address needs resulting from educational deprivation and programs designed to address needs related to mental retardation or learning disability would be applied. The commenter also recommended that project objectives be tested against their appropriateness for non-handicapped children alone.

Response. No change has been made. In many cases, children diagnosed as mildly mentally retarded or learning disabled may have needs similar to those of educationally deprived children who have not been similarly diagnosed. This may be because the handicapped children, as a result of their handicap, need similar special services. It may also be because the handicapped children have been subject to the same influences of poverty and limited educational opportunities which have affected their non-handicapped peers. Under paragraph (c)(1), similar services could be provided to both handicapped and non-handicapped children to meet their common needs, so long as the limitations on selection of handicapped children who can benefit from Title I services without substantial modification are observed. Focusing on the common needs of all participating children ensures that objectives are related to characteristics other than handicapping conditions. There is, therefore, no need, as has been proposed, to limit objectives to those which are appropriate for non-

handicapped children. The Secretary believes this approach is particularly appropriate in light of recent findings that diagnosis of children as mentally retarded has often been mistaken and has resulted in disproportionate classification so as to discriminate on the basis of race.

While LEAs may, therefore, design Title I projects to meet the needs of educationally deprived children, irrespective of handicap, paragraph (c)(1) precludes their design of projects to provide services peculiarly needed by handicapped children. An example of this type of a project would be one which adopts a curriculum which is generally used only to provide handicapped children with special education.

Comment. Several commenters questioned whether § 201.135, which prohibits the use of Title I funds for services an LEA is required to make available under Federal, State, or local law, contradicts § 201.140 which authorizes the use of Title I funds to provide services to handicapped children.

Response. No change has been made. Both § 201.135 and § 201.140 specifically prohibit the use of Title I funds to provide services that an LEA is required to provide under statute or court order. However, neither section prohibits the use of Title I funds to provide handicapped children with additional services to meet needs that are similar to those of non-handicapped children.

Comment. One commenter recommended revising paragraph (c)(1)(ii) (former paragraph (c)(2)) to emphasize its importance as a test of supplanting.

Response. A change has been made. Paragraph (c)(1)(ii) is retained since the examination of program design components, including objectives, selection criteria, and others, has always been a means of determining compliance with the supplanting prohibition. To ensure that compliance with this new requirement can be verified, however, paragraph (c)(2)(ii) has been added to put LEAs on notice that, upon request, they may be required to provide information demonstrating that project objectives do not distinguish between handicapped and non-handicapped children.

Comment. Several commenters recommended revising the regulations so that Title I funds may be used to meet needs that are not met by the LEA's regular program of instruction and whatever special services handicapped children received other than Title I.

Response. As previously discussed, the Secretary has concluded that Section 126(d) of the Title I statute mandates that Title I funds only be used to supplement those non-Federal funds that would be available in the absence of Title I, including funds that are, as a matter of law, required to be provided. The use of Title I funds to provide special education services that are required to be provided but that would not be available, due to limitations on State and local funding, would be inconsistent with this requirement.

Before adopting the approach included in these regulations, the Secretary carefully considered possible alternative means of implementing the statutory standard. Among those alternatives was the use of handicapped chidren's individualized education programs (IEPs) as a benchmark against which to test whether required services were being provided. This approach was seen to be flawed, both because some LEAs may fail to include required services in IEPs in the absence of funds to provide those services (or may include all available services in any IEP, whether or not "required"), and because it is often difficult to determine whether services included in an IEP are the same as those available as part of a Title I project.

The Secretary has accordingly concluded that the approach adopted in these regulations is both legally supportable, and preferrable to available alternatives.

Comment. One commenter requested clarification as to whether services listed in a handicapped child's IEP can be provided through Title I.

Response. No change has been made. The regulations clearly state that services can be provided, without regard to the contents of a handicapped child's IEP, if all applicable requirements are met (including compliance with the equitable distribution test, and conformance with the models described in paragraphs (c), (d), or (e)). The Secretary believes that, consistent with these requirements, limited services included in a child's IEP may be provided through a Title I project without violating the antisupplanting requirements.

Comment. One commenter stated that the provisions of this section are ambiguous, and that they fail clearly to establish when services requried by law cannot be provided using Title I funds.

Response. As previously discussed, the Secretary carefully considered alternatives for implementing the required-by-law test, including using handicapped children's IEPs as a benchmark. These alternatives were found to be imprecise or impossible to monitor effectively. The Secretary believes that the final regulations provide a reasonable framework which is legally justified, possible to monitor, and flexible enough to ensure sound policy results. The Department will give special attention to evaluating the effectiveness with which these provisions are implemented so as to ensure that any uncertainties resulting from the regulatory framework are identified and clarified.

Comment. One commenter recommended deletion of the example in former paragraph (f) because it did not clarify the provisions in the rest of the section. Another commenter stated that this example contradicted the requirements of former § 116a.140(e)(1)(iii).

Response. A change has been made. More explicit guidance is provided, in paragraph (d)(3), concerning situations in which provision of services to handicapped children in separate settings is appropriate. In addition, the example in paragraph (f) has been replaced with three different examples to clarify the requirements in this section.

Comment. One commenter questioned the justification for allowing services to handicapped children to be provided in a separate setting.

Response. No change was made. However, an example has been added following § 201.140(d)(3)(iii) to illustrate more clearly the nature of the justification required if services are to be provided in a separate setting.

Comment. One commenter objected that the section contained no provision assuring that LEAs do not discriminate against handicapped children in selection of project participants.

Response. No change has been made. Section 123(a) of Title I and § 201.103 require LEAs to select those children in greatest need for participation in Title I projects. Also, § 201.132(a) prohibits the exclusion of a child from a Title I project on the basis of a handicap. These provisions provide the assurance the commenter said should be in § 201.140.

Comment. One commenter recommended providing clarification of the relationship between the presumption and demonstration of compliance.

Response. A change has been made. Presumption and demonstration of compliance have been replaced by alternative models for compliance.

Comment. One commenter expressed concern that too much Title I money would be funneled to handicapped children.

Response. The regulations prohibiting supplanting are carefully structured to ensure that LEAs continue to distribute

an equitable proportion of special education funds to handicapped children in Title I areas. Section 201.140 limits selection of the most severely handicapped children who would be unable to benefit from Title I services without substantial modification. It also includes safeguards to ensure that handicapped children receive only services comparable to those provided to their non-handicapped peers. The Secretary believes that allowing handicapped children to participate in these services is required, by virtue of Section 504 of the Rehabilitation Act, and that this participation will not result in a substantial diversion of funds from non-handicapped children who also need Title I services.

Comment. One commenter questioned whether there were any circumstances other than those described in former paragraph (e)(1) and (e)(2) under which an LEA could justify deviation from the standards in paragraph (c)(2).

Response. A change has been made. Section 201.140 has been revised to contain models of compliance identifying project design characteristics which indicate compliance with § 201.140(a).

Comment. One commenter questioned how and to whom LEAs are to make the justification required in former paragraph (e)(1) and (e)(2).

Response. A change has been made. Section 201.140 indicates that LEAs must justify to the SEA in their project applications that either intensified services or services in a separate setting is necessary.

Comment. One commenter questioned why no reference was made in paragraph (a) to the requirements of State and local law.

Response. No change has been made. Special programs mandated by State and local law are discussed in § 201.142.

Comment. One commenter suggested that reference to percentages of handicapped children in former paragraph (d) is inappropriate, rendering monitoring difficult. A second commenter asked that "substantially disproportionately greater number" be defined.

Response. A change has been made. Provisions have been added to paragraphs (c), (d), and (e), requiring LEAs to make available information justifying their selection process if a substantially disproportionate number of handicapped participants have been selected. A specific percentage figure is included to provide clear guidance as to when this requirement would apply.

§ 201.141 *Provision of services required by law: special State and local programs (children whose primary or home language is other than English).*

Comment. One commenter recommended revising the requirement in § 201.141(d)(1) (former § 116a.141(c)(2)(i)) to provide that LEAs may design programs to address special needs resulting from educational deprivation, including limited English proficiency.

Response. No change has been made. The Title I statute requires that Title I projects be designed to meet the special educational needs of educationally deprived children. To the extent that limited English proficiency contributes to educational deprivation, children with limited English proficiency are eligible, on the basis of the resultant educational deprivation, and may be served under Title I.

Comment. One commenter recommended allowing LEAs to select Title I participants on the basis of limited English proficiency as well as educational deprivation.

Response. No change has been made. Limited English proficiency may, in many cases, correspond to educational deprivation.

However, nothing in the Title I statute or legislative history authorizes selection of participants on a basis other than educational deprivation.

Comment. One commenter objected to the requirement that uniform selection criteria apply to both children with limited proficiency in the English language and children whose primary language is English.

Response. No change has been made. Several statutory requirements, including Sections 123(a), 124(b), and 124(e) indicate that participants are to be selected on the same general basis of educational need.

Comment. One commenter objected to the examples as confusing, and lacking in clarity.

Response. A change has been made. Three examples have been included in the section to clarify ways services can be provided to children with limited proficiency in the English language.

Comment. One commenter recommended revising the requirements in this section to allow Title I projects to fill the gaps between services provided as part of the regular program and special services for children with limited proficiency in the English language.

Response. No change has been made. The purpose of this section is to ensure that LEA's do not use Title I funds to provide limited English proficient children with services that they are entitled to receive from other sources. Children with limited proficiency in the English language are to be selected for participation in Title I projects on the same basis as all other children are selected; once selected, the services provided may, in appropriate cases, be made available in bilingual form.

Comment. One commenter objected to the provisions allowing services to children with limited proficiency in the English language to be provided in separate settings and at different levels and intensities as an invitation to LEAs to use Title I funds to provide services required by other laws.

Response. No change has been made. The restrictions on project design governing provision of services in separate settings or at different intensities are considered to be sufficient to ensure that these projects are supplemental.

Comment. One commenter recommended requiring agencies to meet the requirements of both paragraphs (c) and (d) (former paragraphs (c)(1) and (c)(2)) in order to satisfy the "required by law" test.

Response. No change has been made. Where a court order describes in detail an LEA's obligations under Title VI of the Civil Rights Act of 1964 and where non-Title I funds are used to meet an LEA's obligations under this type of an order, an LEA's Title I project cannot, by definition, be supplanting funds required to be made available for this purpose. There is no need, therefore, to demonstrate compliance with paragraphs (d), (e), or (f) as well.

Comment. Several commenters recommended revision to indicate that Title I services may be provided by bilingual teachers and with bilingual materials to ensure children with limited proficiency in the English language an adequate opportunity to benefit from the services.

Response. No change has been made. A provision similar to that proposed is already included in § 201.132(c).

Comment. One commenter stated that Title I services for children with limited proficiency in the English language would probably be provided in separate settings as a general rule.

Response. No change has been made. A variety of models of compliance are included to allow LEAs the flexibility to design Title I projects to meet the particular needs of children in their districts. While instruction in separate settings may be appropriate in some cases, use of that approach must be justified as described in paragraph (e)(3).

Comment. One commenter inquired about the precise functions of bilingual

teachers described in examples under this section.

Response. Changes have been made by providing additional examples which describe in greater detail the circumstances in which Title I services may be provided, using bilingual instructors, to supplement an LEA's efforts to meet responsibilities under Title VI of the Civil Rights Act of 1964.

Comment. One commenter inquired why provisions and examples in this section only relate to discrimination on the basis of national origin and not on the basis of race.

Response. This section implements the provisions of Section 126(d) of the Title I statute relating to special programs of bilingual education. Provisions relating to requirements imposed by court order or compliance agreements, as a result of alleged discrimination on the basis of race, are included in § 201.135, relating to use of regular State and local funds.

Comment. One commenter inquired why a five-year period had been selected under paragraph (c)(2) for demonstrating compliance with the requirements of paragraph (a) by continuing to provide services with non-Title I funds consistent with practices of a recent compliance review. The commenter also asked how this requirement would be implemented.

Response. A change has been made. A five-year period was selected as a reasonable period during which it might be expected that local circumstances had not appreciably changed. If an LEA has not been monitored, it will not be penalized, but will simply be required to use the models of compliance described in paragraphs (d), (e), and (f). Specific guidance is not included, stating that this provision only applies to compliance reviews conducted by the Office of Civil Rights, and specifying that the demonstration of continued compliance must be included in the LEA's project application.

Comment. A number of commenters indicated that the use of presumptions and demonstration requirements in the NPRM was confusing. Commenters also requested further guidance with regard to acceptable justifications for purposes of paragraph (e).

Response. A change has been made. The section has been revised to refer to models of compliance. Information which must be available to demonstrate compliance with each model is specifically described. More detailed guidance is given as to common, acceptable justifications for use of separate settings or greater intensities of instruction for limited English proficient children. A mechanism is also created allowing the Department to give further guidance with regard to other proposed justifications, upon request.

§ 201.142 *Provision of services required by law: (Special State and local programs) Compensatory education or other services required by State or local law.*

Comment. One commenter inquired how this section relates to § 201.137 (equitable distribution: special State and local programs), and wondered whether this section is intended to address compensatory education required to be provided under Federal court order. The commenter also asked whether there are any States or LEAs which have laws requiring compensatory education that are not related to minimum competency programs and whether the example provided relates only to minimum competency programs.

Response. A change has been made. The caption of this section has been changed to refer specifically to "special State and local programs." As explained in an earlier response, the Secretary has concluded that both the "equitably provided" test and the "required by law" test applies with respect to use of non-Title I funds for each type of special program, including programs mandated by State and local law. Since this section applies only to special programs mandated by State and local law, it does not include compensatory programs required by a Federal court, under Federal law, as part of a desegregation plan. It does, however, apply not only to State and local compensatory education programs, but also to other "special programs" including bilingual and special education programs mandated by State and local law in a number of States and localities. The inclusion of one example, relating to minimum competency law, is not intended to narrow this section to this type of State law alone. The inclusion of State and local requirements in a separate section has resulted from the Secretary's view that interpretation of State and local legal requirements is peculiarly a matter for State and local officials involving a more limited Federal role than is the case where Federal legal requirements are invovled.

Comment. One commenter asked who would be "appropriate" State and local officials for purposes of paragraphs (c)(1) and (d)(1) of this section.

Response. An "appropriate official" is one who, under State law, is authorized to interpret applicable law and to assess agency compliance. These officials might include the State Attorney General or his or her staff, and other objective officials, whether or not within the SEA, who are responsible for monitoring LEA compliance and who furnish the SEA with objective evaluations.

Comment. One commenter asked that the example be clarified to indicate how children are selected for participation and whether all children who failed a State competency examination could be designated as eligible for Title I.

Response. A change has been made. The example has been clarified.

§ 201.143 *Coordination.*

Comment. One commenter requested that an example be provided to clarify the meaning of "indirect indicators of educational need" in paragraph (b)(2)(iii) (former paragraph (a)(2)(iii)(B)). Another commenter recommended adopting the statutory language "reasonable proxy" for educational need.

Response. A change has been made. The statutory language "reasonable proxy" has been included in paragraph (b)(2)(ii). This term could include any indicator which reasonably correlates with eductional need.

Comment. One commenter criticized the example as failing to emphasize that special program criteria do not negate or override criteria for selection under Title I. The commentor also recommended that clearer reference be made to the requirements for special State and local programs found in § 201.118.

Response. A change has been made. The example has been changed to meet the commenter's concerns.

Comment. One commenter stated that this provision should include applicable statutory language from Section 126(d) of the Title I statute (referring to children "in the aggregate," residing in "eligible school attendance areas or attending eligible schools," and development of a "plan" for distribution of special funds).

Response. A change has been made. Instead of simply referencing the statutory concepts in the example, this section has been revised so that paragraph (b) specifically includes the statutory language in question. The example has also been modified explicitly to refer to funds available to children "in the aggregate."

§ 201.144 *Prohibition against considering Title I funds in determining State aid.*

Comment. One commenter recommended that this section (former § 116.90) be moved to 34 CFR Part 201 since it relates only to LEAs.

Response. A change has been made. The section was moved to § 201.144.

Comment. One commenter questioned the languge in paragraphs (a) and (b) which, taken literally, appear to contradict each other.

Response. No change has been made. Although the section has been moved to § 201.144, the language remains unchanged. The section is included to provide that a State may not consider Title I funds so as to discriminate against LEAs in determining the level of State aid it provides to them. However, the state may provide additional funds to an LEA on the basis of the LEA's eligibility for, or receipt of, Title I funds.

Subpart I—Parental Involvement

§ 201.150 *Purpose of advisory councils.*

Comment. One commenter recommended including an explanation of the roles of and interrelationships between project school councils, project area councils, individual parents and district advisory councils.

Response. No change has been made. The responsibilities of Title I advisory councils, as specified by Section 125(b) of Title I, are included in § 201.159. The opportunity for involvement of individual parents, as required by Section 124(j) of Title I, is covered in 34 CFR 200.31.

Comment. One commenter recommended including a statement encouraging SEAs to organize State level Title I advisory councils.

Response. No change has been made. The statute contains no authority on which the Secretary could rely to regulate regarding the formation of State Title I advisory councils.

Comment. One commenter objected to the statement that councils are established to "encourage," rather than "require," parental involvement.

Response. No change has been made. Section 125(b) of Title I and § 201.159 accomplish the desired result by directing each LEA to give its advisory councils the responsibility of advising on the planning, implementation, and evaluation of its Title I projects.

Comment. One commenter states that it would be difficult to comply with parent advisory council requirements in small or rural districts.

Response. No change has been made. The Title I statute requires participating LEAs to establish parent advisory councils. Although certain exemptions are authorized by Section 125(a)(2) of Title I and included in §§ 201.154(d) and 201.155(c) of these regulations, the statute contains no other authority for relieving an LEA of the requirement that councils be established for all project areas or project schools and for the LEA's district as a whole.

Comment. One commenter urged that the relationship between Subpart I of these regulations and Section 124(j) of Title I (relating to parental involvement) be clarified.

Response. No change has been made. There is no special relationship between these provisions.

§ 201.151 *Advisory councils that LEAs shall establish.*

Comment. One commenter recommended permitting elected boards other than Title I advisory councils to serve as Title I advisory councils.

Response. No change has been made. Section 125 of Title I requires that project school and project area advisory councils be elected by parents and that district level councils be selected by parents, or by the members of project school and project area advisory councils and certain parents. In addition, §§ 201.152 and 201.156 prescribe the composition of the membership of these councils. However, if a Board elected for other purposes can meet these requirements, it could serve as a Title I advisory council.

Comment. One commenter felt that for small rural LEAs, one district advisory council should be the only council required.

Response. No change was made. If a district consists of only one attendance area, it may elect a single council to serve as both its project area and district advisory council. All other districts are required by Section 125 of the statute to establish both district and project area or project school Title I parent advisory councils.

Comment. One commenter recommended exempting schools that operate schoolwide projects from the requirement that a project school advisory council be established, since, in this situation, Title I children and their parents cannot be identified for the purpose of ensuring that the council has a majority of parents of children to be served.

Response. No change has been made. All children in a school wide project are considered Title I participants, and hence, any of their parents may be elected as majority members. The electing parents, however, may also choose other district residents and teachers in project schools or schools serving project areas as members of the council.

Comment. One commenter recommended specifically stating that advisory councils for both Title I Part A and Title I migrant programs may be coordinated.

Response. No change has been made. LEA's may develop procedures for coordinating these two advisory councils, but they are not required to do so.

Comment. One commenter requested that more clarification be provided concerning the distinction between project area councils and project school councils.

Response. No change has been made. Section 201.52 indicates that a project school is either a school which is located in an ineligible attendance area, or a school which serves children from more than one area. A project area school is a school which serves an eligible attendance area which has been designated for Title I services. A given school cannot, therefore, be both a project area school and a project school.

All of these schools, except those referred to in § 201.155(c), must establish one building level council, called a "project area advisory council" in the case of a project area school, or a "project school advisory council" in the case of a project school.

§ 201.152 *Composition of membership on district advisory councils.*

Comment. One commenter asked why parents of children who are eligible but not selected for services may be elected to the district area advisory council.

Response. No change has been made. Although the majority of members must be parents of children to be served by the project, any resident of the LEA is eligible for membership on the district advisory council. In addition, Section 125(a)(1)(C), as amended by Pub. L. 96-46, requires that parents in eligible-but-not-participating areas elect representatives of eligible-but-not-participating children.

Comment. One commenter recommended allowing individual district advisory council members to be considered parents of children to be served as long as they have children who have participated in the project at some time during the three years for which applications are approved.

Response. No change has been made. Section 125(a) of Title I requires that the majority of members be parents of children to be served by the project. To implement this requirement, § 201.154(c) has been revised to require each LEA to establish procedures for annually ensuring that a majority of members are parents of children to be served. Members who are no longer parents of children to be served may not be counted as part of this majority.

Comment. One commenter recommended including principals of project schools as individuals who may be elected to district advisory councils

even though they reside outside the district.

Response. No change was made. Teachers in project schools and schools serving project areas are the only persons authorized by the statute to be eligible to be elected to the district advisory council even though they reside outside the district.

Comment. One commenter recommended revising paragraph (c) of this section to clarify that parents do not have to elect any teachers to the district advisory council.

Response. A change has been made. Section 201.152(c) was revised to indicate more clearly that the election of the additional members from the categories referred to in § 201.151(c) is not required.

Comment. One commenter recommended requiring advisory council representation to be proportionate to the ethnic makeup of project participants.

Response. No change has been made. The statute does not authorize this requirement.

Comment. One commenter recommended requiring representation on the district advisory councils of children in grade levels other than those served by the Title I program.

Response. No change has been made. The statute does not require such representation; however, representatives from the eligible-but-not-participating areas in many cases will be representing children at grade levels not included in the project.

Comment. One commenter specifically recommended that this section refer to parents of private school children as eligible for membership on district advisory councils and project area and project school advisory councils.

Response. A change has been made. In § 201.152(a) parents of private school children participating in a Title I project are specifically included as parents eligible for membership in the majority of a district or school advisory council.

Comment. One commenter objected to the provision that allows school employees to be elected to district advisory councils.

Response. No change has been made. The statute specifically mentions teachers at schools where projects operate as eligible to serve on advisory councils. Furthermore, the exclusion of otherwise eligible school employees from serving on advisory councils would be contrary to the requirement that parents be free to elect the members of the councils within the constraints imposed by the statute itself. The statute does not exclude school employees.

Comment. One commenter questioned the inclusion of paragraph (a)(2) which provides that parents of children to be served during the next project year may be elected as part of the majority required by Section 125(a)(1)(A) of Title I.

Response. No change has been made. The provision is intended to provide an option for LEAs which hold district advisory council elections in the spring.

Comment. One commenter expressed concern that the reference to § 201.51 in paragraph (b) would effectively exclude representation on the district advisory council of parents of children in eligible but unserved areas in grade spans other than those served by the Title I project.

Response. No change has been made. While § 201.51 offers the option of grouping attendance areas by grade span, selection of that option is not required. Even if the option is employed, this provision does not preclude the election of parents of children in grade spans other than those served.

§ 201.153 *Models for nominating and electing district advisory councils.*

Comment. One commenter expressed concern that the LEA alone would determine the number of members that will serve on the district advisory council.

Response. No change has been made. Consultation with the district advisory council is required in establishing both nomination and election procedures, which will necessarily include consultation with regard to the numbers of persons to be elected to the council.

Comment. One commenter objected to the requirement that LEAs identify the parents of children who are eligible but not served in order to elect the representatives required by § 201.152(b). Another commenter recommended that in LEAs where there are no eligible—but not—participating areas, the representatives required by § 201.152(b) be elected by parents of school level council members in project areas or schools.

Response. A change has been made. LEAs are no longer required to identify parents of children who are eligible but not served in order to elect the representatives required by § 201.152(b). These representatives must be elected by parents in areas which are eligible but not served. If no such areas exist, the LEA has no responsibility to identify representatives of children who are eligible but not participating in the project.

Comment. Several commenters recommended requiring that the current district advisory council be involved in the nomination and election process for the establishment of the next district advisory council.

Response. A change has been made. In § 201.153, LEAs are now required to establish nomination and election procedures in consultation with the district advisory council.

Comment. One commenter recommended establishing categories of parent advisory council members consisting of parents of private school children and parents of children receiving special education services.

Response. No change has been made. Parents of children in private schools and of children receiving special education services are eligible to be elected to district advisory councils on the same basis as other parents.

Comment. One commenter suggested that former paragraph (a) (current paragraph (b)) be clarified to indicate that its provisions apply only to the selection of parents of children to be served and additional members, not to members required to be selected under § 201.152(b).

Response. No change has been made. Section 201.153(c)(1), which contains procedures for the election of the members required by § 201.152(b), clearly states that these members will be elected in addition to those elected under § 201.153(b).

§ 201.154 *Procedures for electing district advisory councils.*

Comment. One commenter recommended requiring LEAs to maintain on file parents' written consent to be identified as parents of children to be served.

Response. A change has been made. A parent's written consent to be identified as a parent of a child in the program is now required. The LEA may, at its option, keep signed consent forms on file.

Comment. One commenter asked why LEAs should be required to identify candidates in specific categories when an LEA may use another method of ensuring the election of a legally constituted district advisory council.

Response. No change has been made. The requirements in § 201.154 are necessary in order to ensure the election of the required membership on the district advisory council.

Comment. One commenter questioned the justification for paragraph (d) which allows for the election of a single council in districts with only a single attendance area.

Response. No change has been made. This provision is appropriate because, in such districts, the district advisory council and the project area advisory council would be identical in

composition, and would be chosen by the same electorate. There is, therefore, no need for two separate councils.

Comment. One commenter questioned why this section did not include a provision reflecting the statute's legislative history which indicates that the requirement for selection of project area or project school advisory councils may be waived in certain circumstances.

Response. No change has been made. The legislative history in question deals with project area and project school advisory councils, while § 201.154 deals with district advisory councils.

§ 201.155 *Required project area advisory councils and project school advisory councils.*

Comment. One commenter recommended deletion of paragraph (b) which requires that project area advisory councils be established for areas in which eligible and participating private school children reside, but where the public school is skipped because its students receive services of the same nature and scope from non-Federal sources.

Response. No change has been made. Section 122(e) of Title I requires that private school children who cannot participate in the non-Federally supported compensatory education program be provided with Title I services. In such cases the area in question would have a Title I program and must, therefore, have a project area advisory council.

Comment. One commenter recommended clarifying the responsibilities of project area advisory councils for areas where the public school students have been skipped under § 201.65 or § 201.71.

Response. No change has been made. The responsibilities of such a council would be the same as for any other project area advisory council. These responsibilities are outlined in § 201.159 of these regulations.

§ 201.156 *Membership of project area advisory councils and project school advisory councils.*

Comment. One commenter recommended revising the language in paragraph (c) to provide that councils with fewer than eight members may be operated for the areas and schools described in that paragraph if the LEA has made an effort to obtain eight members.

Response. No change has been made. The requirement that councils for schools serving 75 or more Title I students include eight or more members is statutory and cannot be set aside by regulations.

Comment. One commenter questioned why terms of office were not specified for district advisory council members but are specified for certain project area or project school advisory council members.

Response. No change has been made. The term of office specified in § 201.156(c)(1) is included because it is specified in Section 125(a)(2)(C) of Title I. The law does not specify a term of office for members of a district advisory council.

Comment. One commenter recommended deletion of the word "design" in paragraph (c)(3) since that word does not appear in the authorizing statutory section.

Response. A change has been made. Section 201.156(c)(3) now contains the statutory language "planning, implementing, and evaluating."

Comment. One commenter recommended specifically stating that any resident of the district is eligible to be elected to a school level advisory council.

Response. A change has been made. Section 201.156(b)(1) has been revised to state that any resident of the LEA is eligible for membership on a project area or project school advisory council.

Comment. Two commenters recommended revising the language in paragraph (a) to clarify that all members of project school and project area advisory council, not just the additional members, must be elected.

Response. A change has been made. Section 201.156(a)(1) has been revised to clarify that all council members must be elected.

Comment. Two commenters recommended adding, to paragraph (c)(3), the provision that election of council officers will take place after the council is fully constituted.

Response. A change has been made. This provision has been added to § 201.156(c)(2).

§ 201.157 *Procedures for electing project area advisory councils and project school advisory councils.*

Comment. One commenter recommended amending this section to provide that a reasonable good faith effort on the part of the LEA to recruit parents to serve on advisory councils would constitute compliance with the applicable requirements, even if not all the councils required by § 201.151 had been formed.

Response. No change has been made. The statute contains no authority for exempting an LEA under such circumstances from any of the requirements of this subpart.

Comment. One commenter suggested that paragraph (a) requiring the identification and notification of parents in various catagories for the purpose of electing project area and project school advisory councils is unnecessary.

Response. No change has been made. The requirements included in paragraph (a) are necessary to ensure that the electorate is notified of the election and that they elect a properly constituted council.

Comment. One commenter questioned the necessity for mandatory identification procedures under paragraph (c). The commenter stated an LEA may prefer some other method for ensuring the election of a properly constituted council.

Response. No change has been made. The procedures in § 201.157 are necessary in order to ensure the election of the required membership on the project school and project area advisory councils.

Comment. One commenter questioned the inclusion of paragraph (d) which requires the names of advisory council members be made available to the general public.

Response. No change has been made. It is important for the public to be informed of the representatives who have been elected to serve on the advisory councils.

§ 201.1587 *An LEA may not impose additional restrictions on the rights of parents to elect advisory council members.*

Comment. One commenter recommended revising this section simply to state that LEAs may not impose restrictions that thwart the intent of the statute.

Response. No change has been made. Section 125 of the statute requires that parent advisory councils be elected by parents. Since the only statutory restrictions are those concerning the composition of councils, the regulations prohibit an LEA from imposing other restrictions.

Comment. One commenter questioned the authority for this section.

Response. No change has been made. Section 201.158 is rooted in Section 125 of Title I, which the Department has interpreted to mean that parents are authorized freely to elect the councils of their choice, except to the extent that authority is limited by paragraph (a) of that section.

§ 201.159 *Participation by advisory councils.*

Comment. One commenter recommended adding a requirement that councils not be allowed to conduct

business unless a majority of the members present are parents of children to be served.

Response. No change has been made. While such a rule may be considered by individual councils for inclusion in their bylaws, there is no basis for including such a requirement in these regulations.

Comment. One commenter recommended clarifying the terms "planning, implementing, and evaluating" in paragraph (a).

Response. A change has been made. Section 201.159(b) expands on the role of the district advisory council in planning, specifying that the LEA shall provide the district advisory council with an opportunity to provide advice in the development of the LEA's project application.

Comment. One commenter recommended that LEAs demonstrate in their project applications the involvement of each advisory council in the application development process.

Response. A change has been made. Although documentation is not required in the application itself, each LEA is required by § 201.159(b) to involve its district advisory council in the development of its application. The LEA and the district advisory council should, in addition, consider the views of any project area or project school advisory council that may wish to provide advice on the LEA's application.

Comment. One commenter proposed that a requirement be included in this section that councils meet no later than the second month of the school year.

Response. No change has been made. The timing of council meetings is a matter that is appropriately determined at the local level.

§ 201.160 *Information that an LEA shall provide to advisory councils.*

Comment. Several commenters recommended adding "SEA notice of final action on audit appeals" to the list of reports to be sent to the district advisory council.

Response. A change has been made. Section 201.160(c)(1), following Section 125(c)(2) of Title I, requires the SEA to send this information to the district advisory council for the LEA that was audited.

Comment. Several commenters recommended requiring that advisory councils be provided with the LEA's current application and previous evaluation reports.

Response. A change has been made. Section 201.160(a)(4) now requires advisory councils to be provided with copies of the LEA's current application. In addition, councils may under 34 CFR 200.141, request access to evaluations of prior projects.

Comment. One commenter recommented adding "information concerning Title I exemplary projects" to the list of documents which are to be provided to parent advisory councils.

Response. A change has been made. Section 201.160(c)(2) requires SEAs to disseminate information on exemplary projects to advisory councils upon request.

§ 201.161 *Training for members of advisory councils.*

Comment. One commenter recommended that paragraph (a) of this section be revised to read "An LEA and DAC shall develop . . .", rather than, "An LEA shall develop . . ."

Response. No change was made. Section 201.161(a)(1) requires that the training be planned in full consultation with the district advisory council.

Comment. One commenter recommended including a requirement that training be provided in the native language of parent advisory council members.

Response. No change has been made. However, the LEA must plan its training program in consultation with its district advisory council and must provide appropriate training materials. In order to be appropriate, the LEA may have to provide these materials in the native language(s) of parent advisory council members.

Comment. One commenter recommended requiring SEAs to develop uniform policies concerning attendance by parent advisory council members at regional or national conferences.

Response. No change has been made. Due to the wide range of activities which are carried out at different conferences and due to the variation among LEAs and their parent advisory councils with respect to types of projects and training needs, it is not possible to develop more specific policies with respect to advisory council members' attendance at these conferences, other than the basic rule that the SEA shall determine whether a conference to which an LEA would send advisory council members is relevant to their functions.

Comment. One commenter recommended deletion of the requirement in paragraph (b) that LEAs conducting joint training each be participating in Title I.

Response. No change has been made. An LEA may not use Title I funds to provide services not related to Title I programs.

Comment. One commenter recommended that paragraph (c)(2) be revised to provide that the LEA, in conjunction with the parent advisory council members, determine the number of council members that will attend national or regional conferences.

Response. No change has been made. However, the district advisory council may advise the LEA on the number of council members the LEA should send to such conferences.

Comment. One commenter recommended that advisory councils themselves be allowed to select the individual members who will attend regional and national conferences.

Response. No change has been made. Nothing in this section precludes such selection. Section 201.161(c)(2) simply indicates that the LEA shall limit the number of advisory council members who may attend a conference.

Comment. One commenter recommended revising paragraph (a)(3) to provide that LEAs may permit the use of Title I funds for expenses of the training program.

Response. A change has been made. Section 201.161(a)(3) has been revised to follow more closely the language in Section 125(d) of Title I.

Comment. One commenter proposed that guidance concerning use of Title I funds for advisory council members' travel be included in this section.

Response. No change has been made. This section is intended to cover training of advisory council members. In so doing, it repeats the provisions in Section 125(c) of Title I. Allowable costs for advisory councils including travel costs, are covered in 34 CFR 200.79 and § 201.162.

Comment. One commenter asked why the regulations require the LEA to provide training at convenient locations.

Response. No change has been made. The requirement in § 201.161(b) is reasonable, and moreover, is consistent with legislative intent.

Comment. One commenter asked why the issue of LEAs joining together to provide joint training at a central location was not addressed.

Response. No change has been made. This issue is covered in § 201.161(b).

Comment. One commenter asked why paragraph (b) allows LEAs to operate joint training programs.

Response. No change has been made. The provision is based on the language of the conference report accompanying Pub. L. 95–561.

Comment. One commenter questioned the prohibition in paragraph (a) against including travel to regional or national conferences in advisory council training programs.

Response. No change has been made. Section 201.161(c) does not prohibit

regional or national conferences. It simply restricts attendance at them by advisory council members at Title I expense.

Comment. One commenter questioned why paragraph (d) linked the Secretary's sponsorship of workshops under Section 125(e) of Title I to the availability of funds appropriated under Section 125(g) of Title I.

Response. No change has been made. Section 125(g) specifically provides authorization to appropriate funds necessary to carry out the provisions of Section 125(e) of the law.

§ 201.162 *Allowable expenditures for advisory councils.*

Comment. One commenter recommended that expenditures for translation of materials into the native language of advisory council members be listed as an allowable cost.

Response. No change has been made. Each LEA should decide whether translations are needed to provide "appropriate materials" as required by Section 125(d) of Title I.

Comment. One commenter recommended exempting migrant parents from the prohibition against reimbursement with Title I funds for time lost from work.

Response. No change has been made. The recommended change for only one type of employment would not be appropriate. The requirements concerning advisory councils for migrant education projects are contained in 34 CFR 204.55.

Comment. One commenter inquired as to the authority for the restrictions in paragraphs (b) and (c).

Response. No change has been made. Under the basic guidelines in Part I of Appendix C to 34 CFR 74 (which is Appendix B to EDGAR), costs under a grant program must "be necessary and reasonable for proper and efficient administration of the grant program." The requirements in § 201.162 (b) and (c) are issued under the Secretary's general rulemaking authority in section 408(a) of GEPA as a means of ensuring that expenditures for advisory councils conform with that basic cost principle. While these specific restrictions are designed to prevent excessive expenditures, they do not prevent an LEA from using Title I funds to pay for costs that are reasonably related to the functioning of advisory councils.

Miscellaneous.

Comment. One commenter pointed out that Section 124(m), relating to control of Title I funds, was not addressed in the regulations.

Response. A change has been made. 34 CFR 200.83 has been added to implement this statutory requirement.

[FR Doc. 81-1296 Filed 1-16-81; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Parts 200 and 201

Financial Assistance to Local and State Agencies To Meet Special Educational Needs; and Financial Assistance to Local Educational Agencies for Children With Special Educational Needs

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking: Cross-reference.

SUMMARY: The Secretary proposes regulations in 34 CFR 200.93–200.95 (Excess costs) and 34 CFR 201.130–201.143 (Supplement, not supplant) for Title I of the Elementary and Secondary Education Act of 1965, as amended (Title I). These regulations implement changes required by the Title I statute as re-enacted by the Education Amendments of 1978 (Pub. L. 95–561). The regulations set forth the Title I requirements concerning Excess Costs and Supplement, not Supplant and provide State and local agencies with guidance regarding the procedures, criteria and standards for meeting those requirements.

The Secretary invites comments on these proposed regulations.

the text of these regulations on which the Secretary invites comments is published in the Rules and Regulations section of this issue of the **Federal Register.** The regulations have been adopted as final regulations and will govern this program until the Secretary issues new regulations based on public comment.

DATE: All comments, suggestions, or objections must be received on or before March 20, 1981.

ADDRESS: Comments should be addressed to Dr. John F. Staehle, Office of Compensatory Education, Department of Education, 400 Maryland Avenue, SW., (Room 3642, ROB–3), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. John F. Staehle. Telephone: (202) 245–2722.

Invitation to comment: For additional details on how to comment, see the preamble of the final regulations for these programs published in this issue of the **Federal Register.**

Date: January 8, 1981.

(Catalog of Federal Domestic Assistance, No. 13.428, Educationally Deprived Children-Local Educational Agencies and No. 13.430, Educationally Deprived Children-State Administration)

Shirley M. Hufstedler,

Secretary of Education.

[FR Doc. 81-1297 Filed 1-16-81; 8:45 am]

BILLING CODE 4000-01-M

federal register

Monday
January 19, 1981

Part III

Department of Education

National Direct Student Loan Program; College Work-Study Program; and Supplemental Educational Opportunity Grant Program; Final Regulations and Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 675 and 676

National Direct Student Loan Program, College Work-Study Program, and Supplemental Educational Opportunity Grant Program

AGENCY: Department of Education.

ACTION: Final Regulations with Comments Invited.

SUMMARY: The Secretary is issuing regulations for the National Direct Student Loan (NDSL), College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) Programs, commonly known as the campus based programs. These regulations have been amended to implement statutory changes contained in the Education Amendments of 1980, Pub. L. 96–374. These regulations also include changes in the funding procedures for each of these programs (Sections 3 through 7 of each regulation) to conform those procedures to the statutory amendments.

DATES: Comments must be received on or before March 20, 1981. These regulations are expected to take effect 45 days after they are transmitted to the Congress. Regulations are usually transmitted to the Congress several days before they are published in the **Federal Register**. The effective date is changed if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

ADDRESS: Comments should be addressed to Lynn Laverentz, Office of Student Financial Assistance (Room 4018, ROB–3), 400 Maryland Avenue, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Lynn Laverentz, Telephone (202) 245–9720.

SUPPLEMENTARY INFORMATION:

Introduction

The Education Amendments of 1980, enacted on October 3, 1980, amended the NDSL, CWS and SEOG programs in several respects. In general most of the changes were effective on October 1, 1980. However with regard to the increase in the interest rate for the NDSL program from three to four percent, the Congress in December acted to postpone the effective date from October 1, 1980 to July 1, 1981.

Several of the statutory changes affect the administration and operation of the three programs. To facilitate the administration of these newly amended programs, regulations implementing these changes are being issued in final form. Other changes of a minor or technical nature have also been made. However, as noted below, the Secretary is requesting public comment on particular provisions of the regulations.

The Education Amendments of 1980 made other changes that were more sweeping in nature. Rules to carry out these changes will be published separately as notices of proposed rulemaking so that the public can be involved in the implementation of these provisions. For example, the Act requires the establishment of a common need analysis system applicable to the Pell Grant and campus-based programs. The Act also requires a common definition of "cost of attendance" that is applicable not only to the campus-based programs but also to the Pell Grant, the Guaranteed Student Loan, and Parent Loans for Undergraduate Students programs which will be published as separate regulations.

The Education Amendments also authorized an alternative source of funding for the NDSL Program under which, to the extent provided in appropriations acts, the Secretary would borrow from the Federal Financing Bank to obtain NDSL capital. If NDSL capital is provided through this new method of funding in a particular year, several significant program changes would result in that year. For example, no institutional capital contribution would be required, and institutions could choose to assign collection responsibility to the Education Department on all loans made from funds obtained in the new way. Numerous changes in the regulations will be required to implement policies and procedures related to these new provisions. A notice of proposed rulemaking with regard to this area will be published to allow for public comment.

Summary of Major Changes.

A summary of major changes follows:

1. Changes in the procedures for distributing funds to institutions.

a. *Conditional guarantee.* The Education Amendments of 1980 amended the SEOG and CWS statutes to provide that institutions are to receive each year no less than their expenditures under each program in the 1979–80 award year. Under the CWS program, however, the statute provides that an institution may receive less than its 1979–80 expenditures if it undergoes a substantial reduction in enrollment. Accordingly, the conditional guarantee provisions of the CWS and SEOG regulations (§§ 675.6(b) and 676.6(b)) have been revised to reflect that change. The provisions dealing with institutions that did not receive funds in either program for the 1979–80 award year, i.e. first and second time participants, were not changed.

b. *Need of institutions for SEOG and self-help funds.* Institutions that are awarded funds in excess of their conditional guarantees receive those funds on the basis of a formula that was premised on the view that 70 percent of a student's financial need should be provided in the form of grants and that the remaining 30 percent should be provided in the form of work and loans (self-help). The Education Amendments of 1980 changed this premise by providing that 75 percent of a student's financial aid package be provided in the form of grants. The Amendments also specified a formula for determining the need of an institution for SEOG funds which incorporated this view.

The SEOG formula, before the enactment of Pub. L. 96–374, provided that an institution's SEOG need equaled 70 percent of the cost of education of the institution's eligible undergraduate students minus the sum of (1) the expected family contribution of those students, (2) Pell Grants (formerly called the Basic Grants) received by those students, (3) State Grants the students received in award year 1977–78, and (4) 50 percent of institutional grants they received in award year 1977–78.

The new statutory formula for determining an institution's need for SEOG funds for each award year provides that the institution's SEOG need equals 75 percent of the cost of education of the institution's eligible undergraduate students minus the sum of (1) the expected family contribution of these students, (2) the Pell Grants received by these students, (3) the State Student Incentive Grants (SSIG) these students received and (4) 25 percent of institutional grants they received.

The Secretary has devised the following formula in these regulations for determining the SSIG figure:

$$\text{SSIG} = \frac{\text{State's total SSIG (Federal plus match)}}{\text{Total undergraduate State grants}} \times \text{Institution's total undergraduate State grants}$$

The new statutory provisions also prohibit the Secretary from penalizing an institution that is required by State law to provide student grants from its own funds if the institution is not free under State law in effect on January 1,

1979 to select the recipients or adjust the criteria by which the recipients are selected. In addition, because some institutions contribute to the State's share of its SSIG awards, the funds these institutions contribute are not included in determining the amount of institutional grants. These provisions are reflected in § 676.6 (c) and (d).

The new statutory formula for determining an institution's need for SEOG funds also required a change in the formulas used in the NDSL and CWS programs to measure an institution's need for work and loans (self-help) for its undergraduate students. Accordingly, §§ 674.6(e) and 675.6(e) were revised to reflect the view that self-help should be 25 percent rather than 30 percent of an undergraduate student's financial aid package.

c. *Eligible students.* The Secretary is clarifying the definition of eligible students (§ 6(c)(3)(ii) in each program) used in determining the self-help and SEOG need of an institution.

d. *Calculation of Federal capital contribution—NDSL default rate.* The Secretary is liberalizing § 674.6a to permit an institution to exclude, when calculating its default rate, notes that it assigns to the Secretary during the base year. The current regulation permits the institution to exclude from its default rate only those notes assigned or referred on or before September 15, 1979.

Student living expenses and Expected Family Contribution (EFC)

The student living expense figure used in the funding formulas is updated annually. For the 1980–81 award year, the national average was $2,600. For the 1981–82 award year, the national average is $2,800. The EFCs are also updated annually and are disseminated in *The Bulletin* and other appropriate publications.

2. *NDSL.*

Except for the increase in the interest rate, changes in the NDSL program are effective for loans made on or after October 1, 1980.

a. The interest rate for the NDSL program is increased to four percent from three percent effective July 1, 1981. (§§ 674.32 and 674.33)

b. The first grace period is reduced from nine months to six months. (§§ 674.2 and 674.32). However a borrower is now entitled to additional six month grace periods. (See paragraph h below).

c. Three new deferments are authorized for periods up to a maximum of three years. The deferments are for full-time volunteer service, comparable to Peace Corps or VISTA volunteer service, in a tax-exempt organization; for temporary total disability of the borrower or of his or her spouse if the disability of the spouse prevents the borrower from working; and for service as an officer in the Commissioned Corps of the U.S. Public Health Service. (§ 674.34a)

d. There is an additional deferment for a period of up to a maximum of two years for an internship required for professional practice or service. (§ 674.34a)

e. A provision has been added permitting the extension of a borrower's repayment period for up to 10 additional years if the borrower becomes a "low-income individual" during the repayment period. (§ 674.32)

f. The definition of "handicapped children" for purposes of cancelling NDSL loans for teaching handicapped children is expanded to include children with specific learning disabilities and orthopedically handicapped children. This new definition is the one contained in section 602(1) of the Education of the Handicapped Act. (§ 674.51)

g. Aggregate loan limits are increased to $12,000 from $10,000 for a graduate student, to $6,000 from $5,000 for a student who has completed two academic years of study towards a bachelor's degree, and to $3,000 from $2,500 for a student who has not completed two academic years of study toward a bachelor's degree. (§ 674.31)

h. Borrowers now are entitled to a six-month grace period after each deferment for study, service or disability. (§§ 674.32 and 674.34a)

i. Institutions are required to provide NDSL borrowers with specific information about these loans (§ 674.16)

j. The Secretary is authorized to enter into agreements with credit bureau organizations to provide for an exchange of information on borrowers whose loans are in default and have been referred to the Secretary for collection. (§ 674.32)

k. The portion of NDSL loans that are cancelled are not considered income for purposes of paying Federal income taxes. (§ 674.58)

3. *CWS.*

a. The minimum wage rate under the CWS program is the minimum wage required under the Fair Labor Standards Act. Subminimum wage rates are no longer permissible. The minimum wage rate through December 31, 1980, was $3.10 per hour. Effective January 1, 1981, the minimum wage rate is $3.35 per hour. This provision was effective on October 1, 1980. (§ 675.24)

b. An institution may carry forward up to 10 percent of its CWS allocation for one award year to the next award year. In addition, the institution may spend an amount determined by the Secretary that may be up to 10 percent of its allocation for one award year in and for expenses incurred in the preceding award year. Thus, an institution may carry forward into 1981–82, up to 10 percent of its 1980–81 award year allocation, or may use up to 10 percent of its 1981–82 allocation in award year 1980–81. (§ 675.18)

c. Where possible, institutions are to provide employment under the CWS program that complements and reinforces the educational or vocational goals of student recipients. (§ 675.8)

d. The amount of funds an institution may use for its Job Location and Development Program is increased to $25,000 from $15,000 as long as that amount does not exceed 10 percent of its CWS allocation. (§ 675.32)

e. An institution may provide employment to students in a Community Service Learning program. However, the rules governing the employment of students under this program are the same as those that govern the CWS program. (§ 675.28)

4. *CWS and SEOG.*

In both the CWS and SEOG programs, an institution may use up to 10 percent of its allocation to pay eligible students who are enrolled as less than half-time students. (§§ 675.9 and 676.9)

5. *SEOG.*

a. A student no longer needs to have exceptional financial need to be eligible to receive a grant.

b. The limitations regarding the maximum aggregate amount of grants a student may receive and the maximum number of years of SEOG eligibility have been eliminated. The only restriction that remains is that a student's eligibility to receive SEOG funds expires when the student earns his or her first undergraduate baccalaureate degree. (§ 676.22)

c. The annual maximum grant permitted per academic year is raised to $2,000 from $1,500. (§ 676.24)

d. The SEOG provision limiting the amount of a grant to one-half of the sum of the total of financial aid made available to the student through the institution has been deleted. This limitation was formerly contained in § 176.16.

e. An institution may shift funds between SEOG Initial year and Continuing year funds as it determines best suits the needs of its students. (§ 676.18)

6. *Administrative cost allowance—NDSL, CWS & SEOG.*

a. The method of calculating the administrative cost allowance has been changed. It is now based on an institution's total expenditures for all of the campus based programs except for expenditures for the CWS Community Service Learning Program. Moreover, the amount of the allowance has been increased. The requirement that the allowance be used first to pay the costs of providing consumer information services has been deleted. The institution still retains the responsibility to provide this information to its enrolled and prospective students. However, the cost of meeting this requirement is considered a cost of administration. (§§ 674.18(c), 675.18(b), and 676.18(b))

b. Under the CWS program, if an institution provides employment to its students under a Community Service Learning program, it is entitled to 10 percent of its CWS expenditures for that purpose for administrative expenses.

7. *Statement of educational purpose.*

The Education Amendments of 1980 deleted the requirement that a student sign an affidavit of educational purpose. In its stead is a statement of educational purpose. The regulations for each program have been simplified (§ .16 for each program) to reflect this change.

Miscellaneous

Other changes of a minor technical nature have been made to facilitate the proper administration of these programs. In addition, several provisions have been deleted. Some have been deleted because changes in the law make them unnecessary. An example of this type of deletion is, the definition of "good standing". Others have been deleted because they have been codified in the Student Assistance General Provisions, 34 CFR Part 668. These include, for example, the definitions of an "institution of higher education" and "recognized equivalent of a high school diploma."

Waiver of Proposed Rulemaking Procedures

In accordance with Section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), it has been the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. The Secretary then reviews these comments and makes appropriate changes before republishing the regulations in final form.

For the reasons described in the following paragraph, the use of that practice in connection with the provisions of these regulations is unnecessary and contrary to the public interest under 5 U.S.C. 553(b). However, the Secretary invites the public to comment on these regulations and will consider appropriate comments before publishing the regulations again.

The Secretary has waived proposed rulemaking procedures because the regulatory changes mainly reflect the statutory changes made by the Education Amendments of 1980 and the other changes are of a minor or technical nature. In addition, the Secretary wishes to give the higher education community an explanation of the changes as early as possible. Accordingly, in this instance, the Secretary is publishing these rules as final regulations.

Comments requested

While the Secretary is publishing these rules as final regulations, the Secretary is requesting public comments on provisions dealing with certain new deferment (§ 674.34a) and repayment (§ 674.32) provisions in the NDSL program and with the Community Service Learning program in the CWS program (§ 675.28). The Secretary is also requesting comments on the definitions of half-time student and on whether common definitions and provisions should be deleted from each program part and consolidated in one comprehensive part which would govern all the Title IV student assistance programs. With regard to the latter issue, the current practice for the campus based program regulations is to indicate with an asterisk the provisions that are common to all three programs.

The Secretary is also requesting comments concerning the SSIG formula used for determining an institution's SEOG need (§ 676.6) and the funding procedures (§§ 3 through 7) for the 1982–83 award year.

Section 464(c) of the Higher Education Act (HEA) was amended by the Education Amendments of 1980 to include deferments for up to three years for service comparable to the service provided in the Peace Corps or ACTION programs if such service was provided by borrowers who were full-time volunteers in an agency exempt from taxes under section 501(c)(3) of the Internal Revenue Code.

The Secretary specifically requests comments concerning the meaning of this provision. For example, should the deferment be limited to borrowers who serve only the type of population that Peace Corps and ACTION Agency volunteers serve; should the deferment be limited to volunteers who do not earn more than Peace Corps and ACTION Agency volunteers earn; and should the deferment be limited to borrowers who provide direct service to the target populations or should it include support staff of the volunteer agency?

Section 464(c) also provides for a deferment of up to two years for a borrower who is serving an internship that is required in order to receive professional recognition required to begin professional practice or service. A medical residency is an example of this type of internship since medical school graduates are required to complete a residency before they can be licensed to practice medicine in most States. The Secretary requests comments on this provision including information regarding the types of required internships.

Section 464(c) was also amended by the Education Amendments of 1980 to provide for an extended repayment period for a "low-income individual". The Community Service Learning Program of the CWS program authorized by section 448 of the HEA specifically authorizes CWS students to provide services to "low-income individuals" under a Community Service Learning Program.

The NDSL and CWS programs are both authorized by Title IV of the HEA as are the Special Services for Disadvantaged Students Programs (TRIO) (Title IV–A–4). The TRIO programs are designed to assist low-income individuals and the statute authorizing these programs includes a definition of a low-income individual. The Secretary has adopted that definition—"An individual from a family whose taxable income for the preceding year did not exceed 150 per centum of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of the Census "—for both the NDSL and CWS programs.

The Secretary requests comments on whether this definition is appropriate for either of these programs, whether another definition would be more appropriate for either or both the NDSL and the CWS programs, and whether the definition selected for one program should be used for the other program.

The regulations for the Community Service Learning program set forth in § 675.28 are basically a restatement of section 448 of the Higher Education Act which authorizes the activities listed. The Secretary requests comments regarding the scope and meaning of these provisions. In commenting, readers are reminded that the rules regarding the employment of students in this activity are the same as those that apply to all CWS employment.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4018, ROB–3, 7th and D Streets S.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (Pub. L. 96–354, enacted Sept. 19, 1980) requires each Federal agency to prepare an initial regulatory flexibility analysis and a final regulatory flexibility analysis for each regulation that—

(1) Is published as a notice of proposed rulemaking after January 1, 1981, and

(2) Has a significant economic impact on a substantial number of small businesses, small organizations, or small governmental jurisdictions.

Because the Department has not yet established its own definitions of "small organization" and "small governmental jurisdiction", as contemplated by the Act, it is not possible to prepare a full initial regulatory flexibility analysis at this time. Further, since these regulations were required by statute to be published in final no later than May 31, 1981, it is impracticable to delay publication while the necessary definitions are being developed. In these circumstances, the Regulatory Flexibility Act permits a waiver or delay of the initial regulatory flexibility analysis. If it is later determined that these regulations are subject to that Act, the Secretary will prepare the necessary analyses in conjunction with the issuance of later regulations.

As an interim measure, this preamble, to the maximum extent possible, includes information of the kind contemplated by the Regulatory Flexibility Act, including the reasons for the regulations, the objectives and legal basis for the regulations, and any significant issues and alternatives for consideration by the public. To assist the Department in determining whether the Regulatory Flexibility Act applies to these regulations and in complying with the Act's requirements, public comment is especially invited on the following matters:

(1) The number and kind of small businesses, small organizations, and small governmental jurisdictions affected by the campus based program regulations;

(2) The reporting, recordkeeping, and compliance burdens imposed by these regulations;

(3) The type of professional skills necessary for preparation of any reports or records required by these regulations;

(4) Any Federal rules that may duplicate, overlap, or conflict with these regulations;

(5) Any significant alternatives that would accomplish the purposes of the applicable statute but would minimize any significant economic impact of these regulations on small entities (small businesses, small organizations, and small governmental jurisdictions). The Secretary is particularly interested in suggestions for alternatives such as the following:

- The establishment of differing reporting or compliance requirements or timetables that take into account the resources available to small entities.
- The clarification, consolidation, or simplification of compliance and reporting requirements for small entities.
- The use of performance rather than design standards.
- An exemption for small entities from coverage of part or all of the regulations.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

Assessment of Educational Impact

The Department particularly requests comments on whether the regulations in this document would require transmission of information that is already being gathered by or is available from any other agency or authority of the United States.

(Catalog of Federal Domestic Assistance Numbers 84.038 National Direct Student Loan Program; 84.033 College Work-Study Program; and 84.007 Supplemental Educational Opportunity Grant Program)

Dated: January 8, 1981.

Shirley M. Hufstedler,

Secretary of Education.

1. Part 674 of Title 34 of the Code of Federal Regulations is revised to read as follows:

PART 674—NATIONAL DIRECT STUDENT LOAN PROGRAM

Note.—An asterisk (*) indicates provisions that are common to Part 674, 675, and 676. The use of asterisks will assure participating institutions that a provision of one regulation is identical to the corresponding provisions in the other two.

Subpart A—General Provisions

Sec.

674.1 Purpose and identification of common provisions.
674.2 Definitions.
674.3 Apportionment and reapportionment of Federal capital contributions to States.
674.4 Allocation, reallocation, and payment to institutions.
674.5 Application.
674.6 Funding procedures.
674.6a Funding Procedures—Federal capital contribution (FCC).
674.7 Application review—approval of request.
674.8 Institutional agreement.
674.9 Student eligibility.
674.10 Special sessions.
*674.11 Cost of attendance.
*674.12 Expected family contribution.
*674.13 Approved need analysis systems.
*674.14 Coordination of student financial aid programs, loan amount, and overaward.
674.15 Coordination with BIA grants.
674.16 Making and disbursing loans.
*674.17 Federal interest in allocated funds—Transfer of loan fund.
674.18 Use of funds.
674.19 Fiscal procedures and records.
674.20 Compliance with truth in lending and equal credit opportunity requirements.
674.21 Deposit of institutional capital contributions into Fund.

Subpart B—Terms of Loans

674.31 Defense and Direct loan maximums for students.
674.32 Promissory note—loan repayment.
674.33 Minimum repayment rates.
674.34 Deferment of repayment—Defense or Direct loans made on or before September 30, 1980.
674.34a Deferment of repayment—Direct loans made on or after October 1, 1980.
674.35 Postponement of loan repayments in anticipation of cancellation.
674.36 Treatment of loan repayments where cancellation, loan repayments, and minimum monthly repayments apply.

Subpart C—Loan Collection—Due Diligence

674.41 [Reserved]
674.42 Due diligence.
674.43 Contact with the borrower prior to repayment period.
674.44 Billing procedures.
674.45 Address searches.
674.46 Collection and litigation procedures.
674.47 Other collection and litigation costs.
674.48 Use of fiscal agent.
674.49 Commonly owned billing service and collection agency.
674.50 Bankruptcy of borrower.

Subpart D—Loan Cancellation

674.51 Special definitions.
674.52 Cancellation procedures.
674.53 Teacher cancellation—Defense loan.
674.54 Teacher cancellation—Direct loan.
674.55 Cancellation for service in a Head Start Program.
674.56 Cancellation for military service.
674.57 Cancellation for death or disability.
674.58 No cancellation for prior service—No repayment refunded—Cancellations not considered taxable income.
674.59 Reimbursement to institutions for loan cancellation.

Sec.
Appendix A—Allotment of funds to States for fiscal year 1972.
Appendix B—Sample promissory note.
Appendix C—Examples for computing penalty charges.
Appendix D—[Reserved]
Appendix E—Affidavit of Educational Purpose.

Authority: Title IV, Part E of the Higher Education Act of 1965, as amended (20 U.S.C. 1087aa–1087ii), and Title II of the National Defense Education Act of 1958, as amended, (20 U.S.C. 421–429), unless otherwise noted.

Subpart A—General Provisions

§ 674.1 Purpose and identification of common provisions.

(a) The National Direct Student Loan Program (NDSL) provides low-interest loans in institutions of higher education to help financially needy students pay their educational costs.

(b)(1) The National Direct Student Loan Program authorized by Title IV–E of the Higher Education Act of 1965 is a continuation of the National Defense Student Loan Program authorized by Title II of the National Defense Education Act of 1958. All rights, privileges, duties, functions, and obligations existing under Title II before the enactment of Title IV–E continue to exist.

(2) The Secretary considers any student loan fund established under Title II to have been established under Title IV–E. The assets of an institution's student loan fund established under Title II are assets of the institution's student loan fund established under Title IV–E.

*(c) Provisions in these regulations that are common to all campus-based regulations are identified with an asterisk.

(20 U.S.C. 1087aa–1087ii, Pub. L. 92–318, section 137(d)(1))

§ 674.2 Definitions.

The following definitions are set forth in Subpart A of the Student Assistance General Provisions, 34 CFR Part 668, Subpart A:

Ability to Benefit;

Institution of higher education (including Public or Private nonprofit institution of higher education, proprietary institution of higher education, and postsecondary vocational institution);

One-year training program;

Recognized equivalent of a high school diploma; and

Six-month training program.

Other definitions used in this part are:

**Academic year:* A period of time in which a full-time student is expected to complete—

(a) The equivalent of at least 2 semesters, 2 trimesters, or 3 quarters at an institution using credit hours; or

(b) At least 900 clock hours of training for each program at an institution using clock hours.

Act: Title IV–E of the Higher Education Act of 1965 (HEA).

**Award year:* The period of time between July 1 of one year and June 30 of the following year.

**Campus Based Programs:* (a) The National Direct Student Loan Program (NDSL–34 CFR Part 674);

(b) The College Work-Study Program (CWS–34 CFR Part 675); and

(c) The Supplemental Educational Opportunity Grant Program (SEOG–34 CFR Part 676).

**Clock Hour:* The equivalent of—

(a) A 50 to 60 minute class, lecture, or recitation; or

(b) A 50 to 60 minute faculty supervised laboratory, shop training, or internship.

College Work-Study Program (CWS): The part-time employment program for students authorized by Title IV–C of the HEA.

(42 U.S.C. 2751–2756b)

(20 U.S.C. 1141(f))

Default or in default: (a) The failure of a borrower to—

(1) Make an installment payment when due; or

(2) Comply with other terms of the promissory note.

(b) Notwithstanding paragraph (a), if the institution reasonably concludes from written contacts with the borrower that he or she intends to repay the loan, the borrower is not considered in default.

(c) Except as provided in § 674.9, the Secretary considers a loan discharged in bankruptcy not to be in default.

Default rate: Represented as a fraction:

$$\frac{\text{Defaulted principal amount outstanding}}{\text{Matured loans}}$$

Defaulted principal amount outstanding: The total amount borrowed that has reached the repayment stage minus any principal amount repaid or canceled on loans—

(a) Repayable monthly and in default at least 120 days; and

(b) Repayable less frequently and in default at least 180 days.

Defense loan: A loan made before July 1, 1972, under Title II of the National Defense Education Act (20 U.S.C. 421–429).

**Dependent student:* A student who does not qualify as an independent student (see independent student).

Direct loan: A loan made after June 30, 1972, under the Act.

Eligible Program:

A program of eduction or training that—

*(a) Admits as regular students only persons who—

(1) Have a high school diploma;

(2) Have a General Education Development Certificate (GED) or a State certificate received after passing a State authorized examination which the State recognizes as the equivalent of a high school diploma; or

(3) Are beyond the age of compulsory school attendance in the State in which the institution is located, and have the ability to benefit from the education or training offered; and

(b)(1) Leads to a bachelor, associate, graduate, or professional degree;

(2) Is at least a 2 year program that is acceptable for full credit toward a bachelor degree;

(3) Is at least a 1 year program leading to a certificate or degree that prepares a student for gainful employment in a recognized occupation; or

(4) Is, for a proprietary institution or a postsecondary vocational institution, at least a six-month program leading to a certificate or degree which prepares students for gainful employment in a recognized occupation.

**Expected family contribution:* The amount a student and his or her spouse and family are expected to pay toward his or her cost of attendance.

Federal capital contribution: The portion of a Fund allocated to an institution under § 674.4.

**Financial need:* The difference between a student's cost of attendance and his or her expected family contribution.

Fund (National Direct Student Loan Fund): A fund established and maintained according to § 674.8.

Grace period:

(a) For loans made before October 1, 1980, the grace period is a period of nine consecutive months starting from the date the borrower ceases to be at least a half-time student at an institution of higher education;

(b) For loans made on or after October 1, 1980, the grace period is a period of six consecutive months starting from—

(1) The date the borrower ceases to be at least a half-time student at an institution of higher education; or

(2) The date the borrower's deferment period ends if the deferment is one described in § 674.34a (a), (b), or (d).

(c) A borrower does not have to pay interest or principal during a grace period.

Graduate or professional student: A student enrolled in an academic program of study above the baccalaureate level at an institution of higher education, including—

(a) A program leading to a first professional degree if the institution requires at least 3 years of study at the college level for entrance into the program; and

(b) The fifth and later years of any program requiring more than 4 years of study at the college level.

**Guaranteed Student Loan Program (GSL):* The student loan program authorized by Title IV–B of the HEA.

(20 U.S.C. 1071 et seq.)

Half-time graduate or professional student: An enrolled graduate or professional student who is carrying a half-time academic work load as determined by the institution according to its own standards and practices.

**Half-time undergraduate student:* An enrolled undergraduate student who is carrying a half-time academic work load as determined by the institution according to its own standards and practices. However, the institution's half-time standards must equal or exceed the equivalent of the following minimum requirements:

(a) 6 semester hours or 6 quarter hours per academic term in an institution using standard semester, trimester, or quarter systems.

(b) 12 semester hours or 18 quarter hours per academic year for an institution using credit hours to measure progress, but not using a standard semester, trimester, or quarter system; or the prorated equivalent for a program of less than 1 year.

(c) 12 clock hours per week for an institution using clock hours.

(d) 12 hours of preparation per week for a student enrolled in a program of study by correspondence.

Independent student (effective through June 30, 1981):

(a) A student who for 1979 and 1980—

(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by his or her parent(s);

(2) Has not received and will not receive financial assistance of more than $750 in each year from his or her parent(s); and

(3) Has not lived and will not live for more than six weeks in each year in the home of his or her parent(s).

(b) If a student's mother and father are divorced or separated, only one parent will be considered to be the parent of the student for purposes of applying the criteria in paragraph (a)(2) of this section. To determine that parent—

(1) Choose the parent with whom the student resided for the greater portion of the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(2) If the preceding criterion does not apply, choose the parent who provided the greater portion of the student's support for the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(3) If neither of the preceding criteria apply, choose the parent who provided the greater support for the period commencing January 1 of the calendar year which immediately precedes the first calendar year of the award period and ending 12 months prior to the date of application to have an expected family contribution determined under an approved need analysis system.

(c) If either of the parents have died, the institution shall consider only the surviving parent as the parent for purposes of applying the criteria in paragraph (a)(2) of this section. If both parents have died, the institution shall not consider either parent.

(20 U.S.C. 1087 aa–ff; 20 U.S.C. 1087dd(e).)

Institutional capital contribution: The portion of a Fund contributed by the institution under § 674.8(a)(2).

**Legal guardian:* An individual appointed by a court to be a legal guardian of a person and who is specifically required by the court to use his or her financial resources to support that person.

Matured loans: The total principal amount of all loans made minus the principal amount of loans to students who are—

(a) Enrolled as at least half-time students in institutions of higher education; or

(b) Still in their first grace period.

**National of the United States:* A citizen of the United States or a noncitizen who owes permanent allegiance to the United States.

(8 U.S.C. 1101(a)(22))

**Parent:* Parent means the student's mother, father, or legal guardian. An adoptive parent is considered to be the student's mother or father.

(20 U.S.C. 1141(c))

**Parent Loans for Undergraduate Students Program (PLUS):* The Parent Loan Program authorized by Title IV–B of the HEA.

**Payment period:* A semester, trimester, or quarter. For an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of an academic year.

**Pell Grant Program:* The grant program, formerly known as the Basic Educational Opportunity Grant Program, authorized by Title IV–A–1 of the HEA.

**Regular student:* A person who is enrolled or accepted for enrollment enrolls in an eligible program at an institution of higher education for the purpose of obtaining a degree or certificate.

**Secretary:* The Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

**State:* The States of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(20 U.S.C. 1141(b); 20 U.S.C. 1088(a))

---

* *Independent student (effective July 1, 1981 through June 30, 1982):*

(a) A student who for 1980 and 1981—

(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by his or her parent(s);

(2) Has not received and will not receive financial assistance of more than $1,000 in each year from his or her parent(s); and

(3) Has not lived and will not live for more than six weeks in each year in the home of his or her parent(s).

(b) If a student's mother and father are divorced or separated, only one parent will be considered to be the parent of the student for purposes of applying the criteria in paragraph (a) of this section. To determine that parent—

(1) Choose the parent with whom the student resided for the greater portion of the 12-month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(2) If the preceding criterion does not apply, choose the parent who provided the greater portion of the student's support for the 12-month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(3) If neither of the preceding criteria apply, choose the parent who provided the greater support for the period commencing January 1 of the calendar year which immediately precedes the first calendar year of the award period and ending 12 months prior to the date of application to have an expected family contribution determined under an approved need analysis system.

(c) If either of the parents have died, the institution shall consider only the surviving parent as the parent of the student. If both parents have died, the institution shall not consider either parent.

State Student Incentive Grant Program (SSIG): The program authorized by Title IV–A–3 of the HEA.

(20 U.S.C. 1070c-et seq.)

Supplemental Educational Opportunity Grant Program (SEOG): The grant program authorized by Title IV–A–2 of the HEA.

(20 U.S.C. 1070b et seq.)

(20 U.S.C. 1087aa–1087ii unless otherwise noted)

§ 674.3 Apportionment and reapportionment of Federal capital contributions to States.

(a) *Apportionment.* (1) The Secretary apportions 90% of appropriated funds for Federal capital contributions according to section 462(a)(1) of the Act. (This section requires the Secretary to apportion additional amounts to each State to make that State's apportionment equal to its allotment for fiscal year 1972. The 1972 allotments are shown in Appendix A.)

(2) The Secretary apportions the remaining funds so that each institution in each State receives the Federal capital contribution computed under §§ 674.6, 674.6a or 674.7.

(b) *Reapportionment.* (1) The Secretary reapportions the amount of a State's apportionment that exceeds the amount of approved requests of institutions in that State.

(2) The Secretary reapportions those funds among the remaining States according to institutional need for Federal capital contributions as computed under §§ 674.6, 674.6a or 674.7.

(20 U.S.C. 1087bb)

§ 674.4 Allocation, reallocation, and payment to institutions.

(a) *Allocation.* (1) The Secretary distributes Federal capital contributions authorized by section 461 of the Act according to §§ 674.6, 674.6a, and 674.7.

(b) *Reallocation.* (1)(i) If an institution anticipates not lending all its allocated funds by the end of an award year, it must specify the anticipated unused amount to the Secretary, who reduces the institution's allocation accordingly.

(ii) Other institutions may apply for those funds on the form and at the time specified by the Secretary.

(iii) The Secretary distributes those funds to applicant institutions in accordance with paragraph (b)(2) of this section.

(2)(i) If the funds that become available under paragraph (b)(1) of this section come from the State's initial allotment under § 674.3(a)(1), the Secretary reallocates those funds proportionately to other institutions in that State. The Secretary reapportions those funds that are not needed to maintain the State's initial allotment, and any funds that do not come from that initial allotment, in accordance with paragraphs (b)(2) (ii), (iii) and (iv) of this section.

(ii) The Secretary increases awards to institutions whose students have suffered financial hardships as a result of natural disasters within the preceding 12 months.

(iii) If any funds remain, the Secretary then increases the Federal capital contribution to institutions whose current level of expenditure (LOE) is less than their national fair shares determined under § 674.6. The Secretary calculates each applicant's increase as follows:

Institution's remaining LOE shortfall/ remaining LOE shortfall of all applicants for reallocation × remaining FCC available for reallocation

(An institution's remaining level of expenditure shortfall is the difference between its national fair share (see § 674.6(g)(4)) and its approved level of expenditure calculated in § 674.6 and this section through paragraph (b)(2)(ii).)

(iv) If any funds still remain, the Secretary reallocates the funds in a manner that best carries out the purposes of this part.

(c) *Payments to institutions.* The Secretary allocates new Federal capital contributions for a specific period of time. The Secretary pays funds to an institution in advance or by reimbursement. The Secretary bases the amount to be paid on periodic fiscal reports.

(20 U.S.C. 1087bb.)

§ 674.5 Application.

(a) To participate in the NDSL program, an institution must file an application with the Secretary for an approved level of expenditure before an annually established closing date. In the application the institution may request—

(1) A Federal capital contribution;

(2) Authority to spend the income of its Fund (that income includes repayments made by borrowers and interest earned on Fund cash); or

(3) Both (1) and (2).

(b) The application must be on a form approved by the Secretary and contain information needed to determine the institution's—

(1) Level of expenditure; and

(2) Federal capital contribution.

(20 U.S.C. 1087bb.)

§ 674.6 Funding procedure.

(a) *General.* (1) Each institution applying for NDSL funds receives an approved level of expenditure in the following three stages—

(i) A "conditional guarantee";

(ii) A State increase based on its "fair share" of the State apportionment; and

(iii) A national increase based on its "fair share" of the national appropriation.

(2) The terms "conditional guarantee" and "fair share" refer only to the level of expenditure. The Secretary computes the Federal capital contribution (FCC) according to § 674.6a.

(3) Definitions—As used in this section—

(i) "Base year" means the 12-month period ending on the June 30 preceding the closing date for filing an NDSL application for a level of expenditure;

(ii) "Base year level of expenditure" means the amount of loans made in the base year plus the amount the institution claimed for administrative expenses in that year.

(iii) "Current year" means the 12-month period ending on the June 30 immediately following the closing date for filing the application; and

(iv) "Utilization rate" means:

an institution's base year level of expenditure/its NDSL funds available in the base year

NDSL funds available in the base year include—

(A) FCC awards in the base year;

(B) The matching institutional capital contribution;

(C) Loan repayments received in the base year;

(D) Reimbursements for Direct loan cancellations; and

(E) Cash on hand as of June 30 of the year preceding the base year.

(b) *Conditional guarantee.* The Secretary computes a conditional guarantee of the level of expenditure in the following way:

(1) An institution that participated in the NDSL program in the base year receives a conditional guarantee equal to the greater of 90 percent of its—

(i) Base year level of expenditure; or

(ii) Current year funding level multiplied by its utilization rate.

(2) An institution's "current year funding level" includes—

(i) The FCC awarded for the current year;

(ii) The matching institutional capital contributions;

(iii) 110 percent of base year loan repayments;

(iv) Reimbursements for Direct loan cancellations; and

(v) Cash on hand as of June 30 of the base year.

(3) An institution applying to participate in the NDSL program for the

first time receives a conditional guarantee equal to the greater of—

(i) $5,000; or

(ii) 90 percent of the average NDSL base year expenditure per student in eligible institutions offering comparable programs of instruction, multiplied by the applicant institution's base year enrollment.

(4) An institution applying to participate in the NDSL program for the second time receives a conditional guarantee equal to the greatest of—

(i) $5,000;

(ii) 90 percent of the average NDSL base year expenditure per student in eligible institutions offering comparable programs of instruction, multiplied by the applicant institution's base year enrollment; or

(iii) 90 percent of its current year funding level.

(c) *Self-help need of an institution.* (1) The Secretary allocates additional funds to an institution on the basis of calculations made under paragraph (f) (State increase) and paragraph (g) (National increase). These calculations are based in part on the institution's self-help need. Self-help need is the need for funds from work and loan sources. The institution's self-help need is the sum of the self-help need of its eligible graduate students and the self-help need of its eligible undergraduate students.

(2) The Secretary calculates the self-help need of an institution's eligible graduate students in accordance with paragraph (d) and the self-help need of its eligible undergraduate students in accordance with paragraph (e).

(3) As used in paragraphs (d) and (e):

(i) *Average cost of attendance* means the attendance costs for undergraduate and graduate students. These costs include tuition, fees, standard living expenses, books, and supplies. (The institution reports its total tuition and fee revenues, and the Secretary uses this amount to determine the average cost of attendance.)

(ii) *Eligible students* means for award year 1981–82 students who—

(A) Were enrolled as regular students in good standing on at least a half-time basis in an eligible program during the base year;

(B) Met program regulation requirements for citizenship or residency in the United States for the base year; and

(C) Applied for financial assistance for the base year, and for whom the institution has on file taxable and non-taxable income data and all the other information necessary to perform a needs analysis using a methodology approved by the Secretary.

(d) *Self-help need of eligible graduate students.* To determine the self-help need of an institution's eligible graduate students, the Secretary—

(1) Establishes various income categories for dependent and independent graduate students;

(2) Establishes an expected family contribution (EFC) for each income category of dependent and independent graduate students, using a need analysis method approved under § 674.13;

(3) Determines the average cost of attendance for all graduate students;

(4) Subtracts from the average cost of attendance for all graduate students, the computed EFC for each income category of dependent students and each income category of independent students. However, the average cost of attendance minus the EFC for any income category may not be less than zero;

(5) Multiplies those amounts by the number of eligible students in each category;

(6) Adds the amounts obtained for each income category of dependent students and each income category of independent students; and

(7) Totals those two amounts.

(e) *Self-help need of eligible undergraduate students.* To determine the self-help need of an institution's eligible undergraduate students, the Secretary—

(1) Establishes various income categories for dependent and independent undergraduate students;

(2) Establishes an EFC for each income category of dependent and independent undergraduate students, using a need analysis method approved under § 674.13;

(3) Computes 25 percent of the average cost of attendance for all undergraduate students;

(4) Multiplies the number of eligible dependent students in each income category by the lesser of—

(i) 25 percent of the average cost of education for all undergraduate students; or

(ii) The average cost of attendance for all undergraduate students minus the EFC determined under paragraph (e)(2) of this section for that income category. However, the average cost of attendance minus the EFC may not be less than zero;

(5) Adds the amounts obtained for each income category of dependent students;

(6) Multiplies the number of eligible independent students in each income category by the lesser of—

(i) 25 percent of the average cost of attendance of all undergraduate students; or

(ii) The average cost of attendance for all undergraduate students minus the EFC determined under paragraph (e)(2) of this section for that income category. However, the average cost of attendance minus the EFC may not be less than zero;

(7) Adds the amounts obtained for each income category of independent students; and

(8) Adds the amounts obtained under paragraphs (e)(5) and (7) of this section.

(f) *State increase.* (1) In any year the Secretary increases the level of expenditure of institutions in a State ("State increase"), thereby increasing the FCC going to those institutions, if the combined FCC's resulting from conditional guarantees of all institutions in that State are less than the State apportionment under § 674.3(a)(1). However, no institution receives a State increase if it does not qualify for FCC under § 674.6a.

(2) The Secretary calculates an institution's State increase according to the following formula:

Institution's State increase = its State shortfall/State shortfalls of all institutions in the State × FCC available for State shortfall × 1.11

(3) As used in the formula in subparagraph (2)—

(i) "FCC available for State shortfall" means the State apportionment minus the FCC used for conditional guarantees.

(ii) "Institution's State shortfall" means the difference between an institution's conditional guarantee and its State fair share determined in paragraph (f)(4) of this section.

(4) The Secretary determines an institution's State fair share according to the following formula:

Institution's State fair share = its self-help need/self-help need of all institutions in the State applying for NDSL funds × total State NDSL funds

(5) As used in the formula in paragraph (f)(4) of this section "total State NDSL funds" means the sum of—

(i) The State apportionment of FCC and the matching institutional capital contribution;

(ii) 121 percent of loan repayments in the base year received by institutions in the State; and

(iii) Reimbursement for Direct loan cancellations in the base year received by institutions in the State.

(g) *National increase.* (1) For any year the Secretary will further increase the level of expenditure of institutions ("national increase"), thereby increasing the FCC going to those institutions, if the sum of the conditional guarantees and State increases awarded to institutions is less than the total NDSL funds for that

year (see paragraph (g)(5) of this section). However, no institution receives a national increase if it does not qualify for FCC under § 674.6a.

(2) The Secretary calculates an institution's national increase according to the following formula—

Institution's national increase = its national shortfall/national shortfall of all institutions × NDSL funds available for national shortfall

(3) As used in the formula in paragraph (g)(2) of this section—

(i) "NDSL funds available for national shortfall" is calculated by—

(A) Adding the conditional guarantees and State increases for all institutions; and

(B) Subtracting that sum from total NDSL funds; and

(ii) An institution's "national shortfall" is calculated by subtracting from its "national fair share" its conditional guarantee and State increase.

(4) The Secretary calculates an institution's "national fair share" according to the following formula—

Institution's national fair share = its self-help need/self-help need of all institutions applying for NDSL funds × total NDSL funds

(5) As used in paragraphs (g) (1), (3), and (4) of this section "total NDSL funds" is calculated by adding—

(i) The appropriation for FCC plus the matching institutional capital contribution;

(ii) 121 percent of loan repayments in the base year; and

(iii) Reimbursements for Direct loan cancellations in the base year.

(h) No institution may receive a higher level of expenditure than it requests.

(20 U.S.C. 1087bb)

The following charts show the income categories and calculations for eligible graduate students and for eligible undergraduate students:

BILLING CODE 4110-02-M

DETERMINATION OF SELF-HELP NEED FOR ELIGIBLE DEPENDENT GRADUATE STUDENTS

1 INCOME	2 EFC	3 AVERAGE COST	4 AVG COST LESS EFC	5 NUMBER OF ELIGIBLE STUDENTS	6 SELF HELP NEED COL. 4 x COL. 5
$ 0 - $ 2,999					
$ 3,000 - $ 5,999					
$ 6,000 - $ 8,999					
$ 9,000 - $11,999					
$12,000 - $14,999					
$15,000 - $17,999					
$18,000 - $20,999					
$21,000 - $ 23,999					
$24,000 - $26,999					
$27,000 - $29,999					
$30,000 - $32,999					
$33,000 - $35,999					
$36,000 - $38,999					
$39,000 - $41,999					
$42,000 - $44,999					
$45,000 - Over					
7 TOTAL SELF-HELP NEED FOR DEPENDENT GRADUATE STUDENTS					$ _____

DETERMINATION OF SELF-HELP NEED FOR ELIGIBLE DEPENDENT UNDERGRADUATE STUDENTS

1 INCOME	2 EFC	3 25% x AVERAGE COST	4 AVG COST LESS EFC	5 NUMBER OF ELIGIBLE STUDENTS	6 NEED: LESSER OF COL. 3 x COL. 5 or COL. 4 x COL. 5
$ 0 - $ 2,999					
$ 3,000 - $ 5,999					
$ 6,000 - $ 8,999					
$ 9,000 - $11, 999					
$12,000 - $14,999					
$15,000 - $17,999					
$18,000 - $20,999					
$21,000 - $23,999					
$24,000 - $26,999					
$27,000 - $29,999					
$30,000 - $32,999					
$33,000 - $35,999					
$36,000 - $38,999					
$39,000 - $41,999					
$42,000 - $44,999					
$45,000 - Over					

7 TOTAL SELF-HELP NEED FOR DEPENDENT UNDERGRADUATE STUDENTS $ _____

DETERMINATION OF SELF-HELP NEED FOR ELIGIBLE INDEPENDENT GRADUATE STUDENTS

1 INCOME	2 EFC	3 AVERAGE COST	4 AVG COST LESS EFC	5 NUMBER OF ELIGIBLE STUDENTS	6 SELF HELP NEED COL. 4 x COL. 5
$ 0 - $ 999					
$ 1,000 - $ 1, 999					
$ 2,000 - $ 2,999					
$ 3,000 - $ 3,999					
$ 4,000 - $ 4,999					
$ 5,000 - $ 5,999					
$ 6,000 - $ 6,999					
$ 7,000 - $ 7,999					
$ 8,000 - $ 8,999					
$ 9,000 - $ 9,999					
$10,000 - $10,999					
$11,000 - $11,999					
$12,000 - $12,999					
$13,000 - $13,999					
$14,000 - $14,999					
$15,000 - Over					
7 TOTAL SELF-HELP NEED FOR INDEPENDENT GRADUATE STUDENTS					$_____

SUMMARY

1 TOTAL SELF-HELP NEED FOR DEPENDENT GRADUATE STUDENTS	$_____
2 TOTAL SELF-HELP NEED FOR INDEPENDENT GRADUATE STUDENTS	$_____
3 TOTAL SELF-HELP NEED FOR ALL GRADUATE STUDENTS (1 + 2)	$_____

DETERMINATION OF SELF-HELP NEED FOR ELIGIBLE INDEPENDENT UNDERGRADUATE STUDENTS

1 INCOME	2 EFC	3 25% x AVERAGE COST	4 AVG COST LESS EFC	5 NUMBER OF ELIGIBLE STUDENTS	6 NEED: LESSER OF COL. 3 x COL. 5 or COL. 4 x COL. 5
$ 0 - $ 999					
$1,000 - $1,999					
$2,000 - $2,999					
$3,000 - $3,999					
$4,000 - $4,999					
$5,000 - $5,999					
$6,000 - $6,999					
$7,000 - $7,999					
$8,000 - $8,999					
$9,000 - $9,999					
$10,000 - $10,999					
$11,000 - $11,999					
$12,000 - $12,999					
$13,000 - $13,999					
$14,000 - $14,999					
$15,000 - Over					

7 TOTAL SELF-HELP NEED FOR INDEPENDENT UNDERGRADUATE STUDENTS $ _____

SUMMARY

1 TOTAL SELF-HELP NEED FOR DEPENDENT UNDERGRADUATE STUDENTS	$ _____
2 TOTAL SELF-HELP NEED FOR INDEPENDENT UNDERGRADUATE STUDENTS	$ _____
3 TOTAL SELF-HELP NEED FOR ALL UNDERGRADUATE STUDENTS (1 + 2)	$ _____

BILLING CODE 4110-02-C

§ 674.6a Funding procedure—Federal capital contributions (FCC).

(a) For any year, an institution receives Federal capital contribution if its default rate—

(1) Is 10 percent or less;

(2) Is more than 10 percent, but has declined by at least 25 percent during the base year; or

(3) Is more than 10 percent but the institution demonstrates that it exercised due diligence according to the provisions of Subpart C during the base year and is currently exercising due diligence.

(b) To determine an institution's FCC the Secretary—

(1) Adds the institution's conditional guarantee, State increase, and national increase;

(2) Subtracts from the sum obtained in paragraph (b)(1) of this section, loan repayments and reimbursements for Direct loan cancellations received in the base year; and

(3) Multiplies the remainder obtained in paragraph (b)(2) of this section by 90 percent.

(c) For purposes of paragraph (b)(2) of this section, loan repayments equal 121 percent of the amount collected in the base year.

(d) The definition of default rate is set forth in § 674.2. However, for purposes of this section, the Secretary excludes—

(1) Notes referred or assigned to the Commissioner on or before September 15, 1979 if the institution received either a notification of acceptance or a receipt from the Office of Education;

(2) Notes assigned to the United States in the base year and accepted by the United States; and

(3) Notes that have been in default but on which borrowers have made satisfactory arrangements to resume payment.

(e) No institution may receive more Federal capital contribution than it requested.

(20 U.S.C. 1087bb.)

§ 674.7 Application review—approval of request.

(a) An institution may request a review of its computed level of expenditure or its Federal capital contribution.

(b) A National Review Panel appointed by the Secretary reviews each institution's request. The panel consists of student financial aid administrators and Education Department personnel.

(c) In establishing an institution's level of expenditure and Federal capital contribution, the Secretary considers the panel's recommendations and its reasons for the recommendations.

(d) The Secretary establishes an approved level of expenditure and Federal capital contribution based on procedures in § 674.6 and the review panel's recommendations.

(20 U.S.C. 1087bb.)

§ 674.8 Institutional agreement.

To participate in the NDSL program, an institution must enter into an agreement with the Secretary. The agreement provides that the institution will use the funds it receives solely for the purposes specified in this part and will administer the program in accordance with the Act, this part and the Student Assistance General Provisions, 34 CFR Part 668. The agreement further provides that—

(a) The institution will establish and maintain a Student Loan Fund (Fund).

It must deposit into the Fund—

(1) Federal capital contributions appropriated under section 461 of the Act;

(2) Institutional capital contributions equal to at least one-ninth of the Federal contributions described in paragraph (a)(1) of this section;

(3) Funds provided by the Secretary under section 468 of the Act;

(4) Principal and interest collected on student loans made from the Fund, except those amounts collected on loans made with funds described in paragraph (a)(3) of this section;

(5) Payments to the institution as the result of direct loan cancellations under section 465(b) of the Act;

(6) Penalty charges collected under § 674.32(f);

(7) Any other Fund earnings including interest earned on those funds; and

(8) Any short term, no interest loans it makes to the fund in anticipation of collections.

(b) The institution must use the money in the Fund only for—

(1) Making National Direct Student Loans to students;

(2) Administrative expenses as provided for in § 674.18(b)

(3) Capital distributions provided for in section 468 of the Act;

(4) Capital distributions provided for in section 469 of the Act;

(5) Litigation costs;

(6) Other collection costs, agreed to by the Secretary in connection with the collection of principal, interest, and penalty charges on a loan made from the Fund (see "Other collection costs" § 674.47); and

(7) Repayment of the short term, no interest loans made to the Fund by the institution in anticipation of collections;

(c)(1) If the institution services and collects loans made to students from funds provided under section 468 of the Act, it shall turn over to the Secretary any repayments of principal and interest it receives along with the penalty charges it collects.

(2) The institution may subtract from the amount it turns over to the Secretary any litigation costs and any "other collection costs" permitted under § 674.47.

(d) If the institution does not service and collect loans made with the funds provided for in section 468 of the Act, the institution will assign the loans made with such funds to the Secretary.

(e) Where a promissory note has been in default at least 2 years despite due diligence, the institution may assign its rights to the United States without recompense, and any amount collected on the loan will be deposited in the general fund of the Treasury;

(f) The institution must submit a report to the Secretary at least twice a year that shows the total number of loans made from its Fund that are in default—

(1) 120 days for loans repayable in monthly installments; or

(2) 180 days for loans repayable in less frequent installments; and

(g) The Secretary will provide to the institution any information with respect to the names and addresses of borrowers or other relevant information which is available to the Secretary.

(20 U.S.C. 1087cc, 1087dd, 1094)

§ 674.9 Student eligibility.

(a) *Eligibility.* A student is eligible to receive an NDSL at an institution of higher education if the student—

*(1) Is a regular student;

(2) Is enrolled or accepted for enrollment in an eligible program as an undergraduate, graduate or professional student at that institution;

*(3) (i) Is a U.S. citizen or National;

(ii) Is a permanent resident of the U.S.;

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands;

*(4) Has financial need;

*(5) Is maintaining satisfactory progress in the course of study he or she is pursuing according to the standards and practices of that institution;

(6) Does not owe a refund on a Pell Grant, Supplemental Grant, or State Student Incentive Grant received to

meet the cost of attending that institution; and

*(7) Is not in default on any National Defense/Direct Student Loan, Guaranteed Student Loan, or Parent Loans for Undergraduate Students (PLUS), received to meet the cost of attending that institution.

*(b) *Member of a religious order—financial need.* The Secretary considers that a member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education has no financial need if that religious order—

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) (i) Directs the member to pursue the course of study; or

(ii) Provides subsistence support to its members.

(c) *Selection.* (1) An institution must make NDSLs reasonably available (to the extent of available funds) to all eligible students who demonstrate financial need.

(2) The institution's selection procedures must be—

(i) Uniformly applied;

(ii) In writing; and

(iii) Maintained in the files of the student financial assistance office.

(3) The institution must maintain on file all NDSL applications for the period specified in § 674.19(c)(2).

(4) The institution may not make a loan under NDSL to a student who is unwilling to repay that loan. Default on a previous loan is evidence of that unwillingness.

*(d) *Determination of satisfactory progress.* (1) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses itself BEFORE the end of the payment period, the institution may make an NDSL advance to the student for the entire payment period.

(2) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses itself AFTER the end of the payment period, the institution may NOT advance any funds to the student for that payment period OR make adjustments in subsequent financial aid payments to compensate for the loss of aid for that period.

*(e) *Overpayment of grants.* Conditions under which an institution may make an NDSL payment to a student who is overpaid a grant:

(1) *Overpayment of a Pell Grant.* If an institution makes an overpayment of a Pell Grant to a student, it may continue to disburse an NDSL to that student if—

(i) The student is otherwise eligible; and

(ii) It can eliminate the overpayment in the award year in which it occurred by adjusting the subsequent Pell Grant payments for that award year.

(2) *Overpayment of a Pell Grant due to institutional error.* If the institution makes an overpayment of a Pell Grant as a result of its own error and can not correct it as specified in subparagraph (1), it may continue to make payments to that student if the student—

(i) Is otherwise eligible; and

(ii) Acknowledges in writing the amount of overpayment and agrees to repay it in a reasonable period of time.

(3) *Overpayment of an SEOG.* An institution may continue to disburse an NDSL to a student who receives an overpayment on an SEOG if—

(i) The student is otherwise eligible; and

(ii) It can eliminate the overpayment by adjusting financial aid payments (other than Pell Grants) in the same award year in which the overpayment occurred.

(4) *Definition.* Overpayment of a grant means that a student's grant payments are greater than the amount he or she is entitled to receive.

*(f) *Default on loans.* Conditions under which an institution may make an NDSL to a student who is in default on loans made for attendance at that institution:

(1) *Guaranteed loan and Parent Loans for Undergraduate Students (PLUS).* An institution may make an NDSL or continue to advance NDSL funds to a student who is in default on a Guaranteed Student Loan or a PLUS if the Secretary (for a Federally insured loan) or a guarantee agency (for a loan insured by that guarantee agency) determines that the student has made satisfactory arrangements to repay the defaulted loan.

(2) *National Defense/Direct Student Loan.* An institution may make an NDSL or continue to advance NDSL funds to a student who is in default on a National Defense/Direct Student Loan made at that institution if the student has made arrangements, satisfactory to the institution, to repay the loan.

*(g) *Bankruptcy.* The Secretary considers a National Defense Student Loan, a National Direct Student Loan, a Guaranteed Student Loan, or a PLUS that is discharged in bankruptcy to be in default for purposes of this section.

*(h) *GSL/PLUS—Reliance on student's statement.* An institution, in determining whether a student is in default on a loan made under the Guaranteed Student Loan Program or the PLUS program, may rely upon the student's written statement that he or she is not in default unless the institution has information to the contrary.

(20 U.S.C. 1087dd; and 1091f)

§ 674.10 Special sessions.

A student enrolled at an institution in a special session (e.g., summer school) is eligible for an NDSL if he or she—

(a) Is otherwise eligible (see § 674.9);

(b) (1) Is registered as at least a half-time student at that institution for that session; or

(2) Is taking all of the courses required to complete his or her certificate or degree; and

(c) (1) Was attending that institution as at least a half-time student during the preceding term; or

(2) Has been accepted as at least a half-time student for the subsequent term.

(20 U.S.C. 1087aa-ii)

***§ 674.11 Cost of attendance.**

(a) A student's cost of attendance includes—

(1) Tuition and fees normally assessed a full-time student at the institution at which the student is in attendance;

(2) An allowance for books, supplies, transportation, and miscellaneous personal expenses;

(3) An allowance for room and board costs incurred by the student which—

(i) Beginning in academic year 1981–82 shall be an allowance of not less than $1,100 for a student without dependents residing at home with parents;

(ii) For students without dependents residing in institutionally owned or operated housing, shall be a standard allowance determined by the institution based on the amount normally assessed most of its residents for room and board;

(iii) For all other students without dependents, shall be a standard allowance determined by the institution based on the expenses reasonably incurred by such students for room and board; and

(iv) For students with dependents, shall be an allowance based on the expenses reasonably incurred by such students for room and board;

(4) For a student engaged in a program of study by correspondence, only tuition and fees and, if required, books and supplies, and travel and room and board costs incurred specifically in fulfilling a required period of residential training;

(5) For a student enrolled in an academic program which normally

includes a formal program of study abroad, reasonable costs associated with such study;

(6) For a student with dependent children, an allowance based on the expenses reasonably incurred for child care; and

(7) For a handicapped student, an allowance for those expenses related to his handicap, including special services, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies.

(b) *Adustments.* The institution, in individual cases, may adjust the cost of attendance if—

(1) The financial aid administrator believes the cost of attendance determined in accordance with paragraph (a) does not accurately reflect the student's actual cost of attendance; and

(2) The institution documents all adjustments in writing with an accompanying explanation and makes them part of the institution's records.

(20 U.S.C. 1089(d))

***§ 674.12 Expected family contribution.**

(a) *Dependent students.* In determining the amount a dependent student and his or her spouse and parents are expected to contribute to the student's cost of attendance the financial aid administrator must consider—

(1) Any serious illness in the family. (Family members include the student, the student's parents and spouse, and any other persons the parents may claim as exemptions under the Internal Revenue Code);

(2) The number of the parents' dependent children;

(3) The number of the parents' dependent children attending institutions of higher education;

(4) Tuition costs of dependent children attending elementary and secondary schools; and

(5) Any other circumstances that could affect the ability of the student, the student's spouse, and the student's parents to contribute to his or her cost of attendance.

(b) *Independent students.* In determining the amount an independent student and spouse are expected to contribute to the student's cost of attendance, the financial aid administrator must consider—

(1) Any serious illness in the family. (Family members include the student, his or her spouse, and any other persons the student or spouse may claim as exemptions under the Internal Revenue Code);

(2) The number of the student's dependent children;

(3) The number of the student's dependent children attending institutions of higher education;

(4) Tuition costs of dependent children attending elementary and secondary schools; and

(5) Any other circumstances that could affect the ability of the student or spouse to contribute to the student's cost of attendance.

(c) *Special determination of dependent student-parent relationship.* (1) The student financial aid administrator must determine whether the relationship between a student and his or her parents makes it unreasonable to expect the parents to contribute to the student's cost of attendance, regardless of their ability to do so, if requested by a student who does not—

(i) Live with his or her parents;

(ii) Visit his or her parents for periods longer than typical for other adult family members; or

(iii) Receive gifts from his or her parents more valuable than those typically given to other adult nondependent offspring.

(2) Before determining that it is unreasonable for a parent of a dependent student to contribute to the student's attendance costs, the financial aid administrator must determine whether the student's parents are, in fact, willing to contribute toward those costs.

(3) The student financial aid administrator must make that determination part of the institution's written record.

(d) *Native American students.* To determine a Native American's expected family contribution, an institution may not consider the following as income or assets of the student or his or her family:

(1) Awards made under the Distribution of Judgment Funds Act (25 U.S.C. 1401 et seq.) or the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(2) Property that may not be sold or encumbered without the consent of the Secretary of the Interior.

(3) Any other property held in trust for the student or his or her family by the U.S. Government.

(e) *Annual determinations.* An institution must determine a student's need at least annually.

(20 U.S.C. 1087dd)

***§ 674.13 Approved need analysis systems.**

(a) An institution must use a Secretary approved need analysis system or calculation method in complying with the requirements in § 674.12 (expected family contribution).

(b) *Preapproved systems for dependent students.* The Secretary has approved the following systems for dependent students:

(1) The method of computing an expected family contribution used in the Pell Grant program (34 CFR Part 690).

(2) The income tax system if adjusted to reflect the number of the parents' dependent children who are attending institutions of higher education. The expected family contribution produced under this system is the sum of—

(i) The money the student is reasonably able to contribute;

(ii) The amount of Federal income tax paid by the student's parents;

(iii) 5% of the parents' net assets in excess of $17,000 if there are no farm or business assets; or

(iv) 5% of the parents' net assets in excess of $50,000 if there are farm and business assets. However, no more than $17,000 may be deducted for assets other than farm and business assets.

(c) *Criteria for other systems for dependent students.* (1) The Secretary approves other need analysis systems for dependent students that are properly submitted (see paragraph (e)), if the system produces expected family contribution figures that—

(i) Increase incrementally as the parents' financial strength, measured in constant dollars, increases;

(ii) Are equal for families of equal financial strength; and

(iii) Are within $50 of the expected family contribution figures in 75% of the sample cases supplied by the Secretary.

(2) The Secretary computes the sample cases by:

(i) Deducting from the sum of the parents' adjusted gross income and nontaxable income—

(A) The amount of Federal income taxes and social security taxes;

(B) An 8% allowance on total income for State and local taxes; and

(C) A family maintenance allowance (excluding the student during the academic year) using Department of Labor estimates at a low standard of living;

(ii) Adding to this remainder, 12% of the net market value of the parents' assets, after deducting a standard asset reserve; and

(iii) Applying a rate schedule that the Secretary will publish annually with the sample cases.

(3) (i) In developing sample cases, the Secretary selects cases where the main wage earner is 45 years of age.

(ii) The Secretary does not select cases that involve medical and dental expenses, casualty and theft loses, housekeeping allowances, farm or business assets, more than one family

member attending a postsecondary institution as an undergraduate, social security or veteran's benefits, or any unusual circumstances.

(4) In comparing figures from systems submitted for approval with figures from sample cases, the Secretary treats an expected parental contribution of less than zero as zero.

(5) In order to insure measurement in constant dollars, the Secretary revises sample case figures for inflation annually by adjusting—

(i) Deductions for family maintenance;

(ii) The standard deduction from assets; and

(iii) The rate of contribution from income and assets.

(d) *Systems for independent students.* The Secretary approves the following systems for independent students:

(1) The method of computing an expected family contribution used in the Pell Grant program (34 CFR Part 690).

(2) The systems of need analysis for independent students published by those organizations approved for dependent students under paragraph (c).

(e) *Application procedures for system approval.* (1) An organization or individual wishing to have a system for dependent students approved must also submit a system for independent students. Both systems must be submitted to the Secretary by June 30.

(2) The Secretary lists approved systems in the **Federal Register** by the following September 1.

(3) Applications for approval must include—

(i) Information the Secretary needs to determine whether or not the system meets the requirements of paragraph (c); and

(ii) The expected family contribution amounts produced by that system for sample cases.

(f) *Duration of approval.* (1) There is no specified expiration date for need analysis systems for dependent students approved under paragraph (b).

(2) An institution may use the need analysis systems for dependent and independent students approved under paragraphs (c) and (d) to determine student eligibility and amount of assistance under Campus Based Programs for an academic year that begins—

(i) No earlier than the following June 1; or

(ii) No later than 12 months after that June 1 date.

(g) *Adjustments.* The institution, in individual cases, may further adjust expected family contributions computed according to one of the approved systems if—

(1) The student financial aid administrator believes the expected family contribution does not accurately reflect the student's (or parents') ability to contribute; and

(2) The institution documents all adjustments in writing with an accompanying explanation and makes them part of the institution's records.

(20 U.S.C. 1087dd)

***§ 674.14 Coordination of student financial aid programs, loan amount, and overaward.**

(a) *Coordinating official.* An institution must appoint a coordinating official for its NDSL and other Federal and non-Federal student financial aid programs.

(b) *Overaward prohibited, general rule.* (1) An institution may not award an NDSL to a student if the NDSL, when combined with all other resources, exceeds the student's financial need. The institution, however, does NOT violate this rule if—

(i) The student receives additional funds after the institution awards aid, and total resources exceed his or her financial need by $200 or less by the end of the academic year; or

(ii) The student earns more money from employment than the institution anticipated when it awarded the NDSL, and it treats the earnings in accordance with paragraph (c) (prevention of overaward).

(2) A student's financial need may not exceed his or her cost of attendance.

(3) If a student's resources exceed his or her need by more than $200, and the excess is not from employment, the overaward is the amount that exceeds the $200.

(c) *Prevention of overaward by treatment of earnings.* An institution must take the following steps when it learns that a borrrower has earned, or will earn, more than $200 over his or her financial need:

(1) It must decide whether the student needs the money to pay for necessary additional educational costs, unanticipated when it awarded financial aid to the student. If the student does, no further action is necessary.

(2) If the student's earnings still exceed need by $200 or more after the institution subtracts any additional costs, it must cancel any unpaid loan or grant (other than Pell Grants) to avoid exceeding need by more than $200.

(3) If the student's earnings still exceed his or her need by more than $200 after the institution takes the steps required in the two preceding subparagraphs, and the student is enrolled for the next academic year, the institution must use the amount that exceeds $200 as—

(i) A resource to help pay the student's cost of attendance in the following year; or

(ii) A substitute for the student's expected family contribution for the current year unless a GSL or PLUS is used for that purpose.

(4) If the student's earnings still exceed his or her need by more than $200 after the institution takes the steps required in subparagraphs (1) and (2) of this paragraph, and the student is NOT enrolled for the next academic year, no further action is necessary.

(d) *Resources.* The Secretary considers that "resources" include, but are not limited to, any—

(1) Funds the student is entitled to receive from a Pell Grant, regardless of whether the student applies for it;

(2) Waiver of tuition and fees;

(3) Scholarship or grant, including an SEOG or athletic scholarship;

(4) Fellowship or assistantship;

(5) Insurance programs for the student's education, including any social security educational benefits not included in computing EFC;

(6) GSL, or PLUS as indicated under paragraph (e);

(7) Long-term loans, excluding GSL and PLUS, made by the institution;

(8) Net earnings from employment, including any part of an independent student's net earnings not included as part of the student's EFC. ("Net earnings" means gross earnings minus taxes and job related costs); and

(9) Veterans benefits (except that part included as part of the student's EFC).

(e) *Treatment of Guaranteed Student Loans (GSL) and Parent Loans for Undergraduate Students (PLUS).* (1) A student may use a GSL or a PLUS as a substitute for his or her expected family contribution.

(2) However, if the loan amounts under one or both of these programs exceeds the student's expected family contribution, the Secretary considers the excess to be a resource.

(f) *Administrative responsibility.* (1) An institution is responsible ONLY for the resources it—

(i) Makes available to its students;

(ii) Knows about; or

(iii) Can reasonably anticipate at the time it awards NDSL funds to the student.

(2) An institution must take reasonable steps to stay informed about the earnings of a student employed outside the institution.

(g) The provisions of paragraph (b) of this section are retroactive to October 12, 1976.

(20 U.S.C. 1087dd)

§ 674.15 Coordination with BIA grants.

*(a) To determine the amount of an NDSL for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution must prepare a package of student aid—

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible for a BIA education grant.

*(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

*(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted and may be deducted only from the other assistance, not the BIA education grant.

(2) The institution must deduct the excess in the following sequence: loans, work-study awards, and grants other than Pell Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

*(d) To determine the financial need of a BIA-eligible student, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(20 U.S.C. 1087dd)

§ 674.16 Making and disbursing loans.

(a) Before an institution makes its first advance to a student, it must—

(1) Inform the borrower of his or her obligations to—

(i) Repay the loan; and

(ii) Apply the proceeds only to educational expenses.

(2) Provide the borrower with the following information—

(i) The yearly and cumulative maximum loan amounts that may be borrowed;

(ii) The repayment terms;

(iii) The maximum number of years in which the loan must be repaid;

(iv) The interest rate and the minimum monthly payment;

(v) Other entitlements the borrower may have for deferral, cancellation, repayment, consolidation or other refinancing of the loan;

(vi) A definition of default and the consequences to the borrower if he or she defaults, including a description of any arrangements made with credit bureau organizations.

(vii) The effects of accepting the loan on the eligibility of the borrower for other forms of student assistance.

(b) An institution may satisfy the requirements of paragraph (a) of this section by mailing the information to the student.

(c)(1) An institution using a semester, trimester, or quarter system must advance each payment period a portion of a loan awarded for a full academic year.

(2) The institution determines the amount advanced each payment period by the following fraction:

$$\frac{\text{NDSL}}{\text{N}}$$

Where NDSL = total NDSL award
and N = the number of semesters, trimesters, or quarters in that year.

(3) If the total NDSL award is to a student attending less than a full academic year, the institution determines the amount of each advance by the following fraction:

$$\frac{\text{NDSL}}{\text{R}}$$

Where NDSL = total NDSL award
and R = the number of semesters, trimesters, or quarters remaining in the academic year.

(d) Notwithstanding paragraph (c), if a student incurs uneven costs during an academic year and needs additional funds in a particular payment period, the institution may advance NDSL funds to the student for that purpose.

(e)(1) An institution NOT using a semester, trimester, or quarter system must advance funds to the student at least twice during an academic year.

(2) The institution must make one advance at the beginning and another at the midpoint of the academic year.

(3) The institution may not advance more than half the loan before the midpoint.

(f)(1) Within each payment period, an institution may advance funds to the student at such time and in such amounts as it determines best meets the student's needs.

(2) It may pay the borrower directly by check or by crediting his or her account with the institution.

(3) However, if it credits the account, the institution must give the borrower a receipt.

(4) In either case, the borrower must sign for the funds in the Schedule of Advances part of the note.

(g) Only one advance is necessary if the total amount the institution awards a student under the Campus Based Programs is less than $301.

(h) A 6 month training program that prepares students for gainful employment in a recognized occupation equals a full academic year for purposes of disbursement.

(i) A correspondence student must submit his or her first completed lesson before receiving an advance.

(j)(1) An institution may not disburse loan funds to a student unless the student files a statement of educational purpose in which the student declares that he or she will use the loan solely for educational expenses in connection with attendance at the institution.

(2) The Secretary considers the following as satifying this requirement: Statement of Educational Purpose I declare that I will use any funds I receive under the NDSL program for expenses connected with attendance at (Name of institution)————————— (Date)————(Signature)————————.

(k) If an institution computes a student's need using estimated data submitted before January 1 of the previous award year, the institution may not pay the student unless it verifies that information.

(20 U.S.C. 424, 1087cc, 1087cc-1 and 1094)

§ 674.17 Federal interest in allocated funds—Transfer of loan fund.

*(a) Except for funds received for the administrative cost allowance (see § 674.18(b)), funds received by an institution under the NDSL program are held in trust for the intended student beneficiaries. Funds may not be used or hypothecated (i.e., serve as collateral) for any other purpose.

(b) (1) If an institution responsible for an NDSL Fund closes or no longer wants to participate in the program, the Secretary will take the following steps to protect the outstanding loans and the Federal interest in that Fund:

(i) The undertaking of a capital distribution of the liquid assets of the Fund according to § 466(c) of the Act;

(ii) The transfer of the outstanding loans to another institution in the same State; or

(iii) The transfer of the outstanding loans to the Department of Education if no institution in that State wishes to receive them.

(2) The Secretary considers the cost of collecting the transferred outstanding loans to be equal to the institutional share of those loans.

(3) If the Secretary transfers the outstanding loans to a second institution, the second institution may deposit the collections on those loans in its own Fund. The Secretary considers the first institution's share of those

collections to be the second institution's institutional capital contribution.

(4) If the Secretary transfers the outstanding loans to the Department of Education, the Secretary may use the institutional share of those collections to pay collection costs.

(c) If more than one institution in the State offers to collect the outstanding loans, the Secretary will transfer the loans to one or more of the competing institutions on the basis of—

(1) Primarily, the institution's demonstrated loan collection capability; and

(2) Secondarily, the number of students of the first institution expected to enroll in the second institution.

(d) No audit exception will be taken against the second institution on account of actions or omissions of the first institution in the administration of its Fund. The second institution must segregate the transferred Fund account until an audit satisfactory to the Secretary is performed on the operation of the first institution's program.

(20 U.S.C. 1087aa–1087ii; 1087cc)

§ 674.18 Use of funds.

(a) *General.* An institution must deposit the funds it receives under the NDSL program into its Student Loan Fund. It may use these funds only for making loans and the other activities specified in § 674.8(b).

(b) *Administrative cost allowance.* An institution participating in the NDSL program is entitled to an administrative cost allowance.

(1) The amount of the allowance equals—

(i) Five (5) percent of the first $2,750,000 of the institution's expenditures in an award year under CWS, SEOG and NDSL programs; plus

(ii) Four (4) percent of its expenditures which are greater than $2,750,000 but less than $5,500,000; plus

(iii) Three (3) percent of its expenditures in excess of $5,500,000.

(2) However, for the purpose of calculating the allowance in paragraph (b)(1) of this section, CWS expenditures made under the Community Service Learning Program (§ 675.28) or NDSL loans that are assigned to the Secretary under Section 463(a)(6)(B) of the Higher Education Act are not included.

(3) An institution must use its administrative cost allowance to offset its costs of administering the Pell Grant, CWS, SEOG and NDSL programs. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of Subpart C of the Student Assistance General Provisions, 34 CFR Part 668.

(4) An institution may not charge any administrative expenses against its NDSL Fund for an award year unless it advances funds to students for that year.

(20 U.S.C. 1087cc, 1087dd, and 1096)

§ 674.19 Fiscal procedures and records.

*(a) *Fiscal procedures.* (1) In administering its NDSL program, an institution must establish and maintain an internal control system of checks and balances that insures that no office can both authorize payments and disburse funds to students.

(2) A separate bank account for Federal funds is not required, except as provided in paragraph (b). However, an institution must notify any bank in which it deposits Federal funds of all accounts in that bank in which it deposits Federal funds. The institution may give this notice by either—

(i) Including in the name of the account the fact that Federal funds are deposited; or

(ii) Notifying the bank in writing of the accounts in which it deposits Federal funds. The institution must retain a copy of this notice in its files.

(b) *Account for NDSL Fund.* (1) An institution must maintain all the cash of its NDSL Fund in a separate bank account that contains no other funds if the Secretary determines that the institution's accounting system and internal controls do not—

(i) Meet the requirements of paragraph (c), paragraph (d), or both;

(ii) Identify the cash balance of the NDSL Fund as readily as if the Fund were maintained in a separate bank account; or

(iii) Adequately identify the earnings of the Fund.

(2) The Secretary makes that determination on the basis of an audit examination or as a result of a program review.

(3) That separate bank account must be identified as the institution's NDSL Fund account and must contain all the cash of the institution's NDSL Fund. That cash includes Federal capital contributions, institutional capital contributions, repayments made by borrowers, Direct loan cancellation payments, and any earnings of the Fund including interest.

(c) *Records and reporting.* (1) An institution must establish and maintain on a current basis financial records that reflect all program transactions. The institution must establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution must also establish and maintain program and fiscal records that—

(i) Are reconciled at least monthly;

(ii) Identify each student's account and status;

(iii) Show the eligibility of each student aided under the program;

(iv) Show the amount of need and how the need was met for each student; and

(v) Identify the administrator who determined the need.

(3) Each year an institution must submit a Fiscal-Operations Report plus other information the Secretary requires. The institution must comply with requirements to insure the information reported is accurate and must submit it on the form and at the time specified by the Secretary.

(d) *Retention of records.* (1) *Records.* Each institution must keep intact and accessible records of the receipt and expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

*(2) *Period of retention.* Except for loan records and audit questions, an institution must keep records for an award year for five years after it submits its Fiscal-Operations Report for that year.

(3) *Loan records.* (i) An institution must maintain a repayment history for each borrower. This repayment history must show the date and amount of each repayment over the life of the loan. It must also indicate the amount of each repayment credited to principal and interest respectively.

(ii) This history must also show the date, nature, and result of each contact with the borrower or proper endorser in the collection of an overdue loan. The institution must include in the repayment history copies of all correspondence to or from the borrower and endorser, except routine bills, routine overdue notices, and routine form letters.

(iii) An institution must retain repayment records, including cancellation and deferment requests, for at least 5 years from the date of the loan's assignment or final repayment or cancellation.

*(4) *Microfilm copies.* An institution may substitute microfilm copies for original records in meeting the requirements of this section.

*(5) *Audit questions.* An institution must keep records in any claim or expenditure questioned by Federal audit until resolution of any audit questions. However, the institution does not have to retain records beyond 5 years if the actions taken by the United States to

recover funds are barred by the Federal statute of limitation in 28 U.S.C. 2415(b).

(e) *Audits-Federal.* An institution must give the Secretary, the Comptroller General of the United States, or their duly authorized representatives access to the records specified in paragraphs (d) (1), (2), and (3) and to any other pertinent books, documents, papers, and records.

(f) *Separate records.* An institution need not maintain separate records for National Defense Student Loans and National Direct Student Loans except for loan cancellation records.

*(g) *Audits—Non-Federal.* (1) An institution must audit, or have audited under its direction, NDSL transactions to determine at a minimum—

(i) The fiscal integrity of financial transactions and reports; and

(ii) If those transactions are in compliance with the applicable laws and regulations.

(2) The audits must be performed in accordance with the Education Department's "Audit Guide" for student financial aid programs.

(3) The institution must have an audit performed at least once every two years unless the Secretary approves a longer interval.

(4) Each audit must cover the entire period of time since the last audit.

*(h) *Audit reports.* The institution must submit audit reports to its local regional office of the Education Department's Office of Inspector General Audit Agency. It must give the Secretary and the Inspector General access to records or other documents necessary to the audit's review.

(i) *Safekeeping.* An institution must keep promissory notes and student loan ledgers in good order in a locked, fire proof container. Only authorized personnel may have access to these documents.

(20 U.S.C. 424, 1087cc, 1232c.)

§ 674.20 Compliance with truth in lending and equal credit opportunity requirements.

In making an NDSL, an institution must comply with the truth in lending requirements of Regulation Z (12 CFR 226) and with the equal credit opportunity requirements of Regulation B (12 CFR 202). With regard to Regulation B, the Secretary considers the NDSL program to be a credit assistance program authorized by Federal law for the benefit of an economically disadvantaged class of persons within the meaning of 12 CFR 202.8(a)(1). Therefore the institution may request a loan applicant to disclose his or her marital status, income from alimony, child support, and spouse's income and signature. (12 CFR 202.8(d)).

(20 U.S.C. 1087aa–1087ii.)

§ 674.21 Deposit of institutional capital contributions into Fund.

When an institution deposits any Federal capital contribution to its Fund it must deposit its institutional capital contribution at the same time.

(20 U.S.C. 1087cc.)

Subpart B—Terms of Loans

§ 674.31 Defense and direct loan maximums for students.

(a) The maximum amount of Defense and Direct loans an eligible student may borrow is—

(1) $3,000 for a student who has not completed 2 academic years of study toward a bachelor's degree. The $3,000 includes Defense and Direct loans.

(2) $6,000 for a student who has completed 2 academic years of study toward a bachelor's degree and has achieved third-year status but has NOT received the degree. The $6,000 includes Defense and Direct loans the student borrowed before completing the 2 years of study toward a bachelor's degree; and

(3) $12,000 for study toward professional or graduate degrees. The $12,000 includes Defense and Direct loans a student borrowed for undergraduate study.

(20 U.S.C. 1087dd.)

§ 674.32 Promissory note—loan repayment.

(a) *Promissory note.* (1) To receive a loan a student must sign a promissory note before the institution makes any advance.

(2) The Secretary must approve the promissory note used by the lending institution.

(3) The note in appendix B is acceptable. The institution must not change the meaning of this note without the Secretary's approval.

(4) The lending institution must give a copy of the signed note to the borrower at or before the exit interview.

(b) *Interest rate.* The promissory note must state that—

(1)(i) For loans made before July 1, 1981, the rate of interest on the loan is 3 percent per annum on the unpaid balance; and

(ii) For loans made on or after July 1, 1981, the rate of interest on the loans is 4 percent per annum on the unpaid balance; and

(2) No interest may be charged before the repayment period begins or during a deferment period authorized under § 674.34a (a), (b), and (d).

(3) No repayment of principal or interest will be required until six months after the completion of any deferment period as set forth in § 674.34 (a), (b), and (d).

(c) *Repayment.* (1) The promissory note must state that the repayment period—

(i) Begins 6 months after the borrower ceases to be a least a half-time student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary, and normally ends 10 years later;

(ii) May begin earlier if the borrower requests it; and

(iii) May vary because of minimum monthly repayments (see § 674.33) or deferments (see §§ 674.34 and 674.34a).

(iv) May be extended for up to ten years if, during the repayment period, the institution determines that the borrower is or will be a low-income individual (as defined in § 674.34a(h)(8)) during the repayment period; and

(v) May be adjusted to reflect the income of the borrower if the institution determines the borrower to be a low-income individual.

(2) The promissory note must state that the borrower must repay the loan—

(i) In equal quarterly, bimonthly, or monthly amounts, as the institution chooses; or

(ii) In graduated installments if the borrower requests a graduated repayment schedule, the institution submits the schedule to the Secretary for approval, and the Secretary approves it.

(3) A repayment plan must be established before the student ceases to be at least a half-time student.

(4) The institution must give the borrower a copy of the promissory note with a copy of the repayment plan attached.

(5) If the last repayment is $10 or less the institution may add it the next-to-last repayment.

(6) A loan repayment must first be applied to interest due on the loan, with the remainder applied to principal.

(d) *Minimum rates of repayment—deferments.* (1) The promissory note may, at the option of the institution, state that the monthly repayments may vary according to the minimum monthly repayment provision (see § 674.33).

(2) The promissory note must include the deferment provisions set forth in § 674.34a.

(e) *Prepayment.* (1) The promissory note must state that the borrower may prepay all or part of the loan at any time without penalty.

(2) Amounts repaid during the academic year in which the loan was made will be used to reduce the original loan amount and will not be considered prepayments.

(3) If a borrower repays more than the amount due for any repayment period, the excess must be used to prepay the principal unless the borrower designates it as an advance payment of the next regular installment.

(f) *Penalty charge.* (1) An institution may state in the promissory note that a penalty will be charged if the borrower does not—

(i) Repay all or part of a scheduled repayment when due;

(ii) File a timely request for cancellation or deferment with the institution. This request must include sufficient evidence to enable the institution to determine whether the borrower is entitled to a cancellation or deferment.

(2) The institution may include the following penalty charges in the promissory note. If the loan is repayable—

(i) Monthly, the maximum monthly charge is $1 for the first month and $2 for each additional month, for each overdue payment;

(ii) Bimonthly, the maximum bimonthly charge is $3 for each overdue payment; and

(iii) Quarterly, the maximum charge per quarter is $6 for each overdue payment.

(3) *Applying penalty charges.* The institution may—

(i) Add the penalty charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after the borrower receives notice of the penalty charge.

(g) *Security and endorsement.* The promissory note must state that the loan must be made without security and endorsement unless—

(1) The borrower is a minor; and

(2) Under applicable State law, a note signed by a minor would not create a binding obligation.

(h) *Assignment.* The promissory note must state that a note may only be assigned to—

(1) The United States or an institution approved by the Secretary; or

(2) An institution the borrower has transferred to, if that institution—

(i) Is participating in the NDSL program; or

(ii) Is not participating, but has been approved by the Secretary; to receive the notes.

(i) *Acceleration.* The promissory note must state that an institution may demand immediate repayment of the entire loan, including any penalty charges and accrued interest, if the borrower does not—

(1) Make a scheduled repayment on time; or

(2) File cancellation or deferment form(s) with the institution on time.

(j) *Cost of collection.* The promissory note may state that the borrower must pay all attorney's fees and other loan collection costs and charges.

(k) *Disclosure of information.* The promissory note shall state that if the borrower defaults on the loan and the loan is referred to the Secretary, the Secretary may disclose to a credit bureau organization—

(1) That the borrower has defaulted on the loan; and

(2) Any other relevant information.

(20 U.S.C. 425 and 1087dd.)

§ 674.33 Minimum repayment rates.

In this section monthly repayment amounts also apply to bimonthly or quarterly equivalents.

(a)(1) *Defense loan.* An institution may require a borrower to pay a $15 minimum monthly repayment if—

(i) The monthly repayment of principal and interest for a 10 year repayment period is less than $15 a month; and

(ii) The promissory note includes a $15 minimum monthly repayment provision.

(2) *Direct loan.* The institution may require a borrower to pay a $30 minimum monthly repayment if—

(i) The monthly repayment of principal and interest for a 10 year repayment period is less than $30 a month; and

(ii) The promissory note includes a $30 minimum monthly repayment provision.

(b) *Minimum repayment of loans from more than one institution.* (1) *Defense loan.* If a borrower has received loans from more than one institution and—

(i) Only one institution exercises the $15 option when the repayment is less than $15, that institution will receive the difference between $15 and the repayment owed to the other institution; or

(ii) Each institution exercises the $15 minimum option, the minimum repayment must be divided among the institutions in proportion to the amount of principal advanced by each institution.

(2) *Direct loan.* If a borrower has received loans from more than one institution and—

(i) Only one institution exercises the $30 option when the repayment is less than $30, that institution will receive the difference between $30 and the repayment owed to the other institution; or

(ii) Each institution exercises the $30 minimum option, the minimum repayment must be divided among the institutions in proportion to the amount of principal advanced by each institution.

(c) *Minimum repayment of both Direct and Defense loans from one or more institutions.* If a borrower has received both a Direct and a Defense loan, the following rules apply. In all cases the repayment includes principal and interest.

(1) If the total monthly repayment is at least $30 for both a Defense and a Direct loan, no institution may exercise a minimum repayment option, even if the Defense loan repayment is less than $15 or the Direct loan repayment is less than $30.

(2) If the total monthly repayment is less than $30 for both the Defense and Direct loans, an institution may exercise either minimum repayment option. The maximum monthly repayment, however, may not exceed $30 a month.

(3) If—

(i) The total monthly repayment is less than $30; and

(ii) The amount owed on a Defense loan is less than $15, the amount attributed to the Defense loan may not exceed $15 a month. However, $15 may be attributed to the Defense loan ONLY if the institution exercises the minimum option on the Defense loan.

(d) *Minimum repayment of Direct loans with different interest rates, or with different provisions, from one or more institutions.*

(1) If a borrower has received a Direct loan at 3 percent and a Direct loan at 4 percent from the same institution, and the total monthly repayment is at least $30 for both the Direct loan at 3 percent and the Direct loan at 4 percent, the institution may not exercise the minimum monthly payment on either loan.

(2) If the borrower has received a Direct loan at 3 percent and a Direct loan at 4 percent at the same institution and the total monthly repayment is less than $30, the institution may exercise the $30 minimum payment option, providing it is in the promissory notes, and the institution divides the repayment between the accounts in proportion to the amount of principal advanced under each loan.

(3) If a borrower has received a Direct loan at 3 percent from one institution and a Direct loan at 4 percent from another institution, each institution shall follow the procedures outlined in paragraph (b)(2) of this section.

(4) If a borrower has received Direct loans prior to October 1, 1980 and a Direct loan between October 1, 1980 and June 30, 1981 the institution shall follow the procedures outlined in paragraphs (d)(1) and (b)(2) of this section.

(20 U.S.C. 425 and 1087dd; section 137d of Pub. L. 92-318.)

§ 674.34 Defense or Direct loans made on or before September 30, 1980.

(a) Principal need not be repaid and interest will not accrue during a period when a borrower is at least a half-time student at an institution of higher education or a comparable institution outside the U.S. approved by the Secretary for this purpose.

(b) Principal need not be repaid and interest will not accrue for a period of up to 3 years during which time the borrower is—

(1) A member of the U.S. Armed Forces (see § 174.56);

(2) A Peace Corps volunteer; or

(3) A volunteer under the Domestic Volunteer Service Act of 1973.

(c) The institution must not include the deferment periods described in paragraphs (a) and (b) when determining the 10 year repayment period.

(d)(1) The institution may defer repayments under extraordinary circumstances. Interest, however, (unlike in paragraphs (a) and (b)) continues to accrue during this deferment period.

(2) If a borrower is unable to make a scheduled repayment due to extraordinary circumstances such as a prolonged illness or unemployment, he or she may ask the institution to change the repayment schedule within the 10 year repayment period.

(3)(i) If a change in the repayment schedule of a Defense loan would extend the repayment period beyond 10 years, the institution must notify the Secretary of the change.

(ii) If a change in the repayment schedule of a Direct loan would extend the repayment period beyond 10 years, the institution must notify the Secretary of the change and receive the Secretary's approval before making it.

(e)(1) The institution may defer a borrower's Direct loan repayments or revise his or her repayment schedule for up to 1 year if—

(i) The institution exercised the minimum monthly repayment rate;

(ii) The borrower is unable, due to extraordinary circumstances, to make repayment when due; and

(iii) The borrower has applied for deferment or a revised repayment schedule.

(2) If, at the end of the 1 year period, the borrower is still unable to repay at the minimum monthly rate because of extraordinary circumstances, the institution may defer repayment or revise repayments for up to another year.

(3) If the institution defers repayment on a loan or revises a repayment schedule under paragraph (e) of this section, (4), or (5) of this paragraph, interest continues to accrue.

(4) The institution may not defer a loan or revise a repayment schedule under paragraphs (e) (1) and (2) of this section if the revision or deferment results in a repayment period of more than 10 years.

(f) (1) The institution may defer Defense loan repayments up to 3 years for a less than half-time student borrower taking courses that are creditable toward a degree.

(2) Interest accrues during this deferment period.

(3) The institution may exclude these deferment periods in computing the 10 year repayment period.

(20 U.S.C. 425 and 1087dd.)

§ 674.34a Deferment of repayment. Direct loans made on or after October 1, 1980.

(a) Principal need not be repaid and interest will not accrue during a period when a borrower is at least a half-time student at an institution of higher education or a comparable institution outside the U.S. approved by the Secretary for this purpose.

(b) Principal need not be repaid and interest will not accrue for a period of up to 3 years during which time the borrower is—

(1) A member of the U.S. Armed Forces or an officer in the Commissioned Corps of the U.S. Public Health Service; (see § 674.56);

(2) A Peace Corps volunteer; or

(3) A volunteer under the Domestic Volunteer Service Act of 1973;

(4) A full-time volunteer in service which the Secretary has determined is comparable to service in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION programs). The Secretary considers that a borrower is providing comparable service if he or she satisfies the following five criteria:

(i) The borrower serves in an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1954;

(ii) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions;

(iii) The borrower's compensation does not exceed the compensation received by a full-time volunteer in the Peace Corps or in a program administered by the ACTION agency. Compensation includes an allowance for subsistence, necessary travel expenses, and stipends;

(iv) The borrower, as part of his or her duties, does not give religious instruction, conduct worship service, engage in religious proselytizing, or engage in fundraising to support religious activities.

(v) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(5) Temporarily totally disabled, as established by an affidavit of a qualified physician, or unable to secure employment because the borrower is providing care such as continuous nursing or other similar services required by a spouse who is so disabled.

(c)(1) "Temporarily totally disabled" for purposes of paragraph (b) of this section with regard to the borrower means an injury or illness which prevents an individual from attending an eligible institution or to be gainfully employed for an extended period of time.

(2) "Temporarily totally disabled" with regard to the borrower's spouse means an injury or illness, established by an affidavit of a qualified physician, that requires the borrower to provide care such as continuous nursing or other similar services thus preventing the borrower from obtaining gainful employment.

(d)(1) Principal need not be paid and interest will not accrue for a period not to exceed two years during which time the borrower is serving an eligible internship after obtaining a bachelor's or professional degree.

(2) An eligible internship is an internship which a person is required to undergo to receive professional recognition required to begin professional practice or service. Medical residency is an example of such an internship.

(e) The institution must not include the deferment periods described in paragraphs (a), (b), (d) and the grace period described in paragraph (f) when determining the 10-year repayment period.

(f) No repayment of principal or interest will be required to begin until six months after the completion of any period during which the borrower is in deferment under paragraph (a), (b), and (d).

(g)(1) The institution may defer repayments under extraordinary circumstances.

(2) If a borrower is unable to make a scheduled repayment due to extraordinary circumstances such as a prolonged illness or unemployment, he or she may ask the institution to change the repayment schedule within the 10 year repayment period.

(3) If a change in the repayment schedule of a Defense loan would extend the repayment period beyond 10 years, the institution must notify the Secretary of the change. If a change in the repayment schedule of a Direct loan would extend the repayment period beyond 10 years, the institution must notify the Secretary of the change and receive the Secretary's approval before making it.

(h)(1) The institution may defer a borrower's Direct loan repayments or revise his or her repayment schedule for up to 1 year if—

(i) The institution exercised the minimum monthly repayment rate;

(ii) The borrower is unable, due to extraordinary circumstances, to make repayment when due; and

(iii) The borrower has applied for deferment or a revised repayment schedule.

(2) If, at the end of the 1 year period, the borrower is still unable to repay at the minimum monthly rate because of extraordinary circumstances, the institution may defer repayment or revise repayments for up to another year.

(3) If the institution defers repayment on a loan or revises a repayment schedule under paragraph (g) of this section, interest continues to accrue.

(4) The institution may not defer a loan or revise a repayment schedule under paragraphs (g) (1) and (2) of this section if the revision or deferment results in a repayment period of more than 10 years.

(i) The institution may—

(1) Extend the repayment period up to ten years for any student borrower who during the repayment period is a low-income individual if that individual is expected to remain a low-income individual during that repayment period. The term "low-income individual" means an individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of the Census.

(2) Adjust the repayment schedule to reflect the income of that individual.

(20 U.S.C. 425 and 1087dd.)

§ 674.35 Postponement of loan repayments in anticipation of cancellation.

(a) An institution must postpone loan repayments for a 12 month period if the borrower—

(1) Teaches or provides other services eligible for loan cancellation; and

(2) Submits a statement signed by a responsible official in the military, agency, or school employing the borrower, specifying that the borrower is so employed. The statement must describe the borrower's job, list the period of employment, and state whether the job is full- or part-time.

(b) If a borrower has received both Defense and Direct loans and is eligible for cancellation benefits on only one, the institution may postpone only repayments on the loan for which cancellation is available.

(20 U.S.C. 425 and 1087dd–ee.)

§ 674.36 Treatment of loan repayments where cancellation, loan repayments, and minimum monthly repayments apply.

(a) An institution may not exercise the minimum monthly repayment provisions on a note when the borrower has received a partial cancellation for the period covered by a postponement.

(b) If a borrower has received both Defense and Direct loans and only one can be cancelled, the amount due on the uncancelled loan is the amount established in § 674.32(c), loan repayment terms or § 674.33(a), minimum repayment rates.

(20 U.S.C. 425 and 1087dd–ee.)

Subpart C—Due Diligence

§ 674.41 [Reserved]

§ 674.42 Due diligence.

Each institution must be diligent and forceful in collecting loans. In exercising this responsibility it must—

(a) Inform each borrower before he or she signs the note that he or she must repay the loan and apply the proceeds only to educational expenses;

(b) Conduct an exit interview with each borrower (described in § 674.43) before he or she leaves the institution and, again, explain his or her obligation to repay the loan;

(c) In or before the exit interview—

(1) Give a copy of the signed promissory note and the repayment schedule to the borrower; and

(2) Have the borrower sign the schedule. A repayment schedule shows the borrower the total amount of his or her loan and states the repayment amount and the date each repayment is due;

(d) Keep a signed copy of the repayment schedule in the institution's files;

(e) Mail a copy of the note and two copies of the repayment schedule to a borrower who leaves the institution without notice, requesting that the borrower sign and return one of the schedules to the institution;

(f) Keep the borrower informed, on a timely basis, of all changes in the program that affect his or her rights or responsibilities; and

(g) Respond promptly to all inquiries from the borrower or any endorser.

(20 U.S.C. 1087cc.)

§ 674.43 Contact with the borrower prior to repayment period.

(a) *Information coordination.* An institution must coordinate information among its offices, e.g. the registrar, student financial aid, business and alumni offices. Doing so will enable it to determine—

(1) When a borrower will graduate so an exit interview may be scheduled; or

(2) Whether a borrower has left the institution without notice so that required information may be mailed to him or her.

(b) *Exit interview.* An institution must, if possible, conduct an exit interview with each borrower before he or she leaves the institution. If an individual interview is not feasible, a group interview is permitted. During the interview the institution must tell the borrower again, as it did when the loan was made, that the borrower received a loan and the loan must be repaid in accordance with the repayment schedule. Furthermore, the institution must explain, in detail, the borrower's rights and obligations under the loan including the following:

(1) The borrower must inform the institution immediately of any address change.

(2) The full amount of the loan and the interest rate.

(3) The first repayment amount and when it is due.

(4) The borrower must contact the institution before the due date of any repayment he or she cannot make.

(5) His or her deferment, cancellation or postponement rights and the procedures for filing for these benefits.

(6) The right to prepay without penalty.

(7) The loan note's optional features such as minimum monthly repayment, penalty and collection charges.

(c) *The institution's contact with the borrower.* (1) For loans made on or before September 30, 1980, an institution must contact a borrower at least 3 times before the first repayment is due as follows:

(i) 90 days into the grace period, the institution must send to the borrower the information in paragraph (b) plus other information necessary to satisfy Truth in Lending Act regulations.

(ii) 180 days into the grace period, the institution must notify the borrower of the date his or her grace period ends.

(iii) Approximately 30 days before the first repayment is due, the institution must notify the borrower of that

repayment date and the amount due. (see § 674.44(a)(1).)

(2) For loans made on or after October 1, 1980, an institution must contact a borrower at least 2 times before the first repayment is due as follows:

(i) 90 days into the grace period, the institution must send to the borrower the information in paragraph (b) plus other information necessary to satisfy Truth in Lending Act regulations.

(ii) Approximately 30 days before the first repayment is due, the institution must notify the borrower of that repayment date and the amount due. (see § 674.44(a)(1).)

(d) *Address search.* If an institution discovers that a borrower's address has changed, it must conduct the search required under § 674.44(a)(6) to find the correct address.

(20 U.S.C. 425 and 1087cc.)

§ 674.44 Billing procedures.

(a) An institution must establish and maintain the following billing and follow-up procedures until all loans are repaid:

(1) Unless a coupon system is established, the institution must send to each borrower—

(i) A letter of notice and a statement of account at least 30 days before the first payment is due; and

(ii) A statement of account 10 days before the due date of each repayment after the first.

(2) An institution must contact a borrower and demand repayment if it has not received from the borrower within 15 days of a due date—

(i) A repayment;

(ii) A request for a deferment; or

(iii) A cancellation request form.

(3) An institution must demand repayment as follows:

(i) Within 15 days of a missed due date, the institution must contact the borrower by telephone or in writing to demand repayment (first overdue notice).

(ii) Within 30 days of the first overdue notice, it must contact the borrower again, by telephone or in writing, if there is no satisfactory response to the first notice (second overdue notice).

(iii) Within 15 days of the second overdue notice, if there is no satisfactory response, it must contact the borrower again—

(A) By telephone; or

(B) By mailgram or similar written communication that demonstrates a response rate higher than that for routine mail (third overdue notice).

(iv) Within 15 days of the third overdue notice, it must send the borrower the final demand letter if there is no satisfactory response to the third overdue notice. In this letter the institution must inform the borrower that the loan will be referred for collection or litigation if repayment, or a proper form, is not received within 30 days of the letter's date.

(v) If an institution accelerates a loan (makes the entire unpaid amount, including accrued interest and penalty charges, payable immediately), it must give the borrower advance, written notice. The notice may be given separately or in the final demand letter.

(4) An institution may omit any or all the overdue notices before the final demand letter if—

(i) The borrower's repayment history has been unsatisfactory, e.g., the borrower has often failed to repay or file proper forms on time or has previously received a final demand letter; or

(ii) The institution believes the borrower does not intend to repay the loan or file the proper form.

(5) The institution must maintain a list of borrowers with overdue payments, updated monthly.

(6) If mail is returned, an institution must conduct a thorough search to locate the borrower's address, including—

(i) Checking records in all appropriate institutional offices;

(ii) Checking telephone directories or information operators in the location of the borrower's last known address;

(iii) Telephoning the borrower if a number is found; and

(iv) Using the Department of Education's free skip-tracing service.

(b)(1) The Secretary considers billing and follow-up collection procedure costs (as required in paragraph (a)) to be routine administrative expenses that are NOT chargeable to the Fund.

(2) However, the costs of phone calls to the borrower are considered other collection costs that MAY be charged to the Fund.

(20 U.S.C. 424 and 1087cc)

§ 674.45 Address searches.

(a) An institution, unable to locate a borrower in spite of its efforts under § 674.44(a)(6), must either—

(1) Hire a commercial skip-tracing organization; or

(2) Attempt to locate the borrower with its own personnel.

(b) If the institution locates the borrower, it must first try to collect the overdue amount before referring the loan for collection or litigation.

(20 U.S.C. 424 and 1087cc)

§ 674.46 Collection and litigation procedures.

(a) If an institution is still unable to collect a payment after following the procedures under §§ 674.44 and 674.45, it must telephone or personally contact the borrower to determine why the borrower has not paid. If this final contact fails to obtain payment, the institution must—

(1) Hire a collection agency;

(2) Sue the borrower; or

(3) Use its own personnel to collect the amount due.

(b) If the institution uses a collection agency, the agency must—

(1) Be bonded in an amount covering the part of the Fund under its control at any particular time; or

(2) Deposit the collection funds, immediately upon receipt, in a bank account in the institution's name—a "lock-box" deposit.

(c) If the institution is unable to collect a payment after following the procedures in sections 674.42–674.45 and paragraphs (a) and (b) of this section, it may refer the NDSL to the Secretary for collection.

(d) (1) An institution must sue a borrower or any proper endorser if collection efforts have failed and it determines that the borrower or endorser—

(i) Has assets that may cover all or most of the outstanding debts;

(ii) Has no known defense;

(iii) Can be located and easily served; and

(iv) Owes more than $500.

(2) The institution may sue the borrower even if the conditions of subparagraph (c)(1) are not met.

(e) If the principal and interest outstanding on a loan are $10 or less, an institution may write it off.

(20 U.S.C. 424, 1087cc and 1087gg)

§ 674.47 Other collection and litigation costs.

(a) The Secretary considers the reasonable costs of carrying out §§ 674.45(a) and 674.46 and telephone costs in §§ 674.44(a), 674.45(b), and 674.48(b) to be "other collection costs" chargeable to the Fund. Collection costs paid by the borrower are NOT chargeable to the Fund.

(b)(1) For audit purposes, an institution must support "other collection costs" with financial statements, e.g., phone and collection agency bills.

(2) A collection agency's statement must list specific amounts collected and the amount it retains.

(c)(1) If an institution performs its own collections, the Secretary considers the institution's actual collection costs, including salaries of its personnel, to be "other collection costs";

(2) However, these costs may not exceed the costs that would be

permitted if the institution used a collection agency.

(d) An institution's reasonable litigation costs, incurred in carrying out this subpart, may be charged to the Fund.

(20 U.S.C. 424 and 1087cc)

§ 674.48 Use of fiscal agent.

(a)(1) An institution is responsible for all decisions in administering an NDSL program, e.g., decisions about collecting, cancelling, or deferring loans.

(2) A fiscal agent may perform only ministerial acts.

(b) A billing service used by an institution to carry out billing procedures under § 674.44—

(1) May not deduct its fees from the amount it receives from borrowers;

(2) May telephone and perform skip-tracing activities to prevent a borrower from defaulting on a loan; and

(3) Must provide the institution with at least a monthly documentation of its charges for skip-tracing activities and telephone calls.

(20 U.S.C. 424 and 1087cc)

§ 674.49 Commonly owned billing service and collection agency.

If an institution uses a billing service to carry out § 674.44 (billing procedures), it may not use a collection agency that—

(a) Owns or controls the billing service;

(b) Is owned or controlled by the billing service; or

(c) Is owned or controlled by the same corporation, partnership, association, or individual that owns or controls the billing service.

(20 U.S.C. 1087cc)

§ 674.50 Bankruptcy of borrower.

(a) An institution must refrain from carrying out this subpart on a loan which has been discharged in bankruptcy.

(b) An institution may not write off a loan until it has received an official notice of the bankruptcy discharge and must keep the notice in the borrower's file to support its writeoff entry.

(c) If an institution receives a repayment from a borrower after a loan has been discharged, it must deposit that payment in its Fund.

(20 U.S.C. 424 and 1087cc)

Subpart D—Loan Cancellation

§ 674.51 Special definitions.

(a) *Academic year or its equivalent for elementary and secondary schools and special education:* One complete school year or two half years from different school years excluding summer sessions that are complete and consecutive and that generally fall within a 12-month period.

(b) *Academic year or its equivalent for institutions of higher education:* A period of time in which a full-time student is expected to complete—

(1) The equivalent of 2 semesters, 2 trimesters, or 3 quarters at an institution using credit hours; or

(2) At least 900 clock hours of training for each program at an institution using clock hours.

(c) *Elementary school:* A school that provides elementary education, including education below grade 1, as determined by—

(1) State law; or

(2) The Secretary, if the school is not in a State.

(d) *Handicapped children:* Children who require special education and related services because they are—

(1) Mentally retarded;

(2) Hard of hearing;

(3) Deaf;

(4) Speech impaired;

(5) Visually handicapped;

(6) Seriously emotionally disturbed;

(7) Orthopedically impaired;

(8) Specific learning disabled; or

(9) Otherwise health impaired.

(e) *Local educational agency:* An agency defined in section 1201(g) of the Act.

(f) *Secondary school:* (1) A school that provides secondary education, as determined by—

(i) State law; or

(ii) The Secretary, if the school is not in a State.

(2) However, State laws notwithstanding, secondary education does not include any education beyond grade 12.

(g) *State education agency:* (1) The State board of education; or

(2) An agency or official designated by the Governor or by State law as being primarily responsible for the State supervision of public elementary and secondary schools.

(h) *Teacher:* (1) A professional who provides direct and personal services to students for their educational development through—

(i) Direct classroom teaching; or

(ii) Non-teaching positions of an educational nature such as a librarian and a guidance counselor.

(2) A supervisor, administrator, researcher, or curriculum specialist is not a teacher unless he or she primarily provides direct and personal services to students.

(3) A teacher in an institution of higher education does not include a person teaching elementary or secondary education unless that person teaches a remedial education program specifically designed to prepare high school graduates for postsecondary education.

(i) *Title I children:* Persons of age 5 through 17 counted under section 111(c) of the Elementary and Secondary Education Act of 1965.

(20 U.S.C. 425, 1087ee, and 1141)

§ 674.52 Cancellation procedures.

(a) *Application for cancellation:* (1) To apply for cancellation, a borrower must complete and file a form, obtained from the lending institution, by the date the institution establishes.

(2) If a borrower fails to file the form on time, the institution must follow the billing procedures in § 674.44 for contacting the borrower.

(3) If the borrower still fails to file the form, the institution may determine that the loan is in default and require immediate repayment of the unpaid balance, accrued interest, and penalty charges.

(b) The institution that makes the loan decides whether a borrower is entitled to cancellation.

(c)(1) An institution may refuse cancellation for simultaneous teaching in two or more schools or institutions if it cannot easily determine that the teaching was full-time.

(2) However, cancellation must be granted if one school official certifies that a teacher worked full-time for a full academic year under his or her supervision.

(20 U.S.C. 425, 1087cc)

§ 674.53 Teacher cancellation—Defense loan.

The following rules apply to Defense loan borrowers:

(a) *Cancellation. Ten percent rate.* (1) An institution must cancel up to 50 percent of a borrower's Defense loan, plus the interest on the unpaid balance, for full-time teaching in—

(i) A public or other nonprofit elementary or secondary school;

(ii) An institution of higher education; or

(iii) An overseas Department of Defense elementary or secondary school.

(2) The cancellation rate is 10 percent of the original loan principal, plus the interest on the unpaid balance, for each complete year, or its equivalent, of teaching.

(b) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) The institution must cancel the borrower's entire Defense loan, plus interest on the unpaid balance, for full-time teaching in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualifies for funds in that year under Title I of the Elementary and Secondary Education Act of 1965; and

(ii) The Secretary selects, after determining it to be a school with a high concentration of students from low-income families.

(2) (i) The Secretary will not select more than 25% of the eligible schools in a State for any year unless at least 50% of the enrollment of each school selected is made up of Title I children.

(ii) However, in making this calculation for Defense loans, the Secretary will use a low-income factor of $3,000.

(3) (i) The Secretary selects schools under subparagraph (1) based on a ranking by the State Education Agency.

(ii) The State Education Agency must base its ranking of the schools on objective standards and methods approved by the Secretary. These standards take into account the numbers and percentages of Title I children attending those schools.

(iii) For each academic year, the Secretary will notify participating institutions of the schools selected under this paragraph.

(4) The cancellation rate is 15 percent of the original loan principal, plus the interest on the unpaid balance, for each complete academic year, or its equivalent, of full-time teaching.

(5) Cancellation for full-time teaching under this paragraph is available only for teaching beginning with academic year 1966–67.

(c) *Cancellation for full-time teaching of the handicapped.* (1) The institution must cancel the borrower's entire Defense loan, plus interest, for full-time teaching of handicapped children in a public or other nonprofit elementary or secondary school system.

(2) The cancellation rate is 15 percent of the original loan principal, plus the interest on the unpaid balance, for each complete academic year, or its equivalent, of full-time teaching.

(3) Cancellation for full-time teaching under this paragraph is available only for teaching beginning with the academic year 1967–68.

(20 U.S.C. 425(b)(3))

§ 674.54 Teacher cancellation—Direct loan.

The following rules apply to Direct loan borrowers:

(a) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) The institution must cancel the borrower's entire Direct loan, plus the interest on the loan, for full-time teaching in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualifies for funds, in that year, under Title I of the Elementary and Secondary Education Act of 1965; and

(ii) The Secretary selects after determining it to be a school in which at least 30 percent of the school's total enrollment is made up of Title I children.

(2) However, the Secretary will not select more than 50 percent of the schools in that State receiving Title I assistance.

(3) (i) The Secretary selects schools under subparagraph (1) based on a ranking by the State Education Agency.

(ii) The State Education Agency must base its ranking of the schools on objective standards and methods approved by the Secretary. These standards take into account the numbers and percentages of Title I children attending those schools.

(iii) For each academic year, the Secretary will notify participating institutions of the schools selected under this paragraph.

(b) *Cancellation for full-time teaching of the handicapped.* (1) The institution must cancel the borrower's entire Direct loan, plus the interest on the loan, for full-time teaching of handicapped children in a public or other nonprofit elementary or secondary school system.

(c) *Cancellation rates.* (1) To qualify for cancellation under paragraph (a) or (b) (low-income or handicapped), a borrower must teach full-time for a complete academic year, or its equivalent.

(2) Cancellation rates are—

(i) 15 percent of the original loan principal, plus the interest on the unpaid balance, for the first and second years of full-time teaching;

(ii) 20 percent of the original loan principal, plus the interest on the unpaid balance, for the third and fourth years of full-time teaching; and

(iii) 30 percent of the original loan principal, plus the interest on the unpaid balance, for the fifth year of full-time teaching.

(20 U.S.C. 1087ee)

§ 674.55 Cancellation for service in a Head Start program.

(a) An institution must cancel a borrower's entire Direct loan, plus the interest on the unpaid balance, for service as a full-time staff member in a "Head Start" program if—

(1) The program operates for a complete academic year, or its equivalent; and

(2) The borrower's salary does not exceed the salary of a comparable employee working in the local school district.

(b) The cancellation rate is 15 percent of the original loan principal, plus the interest on the unpaid balance, for each complete academic year, or its equivalent, of full-time teaching service.

(c) (1) "Head Start" is a preschool program carried out under section 222(a)(1) of the Economic Opportunity Act of 1964.

(2) "Full-time staff member" is a person regularly employed in a full-time professional capacity to carry out the educational part of a Head Start program.

(20 U.S.C. 1087ee)

§ 674.56 Cancellation for military service.

(a) *Cancellation on a Defense loan.* (1) An institution must cancel up to 50 percent of a Defense loan made after April 13, 1970, for the borrower's full-time active service starting after June 30, 1970, in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard.

(2) The cancellation rate is 12½ percent of the original loan principal, plus the interest on the unpaid balance, for each complete year of consecutive service.

(b) *Cancellation on a Direct loan.* (1) An institution must cancel up to 50 percent of a Direct loan for service as a member of the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard in an area that qualifies for special pay under section 310 of Title 37 of the U.S. Code.

(2) The cancellation rate is 12½ percent of the original loan principal, plus the interest on the unpaid balance, for each complete year of qualifying service.

(c) The Secretary considers a borrower's loan deferment under § 674.34 to run concurrently with any period for which a cancellation for military service is granted.

(20 U.S.C. 425(b)(3) and 1087ee)

§ 674.57 Cancellation for death or disability.

(a) *Death.* An institution must cancel the unpaid balance of a borrower's Defense or Direct loan, including interest, if the borrower dies. The lending institution cancels the loan on the basis of a death certificate or other evidence of death that is conclusive under State law.

(b) *Permanent and total disability.* (1) An institution must cancel the unpaid balance of a Defense or Direct loan, including interest, if the borrower becomes permanently and totally disabled after receiving the loan. The lending institution decides whether to cancel the loan based on medical

evidence supplied by the borrower or his or her representative.

(2) Permanent and total disability is the inability to work and earn money because of an impairment that is expected to continue indefinitely or result in death.

(c) *No Federal reimbursement.* No Federal reimbursement will be made to an institution for cancellation of loans due to death or disability.

(d) *Retroactive.* Cancellation for death or disability applies retroactively to all Defense and Direct loans whenever made.

(20 U.S.C. 425 and 1087dd and section 130(g)(2) of the Educational Amendments of 1976, Pub. L. 94–482)

§ 674.58 No cancellation for prior service—No repayment refunded—Cancellations not considered taxable income.

(a) No portion of a loan may be cancelled for teaching, Head Start, or military service if the borrower's service is performed before the date he or she signs the promissory note.

(b) No repayment may be refunded unless it was made because of institutional error.

(c) The amount of a loan and interest on a loan which is cancelled under Subpart D shall not be considered taxable income for purposes of the Internal Revenue Code of 1954.

(20 U.S.C. 425 and 1087ee; Pub. L. 96–374, Section 448(e), 94 Stat 1443)

§ 674.59 Reimbursement to institutions for loan cancellation.

(a) *Reimbursement for Defense loan cancellation.* (1) The Secretary pays an institution each award year its share of the principal and interest cancelled under § 674.53 or § 674.56(a).

(2) The institution's share of cancelled principal and interest is computed by the following ratio:

$$\frac{I}{I+F}$$

Where I is the institution's capital contribution to the Fund, and F is the Federal capital contribution to the Fund.

(b) *Reimbursement for Direct loan cancellation.* The Secretary pays an institution each award year the principal and interest cancelled from its student loan fund under §§ 674.54, 674.55, and 674.56(b). The institution must deposit this amount in its Fund.

(20 U.S.C. 428 and 1087ee)

Appendix A.—*Allotment of Funds to States for Fiscal Year 1972*

Alabama	$4,329,688
Alaska	143,019
Arizona	3,025,951
Arkansas	2,457,919
California	30,963,291
Colorado	4,163,216
Connecticut	3,790,537
Delaware	663,468
District of Columbia	2,167,676
Florida	7,872,683
Georgia	4,919,990
Hawaii	1,137,046
Idaho	1,220,847
Illinois	14,264,322
Indiana	7,496,071
Iowa	5,075,628
Kansas	4,125,849
Kentucky	4,117,819
Louisiana	4,663,504
Maine	1,175,287
Maryland	4,453,186
Massachusetts	10,510,277
Michigan	12,724,387
Minnesota	6,340,123
Mississippi	3,292,103
Missouri	6,686,416
Montana	1,233,084
Nebraska	2,719,537
Nevada	443,641
New Hampshire	1,228,222
New Jersey	5,036,568
New Mexico	1,570,800
New York	23,755,497
North Carolina	6,796,494
North Dakota	1,339,610
Ohio	13,598,996
Oklahoma	4,489,951
Oregon	3,944,044
Pennsylvania	14,293,876
Rhode Island	1,501,312
South Carolina	2,631,093
South Dakota	1,322,457
Tennessee	5,330,199
Texas	15,388,640
Utah	2,976,511
Vermont	901,213
Virginia	4,928,348
Washington	5,811,589
West Virginia	2,695,336
Wisconsin	7,300,992
Wyoming	578,575
Canal Zone	19,503
Guam	50,368
Puerto Rico	2,114,959
Virgin Islands	18,082
Total	286,000,000

Appendix B—Promissory Note

National Direct Student Loan Program

(Bracketed clause may be included at option of institution)

I, _____

promise to pay to _____, (hereinafter called the Lending Institution) located at _____, the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below [together with all attorney's fees and other costs and charges necessary for the collection of any amount not paid when due].

I further understand and agree that:

General

I. All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, hereinafter called the Act and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note must be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Lending Institution.

Repayment

II. (1) Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF THREE PERCENT (3%)* on the unpaid balance except that no interest shall accrue during any period described in paragraph III (3). (A), (B) and (C).

(Bracketed clause must be included if the institution uses paragraph II(4))

(2) [Except as provided in paragraph II (4)] I promise to repay the principal, and the interest which accrues on it, over a period beginning 6 months after the date I cease to be at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the United States Secretary of Education (hereinafter called the Secretary), and ending, unless paragraph II(3) or III (3) (deferment) applies, 10 years later.

I may, however, request that the repayment period start on an earlier date.

I promise to repay the principal and interest over the course of the repayment period in EQUAL monthly, bimonthly or quarterly installments, as determined by the Lending Institution. However, if I request, repayments may be made in GRADUATED INSTALLMENTS determined in accordance with schedules approved by the Lending Institution and the Secretary. In either case, a schedule of repayment shall be attached to and made part of this note.

(3) Notwithstanding paragraph II(2), if I qualify as a low-income individual during the repayment period, the lending institution may, at my request, extend the repayment period for up to an additional 10 years or adjust any repayment schedule to reflect my income, or both.

(Bracketed paragraphs may be included at option of institution)

[(4) If the repayment schedule established under paragraph II(2) provides for repayment of principal and interest at a rate of less than $30 per month, I shall repay the total amount of this loan plus the interest thereon at the rate of $30 per month, which shall include repayment of principal and interest.

If I receive or have received National Direct or Defense Student Loans from other lending institutions, I shall repay this note at a monthly rate equal to not less than the amount by which $30 exceeds the total monthly rate of principal and interest repaid on the other loans.

A schedule of repayment will be attached to and made part of this note.

The Lending Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph 2 of this article.]

III. This note is also subject to the following conditions:

Prepayment

(1) I may at my option and without penalty prepay all or any part of the principal, plus the accrued interest thereon, at any time. Amounts I repay in the academic year in which the loan was made will be used to reduce the amount of the loan and will not be considered a prepayment. If I repay more

*For loans made after June 30, 1981, the annual percentage rate increases to four percent (4%).

than the amount due for any repayment period, the excess will be used to prepay principal unless I designate it as an advance payment of the next regular installment.

Default

(2)(A) If I fail to meet a scheduled repayment of any installment, the entire unpaid indebtedness including interest due and accrued thereon, plus any applicable penalty charges, will, at the option of the Lending Institution, become immediately due and payable.

(B) Further, I understand that if I default on my loan repayments and the loan is referred to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

Deferment

(3) Interest will not accrue, and installments need not be paid—

(A) while I am enrolled and in attendance as at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary or

(B) for a period not in excess of 3 years during which time I am—

(i) on full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard),

(ii) in service as a Volunteer under the Peace Corps Act, or

(iii) a VISTA volunteer under Title I—Part A of the Domestic Volunteer Service Act,

(iv) a full-time volunteer in a tax-exempt organization performing service comparable to the service performed by Peace Corps or ACTION agency volunteers,

(v) temporarily totally disabled as established by an affidavit of a qualified physician,

(vi) unable to secure employment because I am providing care required by my spouse who is so disabled, or

(vii) an officer on full-time active duty in the Commissioned Corps of the U.S. Public Health Service.

(C) for a period not in excess of two years during which time I am serving in an internship which is required in order that I may receive professional recognition required to begin my professional practice or service.

(D) The Lending Institution may, upon my application, defer or reduce any scheduled repayments if, in its opinion, extraordinary circumstances, such as prolonged illness or unemployment, prevent me from making such repayments. However, interest will continue to accrue.

Cancellation for Teaching

(4) I am entitled to have the entire amount of this loan plus the interest thereon cancelled if I undertake service.

(A) as a full-time teacher in a public or other non-profit elementary or secondary school which is in a school district of a local educational agency which is eligible for funds under Title I of the Elementary and Secondary Education Act of 1965 and which has been designated by the Secretary in accordance with the provisions of Section 465(a)(2) of the Higher Education Act as a school with a high enrollment of students from low-income families, or

(B) as a full-time teacher of handicapped children (including mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, children with specific learning disabilities, or other health impaired children who by reason thereof require special education and related services) in public or other nonprofit elementary or secondary school system.

This loan will be cancelled at the following rates: 15 percent of the total principal amount of the loan plus interest on the unpaid balance will be cancelled for the first and second complete academic years of that teaching service; 20 percent of the total principal amount plus interest on the unpaid balance for the third and fourth complete academic years of that teaching service; and 30 percent of the total principal amount plus interest on the unpaid balance for the fifth complete academic year of that teaching service.

Head Start Cancellation

(5) I am entitled to have the entire amount of this loan plus the interest thereon cancelled if I undertake service as a full-time staff member in a Head Start program if

(A) that Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) my salary is not more than the salary of a comparable employee of the local educational agency.

Cancellation will be at the rate of 15 percent of the total principal amount plus the interest on the unpaid balance for each complete school year or the equivalent of service in a Head Start program.

Head Start is a preschool program carried out under section 222(a)(1) of the Economic Opportunity Act of 1964.

Military Cancellation

(6) If I serve as a member of the Armed Forces of the United States, up to 50 percent of the principal amount of this loan plus the interest thereon will be cancelled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance for each complete year of service in an area of hostilities that qualifies for special pay under section 310 of title 37 of the United States Code.

Death and Disability Cancellation

(7) If I should die or become permanently and totally disabled, the entire amount of this loan plus the interest thereon shall be cancelled.

Address Change

(8) I am responsible for informing the Lending Institution of any change or changes in my address.

Penalty Charge

(Bracketed paragraphs may be included at option of institution)

[(9) If I fail to make timely payment of all or any part of a scheduled installment, or if I am eligible for deferment or cancellation under paragraphs III (3), (4), (5), or (6), but fail to submit the appropriate request on time, I promise to pay the charge assessed against me by the Lending Institution.

No charge may exceed (1) where the loan is repayable in monthly installments, $1 for the first month or part of a month by which the installment or evidence is late, and $2 for each month or part of a month thereafter; or (2) in the case of a loan which is repayable in bimonthly or quarterly installments, $3 and $6, respectively, for each installment interval or part thereof by which the installment or evidence is late.

If the Lending Institution elects to add the assessed charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.]

Assignment

IV. This note may be assigned by the Lending Institution only (A) to another institution upon my transfer to that institution if that institution is participating in this program (or, if not so participating, is eligible to do so and is approved by the Secretary for that purpose) or (B) to the United States or to an institution approved by the Secretary. The provisions of this note that relate to the Lending Institution shall, where appropriate, relate to an assignee.

Prior Loans

V. I hereby certify that I have listed below all of the National Direct Student Loans (or National Defense Student Loans) I have obtained at other institutions. (If no prior loans have been received, state "None.")

Schedule of National Direct Student Loans and National Defense Student Loans at other institutions

	Amount	Date	Institution
1	$		
2	$		
3	$		
4	$		

VI. Schedule of Advances

	Amount	Date	Signature of maker
1	$		
2	$		
3	$		
4	$		

Signature _____

Date _____, 19__

Permanent address _____

(Street or Box Number, City, State, and Zip Code)

Caveat—This note is to be executed without security and without endorsement, except that if I am a minor and this note would not, under the law of the State in which the Lending Institution is located, create a binding obligation, either security or endorsement may be required. The Lending Institution shall supply a copy of this note to me.

Signature of endorser _____

Date _____, 19__

Permanent Address _____

(Street or Box Number, City, State, and Zip Code)

Appendix C.—*Example for Computing Penalty Charges—6 mo*

	Jan. 2	Feb. 2	Mar. 2	Apr. 2	May 2	June 2	Total per payment
Monthly:							
1st past due	$1	$1–$2	$3+$2	$5+$2	$7+$2	$9+$2	$11
2d past due		1	1+2	3+2	5+2	7+2	9
3d past due			1	1+2	3+2	5+2	7
4th past due				1	1+2	3+2	5
5th past due					1	1+2	3
6th past due						1	1
Total, all payments							36
Bimonthly:							
1st past due	3		3+3		6+3		9
2d past due			3		3+3		6
3d past due					3		3
Total, all payments							18
Quarterly:							
1st past due	6			6+6			12
2d past due				6			6
Total, all payments							18

Appendix D [Reserved]

2. Part 675 of Title 34 of the Code of Federal Regulations is revised to read as follows:

PART 675—COLLEGE WORK-STUDY AND JOB LOCATION AND DEVELOPMENT PROGRAM

Subpart A—College Work-Study Program

Note: An asterisk (*) indicates provisions that are common to Part 674, 675 and 676. The use of asterisks will assure participating institutions that a provision of one regulation is identical to the corresponding provisions in the other two.

Sec.

675.1 Purpose and identification of common provisions.
675.2 Definitions.
675.3 Allotment and reallotment.
675.4 Allocation, reallocation, and payment to institutions.
675.5 Application.
675.6 Funding procedures.
675.7 Application review—approval of request.
675.8 Institutional agreement.
675.9 Student eligibility.
675.10 Special sessions.
**675.11 Cost of education attendance.
**675.12 Expected family contribution.
*675.13 Approved need analysis systems.
*675.14 Coordination of student financial aid programs, award amount, and overaward.
675.15 Coordination with BIA grants.
675.16 Payments to students.
*675.17 Federal interest in allocated funds.
675.18 Use of funds.
675.19 Fiscal procedures and records.
675.20 Maintenance of effort.
675.21 Transfer of funds.
675.22 Project eligibility.
675.23 Eligible jobs.
675.24 Establishment of wage rates under CWS.
675.25 Earnings applied to cost of attendance.
675.26 CWS Federal share limitations.
675.27 Nature and source of institutional share.
675.28 Community service learning program.

Sec.

675.1 Purpose and identification of common provisions.
675.2 Definitions.
675.3 Allotment and reallotment.
675.4 Allocation, reallocation, and payment to institutions.
675.5 Application.
675.6 Funding procedures.
675.7 Application review—approval of request.
675.8 Institutional agreement.
675.9 Student eligibility.
675.10 Special sessions.
**675.11 Cost of education attendance.
**675.12 Expected family contribution.
*675.13 Approved need analysis systems.
*675.14 Coordination of student financial aid programs, award amount, and overaward.
675.15 Coordination with BIA grants.
675.16 Payments to students.
*675.17 Federal interest in allocated funds.
675.18 Use of funds.
675.19 Fiscal procedures and records.
675.20 Maintenance of effort.
675.21 Transfer of funds.
675.22 Project eligibility.
675.23 Eligible jobs.
675.24 Establishment of wage rates under CWS.
675.25 Earnings applied to cost of attendance.
675.26 CWS Federal share limitations.
675.27 Nature and source of institutional share.
675.28 Community service learning program.

Subpart B—Job Location and Development Program

675.31 Purpose.
675.32 Federal contribution allowed.
675.33 Allowable costs.
675.34 Federal share of allowable costs.
675.35 Institutional share.
675.36 Multi-institutional job location and development project; arrangements with nonprofit organizations.
675.37 Restrictions.
675.38 Agreement.
675.39 Maintenance of effort.
675.40 Procedures and records.
675.41 Termination and suspension.
Appendix A—Allotment of funds to States for fiscal year 1972.
Appendix B—Model off-campus agreement.

Authority: Sec. 441–448 of Pub. L. 89–329, Title IV, 79 Stat. 1219, as amended (42 U.S.C. 2751–2756b), unless otherwise noted.

Subpart A—College Work-Study Program

§ 675.1 Purpose and identification of common provisions.

(a) The College Work-Study Program (CWS) provides part-time employment to students attending institutions of higher education who need the earnings to help meet their costs of postsecondary education.

(b) Provisions in these regulations that are common to all campus-based regulations are identified with an asterisk.

(42 U.S.C. 2751–2756b unless otherwise noted)

§ 675.2 Definitions.

The following definitions are contained in Subpart A of the Student Assistance General Provisions, 34 CFR Part 668;

Ability to benefit;

Institution of higher education (including public or private nonprofit institution of higher education, proprietary institution of higher education, and postsecondary vocational institution);

One-year training program;

Recognized equivalent of a high school diploma; and

Six-month training program.

Other definitions used in this part are:

Academic year: A period of time in which a full-time student is expected to complete—

(a) The equivalent of at least 2 semesters, 2 trimesters, or 3 quarters at an institution using credit hours; or

(b) At least 900 clock hours of training for each program at an institution using clock hours.

Act: Title IV–C of the Higher Education Act of 1965 (HEA).

Award year: The period of time between July 1 of one year and June 30 of the following year.

Campus Based Programs: (a) The National Direct Student Loan Program (NDSL–34 CFR Part 674);

(b) The College Work-Study Program (CWS–34 CFR Part 675); and

(c) The Supplemental Educational Opportunity Grant Program (SEOG–34 CFR Part 676).

Clock Hour: The equivalent of—

(a) A 50 to 60 minute class, lecture, or recitation; or

(b) A 50 to 60 minute faculty supervised laboratory, shop training, or internship.

Cooperative Education Program: A program authorized by Title VIII of the Higher Education Act.

Dependent student: A student who does not qualify as an independent student (see independent student).

Eligible program: A program of education or training that—

(a) Admits as regular students only persons who—

(1) Have a high school diploma;

(2) Have a General Education Certificate (GED) or a State certificate received after passing a State authorized examination which the State recognizes as the equivalent of a high school diploma; or

(3) Are beyond the age of compulsory school attendance in the State in which the institution is located, and have the ability to benefit from the education or training offered.

(b)(1) Leads to a bachelor, associate, undergraduate, graduate or professional degree;

(2) Is at least a 2 year program that is acceptable for full credit toward a bachelor degree;

(3) Is at least a 1 year program leading to a certificate or degree that prepares a student for gainful employment in a recognized occupation; or

(4) Is, for a proprietary institution or a postsecondary vocational institution, at least a six-month program leading to a certificate or degree which prepares students for gainful employment in a recognized occupation.

Expected family contribution: The amount a student and his or her spouse and family are expected to pay toward his or her cost of attendance.

Financial need: The difference between a student's cost of attendance and his or her expected family contribution.

Graduate or professional student: A student enrolled in an academic program of study above the baccalaureate level at an institution of higher education, including—

(a) A program leading to a first professional degree if the institution requires at least 3 years of study at the college level for entrance into the program; and

(b) The fifth and later years of any program requiring more than 4 years of study at the college level.

Guaranteed Student Loan Program (GSL): The student loan program authorized by Title IV–B of the HEA.

(20 U.S.C. 1071 et seq.)

Half-time graduate or professional student: An enrolled graduate or professional student who is carrying a half-time academic work load as determined by the institution according to its own standards and practices.

Half-time undergraduate student: An enrolled undergraduate student who is carrying a half-time academic work load as determined by the institution according to its own standards and practices. However, the institution's half-time standards must equal or exceed the equivalent of the following minimum requirements:

(a) 6 semester hours or quarter hours per academic term in an institution using standard semester, trimester, or quarter systems.

(b) 12 semester hours or 18 quarter hours per academic year for an institution using credit hours to measure progress, but not using a standard semester, trimester, or quarter system, or the prorated equivalent for a program of less than 1 year.

(c) 12 clock hours per week for an institution using clock hours.

(d) 12 clock hours of preparation per week for a student enrolled in a program of study by correspondence.

Independent student (effective through June 30, 1981):

(a) A student who for 1979 and 1980—

(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by his or her parent(s);

(2) Has not received and will not receive financial assistance of more than $750 in each year from his or her parent(s); and

(3) Has not lived and will not live for more than six weeks in each year in the home of his or her parent(s).

(b) If a student's mother and father are divorced or separated, only one parent will be considered to be the parent of the student for purposes of applying the criteria in paragraph (a) of this section.

To determine that parent—

(1) Choose the parent with whom the student resided for the greater portion of the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(2) If the preceding criterion does not apply, choose the parent who provided the greater portion of the student's support for the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(3) If neither of the preceding criteria apply, choose the parent who provided the greater support for the period commencing January 1 of the calendar year which immediately precedes the first calendar year of the award period and ending 12 months prior to the date of application to have an expected family contribution determined under an approved need analysis system.

(c) If either of the parents have died, the institution shall consider only the surviving parent as the parent for purposes of applying the criteria in paragraph (a) of this definition. If both parents have died, the institution shall not consider either parent.

Independent student (effective July 1, 1981 through June 30, 1982):

(a) A student who for 1980 and 1981—

(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by his or her parent(s);

(2) Has not received and will not receive financial assistance or more than $1,000 in each year from his or her parent(s); and

(3) Has not lived and will not live for more than six weeks in each year in the home of his or her parent(s).

(b) If a student's mother and father are divorced or separated, only one parent will be considered to be the parent of the student for purposes of applying the criteria in paragraph (a) of this section. To determine that parent—

(1) Choose the parent with whom the student resided for the greater portion of the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(2) If the preceding criterion does not apply, choose the parent who provided the greater portion of the student's support for the 12 month period preceding the date of application to

have an expected family contribution determined under an approved need analysis system.

(3) If neither of the preceding criteria apply, choose the parent who provided the greater support for the period commencing January 1 of the calendar year which immediately precedes the first calendar year of the award period and ending 12 months prior to the date of application to have an expected family contribution determined under an approved need analysis system.

(c) If either of the parents have died, the institution shall consider only the surviving parent as the parent of the student. If both parents have died, the institution shall not consider either parent.

**Legal guardian:* An individual appointed by a court to be a legal guardian of a person and who is specifically required by the court to use his or her financial resources to support that person.

National Direct Student Loan Program (NDSL): The student loan program authorized by Title IV–E of the HEA

(20 U.S.C. 1087aa–1087ii)

**National of the United States:* A citizen of the United States or a noncitizen who owes permanent allegiance to the United States.

(8 U.S.C. 1101(a)(22))

**Nonprofit institution:* An institution owned and operated by one or more nonprofit corporations or associations where no part of the net earnings of the institution benefits any private shareholder or individual.

(20 U.S.C. 1141(c))

**Parent:* Parent means the student's mother, father, or legal guardian. An adoptive parent is considered to be the student's mother or father.

**Parent Loans for Undergraduate Students Program (PLUS):* The parent loan program authorized by Title IV–B of the HEA.

**Payment period:* A semester, trimester, or quarter. For an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of an academic year. A payment period is not the payroll period discussed in § 675.16.

**Pell Grant Program:* The grant program, formerly known as the Basic Educational Opportunity Grant Program, authorized by Title IV A–1 of the HEA.

**Regular student:* A person who is enrolled or accepted for enrollment, in an eligible program at an institution of higher education for the purpose of obtaining a degree or certificate.

**Secretary:* The Secretary of the Department of Education, or an official or employee of the Department acting for the Secretary under a delegation of authority.

**State:* The States of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(20 U.S.C. 1141(b))

**State Student Incentive Grant Program (SSIG):* The program authorized by Title IV–A–3 of the HEA.

(20 U.S.C. 1070c et seq.)

Supplemental Educational Opportunity Grant Program (SEOG): The grant program authorized by Title IV–A–2 of the HEA.

(20 U.S.C. 1070b *et. seq.)*

(42 U.S.C. 2751–2756b, unless otherwise noted)

§ 675.3 Allotment and reallotment.

(a) *Initial allotment.* The Secretary allots one percent of the CWS appropriation according to section 442(a) of the Act. The Secretary allots an additional amount according to section 442(f) of the Act.

(b) *Initial allotment to States.* (1) The Secretary allots 90% of the amount remaining according to the Act, 442(b). (If necessary the Secretary allots additional amounts to each State to make that State's allotment equal to its allotment for fiscal year 1972. The 1972 allotments are shown in Appendix A.)

(2) The Secretary allots the remaining amount so that each institution in each State receives the CWS funds computed under §§ 675.6 or 675.7.

(c) *Reallotment.* (1) The Secretary reallots the amount of a State's allotment that exceeds the approved requests of institutions in that State.

(2) The Secretary reallots those funds among the remaining States according to institutional need for CWS funds as computed under §§ 675.6 or 675.7.

(42 U.S.C. 2752)

§ 675.4 Allocation, reallocation, and payment to institutions.

(a) *Definition.* As used in this section and in section 675.6, "current year" means the 12-month period ending on the June 30 immediately following the closing date for filing a CWS application.

(b) *Allocation.* The Secretary distributes CWS funds according to §§ 675.6 and 675.7.

(c) *Reallocation.* (1)(i) If an institution anticipates not using all its allocated funds by the end of an award year and if it does not wish to carry those funds forward into the next award year, it must specify the anticipated unused amount to the Secretary, who reduces the institution's allocation accordingly.

(ii) Other institutions may apply for those funds on the form and at the time specified by the Secretary.

(iii) The Secretary distributes those funds to applicant institutions in accordance with paragraph (c)(2) of this section.

(2)(i) If the funds that become available under paragraph (c)(1) of this section come from the State's initial allotment under § 675.3(b)(1), the Secretary reallocates those funds equitably to other institutions in that State. The Secretary reallots those funds that are not needed to maintain the State's initial allotment, and any funds that do not come from that initial allotment, in accordance with paragraphs (c)(2) (ii), (iii), (iv), and (v) of this section.

(ii) The Secretary reallocates fifty (50) percent of any remaining funds to eligible applicant institutions to initiate, improve, or expand cooperative education programs conducted in accordance with title VIII of the HEA.

The Secretary distributes these funds to eligible applicant institutions according to the following formula:

An eligible applicant institution's share = The number of students assisted under the cooperative education program authorized by title VIII for the fiscal year enrolled in the eligible institution which applied for reallocated funds./The number of such students for such year enrolled in all eligible institutions which applied for reallocated funds. × Funds available for distribution.

(iii) The Secretary reallocates the remaining fifty (50) percent to institutions whose students have suffered financial hardships as a result of natural disasters within the preceding 12 months.

(iv) If any funds remain, the Secretary then increases awards to institutions whose awards are less than their national fair share determined under § 675.6. The Secretary calculates each applicant's increase as follows:

Institution's remaining shortfall/remaining shortfall of all applicants for reallocation × remaining amount available for reallocation

(An institution's remaining shortfall is the difference between its national fair share (see § 675.6(g)(4)) and its award calculated in § 675.6 and this section through paragraph (c)(2)(iii).)

(v) If any funds still remain, the Secretary reallocates the funds in a manner that best carries out the purposes of this part.

(d) *Payments to institutions.* The Secretary allocates funds for a specific period of time. The Secretary pays funds to an institution in advance or by reimbursement. The Secretary bases the amount to be paid on periodic fiscal reports.

(42 U.S.C. 2752 and 2756.)

§ 675.5 Application.

(a) To participate in the CWS program, an institution must file an application with the Secretary before an annually established closing date.

(b) The application must be on a form approved by the Secretary and contain information needed to determine the institution's allocation under § 675.6 and 675.7.

(c) The application must contain the information needed to determine whether the institution is complying with the maintenance of effort requirements under § 675.20.

(42 U.S.C. 2756)

§ 675.6 Funding procedure.

(a) *General.* (1) Each institution applying for CWS funds receives an amount computed in the following three stages:

(i) A "conditional guarantee";

(ii) A State increase based on its "fair share" of the State apportionment; and

(iii) A national increase based on its "fair share" of the national appropriation.

(2) Definitions—As used in this section—

(i) "Base year" means the 12-month period ending on the June 30 preceding the closing date for filing a CWS application;

(ii) "Current year" is defined in § 675.4.

(b) *Conditional guarantee.* The Secretary computes a conditional guarantee in the following way:

(1) An institution that participated in the CWS program in the base year receives a conditional guarantee equal to its 1979–80 award year expenditures unless it suffers a substantial decline in enrollment.

(2) An institution applying to participate in the CWS program for the first time receives a conditional guarantee equal to the greater of—

(i) $5,000; or

(ii) 90 percent of the average CWS base year expenditure per student in eligible institutions offering comparable programs of instruction, multiplied by the applicant institution's base year enrollment.

(3) An institution applying to participate in the CWS program for the second time receives a conditional guarantee equal to the greatest of—

(i) $5,000;

(ii) 90 percent of the average CWS base year expenditure per student in eligible institutions offering comparable programs of instruction, multiplied by the applicant institution's base year enrollment; or

(iii) 90 percent of its current year allocation.

(c) *Self-help need of an institution.* (1) The Secretary allocates additional funds to an institution under paragraph (f) (State increase) and paragraph (g) (National increase) based in part on the institution's self-help need. Self-help need is the need for funds from work and loan sources. The institution's self-help need is the sum of the self-help need of its eligible graduate students and the self-help need of its eligible undergraduate students.

(2) The Secretary calculates the self-help need of an institution's eligible graduate students in accordance with paragraph (d) of this section and the self-help need of its eligible undergraduate students in accordance with paragraph (e) of this section.

(3) As used in paragraphs (d) and (e) of this section:

(i) *Average cost of attendance* means the attendance costs for undergraduate and graduate students. These costs include tuition, fees, standard living expenses, books, and supplies. (The institution reports its total tuition and fee revenues, and the Secretary uses this amount to determine the average cost of attendance.)

(ii) *Eligible students* means for award year 1981–82 students who—

(A) Were enrolled as regular students in good standing on at least a half-time basis in an eligible program during the base year;

(B) Met program regulation requirements for citizenship or residency in the United States for the base year; and

(C) Applied for financial assistance for the base year, and for whom the institution has on file taxable and non-taxable income data and all the other information necessary to perform a needs analysis using a methodology approved by the Secretary.

(d) *Self-help need of eligible graduate students.* To determine the self-help need of an institution's eligible graduate students, the Secretary—

(1) Establishes various income categories for dependent and independent graduate students;

(2) Establishes an expected family contribution (EFC) for each income category of dependent and independent graduate students, using a need analysis method approved under § 675.13;

(3) Determines the average cost of attendance for all graduate students;

(4) Subtracts from the average cost of attendance for all graduate students, the computed EFC for each income category of dependent students and each income category of independent students. However, the average cost of attendance minus the EFC for any income category may not be less than zero;

(5) Multiplies those amounts by the number of eligible students in each category;

(6) Adds the amounts obtained for each income category of dependent students and each income category of independent students; and

(7) Totals those two amounts.

(e) *Self-help need of eligible undergraduate students.* To determine the self-help need of an institution's eligible undergraduate students, the Secretary—

(1) Establishes various income categories for dependent and independent undergraduate students;

(2) Establishes an EFC for each income category of dependent and independent undergraduate students, using a need analysis method approved under § 675.13;

(3) Computes 25 percent of the average cost of attendance for all undergraduate students;

(4) Multiplies the number of eligible dependent students in each income category by the lesser of—

(i) 25 percent of the average cost of attendance for all undergraduate students; or

(ii) The average cost of attendance for all undergraduate students minus the EFC determined under paragraph (e)(2) of this section for that income category. However, the average cost of attendance minus the EFC may not be less than zero;

(5) Adds the amounts obtained for each income category of dependent students;

(6) Multiplies the number of eligible independent students in each income category by the lesser of—

(i) 25 percent of the average cost of attendance of all undergraduate students; or

(ii) The average cost of attendance for all undergraduate students minus the EFC determined under paragraph (e)(2) of this section for that income category. However, the average cost of attendance minus the EFC may not be less than zero;

(7) Adds the amounts obtained for each income category of independent students; and

(8) Adds the amounts obtained under paragraphs (e) (5) and (7) of this section.

(f) *State increase.* (1) For any year the Secretary increases awards to institutions in a State ("State increase") if the combined conditional guarantees of all institutions in that State are less than the State's allotment under § 675.3.

(2) The Secretary calculates an institution's State increase according to the following formula—

Institution's State increase = its State shortfall/State shortfalls of all institutions in State × CWS funds available for State shortfall

(3) As used in the formula in paragraph (f)(2) of this section—

(i) "CWS funds available for State shortfall" is calculated by subtracting from the State allotment, the conditional guarantees of all institutions in the State.

(ii) An institution's "State shortfall" is calculated by subtracting from an institution's State fair share its conditional guarantee.

(iii) An institution's "State fair share" is calculated as follows—

Institution's State fair share = its self-help need/self-help need of all institutions in the State applying for CWS funds × State allotment for CWS

(g) *National increase.* (1) For any year the Secretary will further increase awards to institutions ("national increase") if the sum of the conditional guarantees and State increases awarded to institutions is less than the CWS appropriation for that year.

(2) The Secretary calculates an institution's national increase according to the following formula—

Institution's national increase = its national shortfall/national shortfall of all institutions × CWS funds available for national shortfall

(3) As used in the formula in paragraph (g)(2) of this section—

(i) "CWS funds available for national shortfall" is calculated by subtracting from the CWS appropriation the conditional guarantees and State increases of all institutions.

(ii) An institution's national shortfall is calculated by subtracting from its "national fair share", its conditional guarantee and State increase.

(4) An institution's "national fair share" is calculated as follows—

Institution's national fair share = its self-help need/self-help need of all institutions applying for CWS × CWS appropriation

(h) No institution may receive more CWS funds than it requests.

(42 U.S.C. 2756)

The following charts show the income categories and calculations for eligible graduate students and for eligible undergraduate students:

Determination of Self-Help Need for Eligible Dependent Graduate Students

1	2	3	4	5	6
Income	Expected family contribution	Average cost	Average cost less expected family contribution	Number of eligible students	Self-help need, col. 4 × col. 5

Determination of Self-Help Need for Eligible Dependent Graduate Students

0 to $2,999	
$3,000 to $5,999	
$6,000 to $8,999	
$9,000 to $11,999	
$12,000 to $14,999	
$15,000 to $17,999	
$18,000 to $20,999	
$21,000 to $23,999	
$24,000 to $26,999	
$27,000 to $29,999	
$30,000 to $32,999	
$33,000 to $35,999	
$36,000 to $38,999	
$39,000 to $41,999	
$42,000 to $44,999	
$45,000 and over	$
7 Total self-help need for dependent graduate students	4

Determination of Self-Help Need for Eligible Independent Graduate Students

0 to $999	
$1,000 to $1,999	
$2,000 to $2,999	
$3,000 to $3,999	
$4,000 to $4,999	
$5,000 to $5,999	
$6,000 to $6,999	
$7,000 to $7,999	
$8,000 to $8,999	
$9,000 to $9,999	
$10,000 to $10,999	
$11,000 to $11,999	
$12,000 to $12,999	
$13,000 to $13,999	
$14,000 to $14,999	
$15,000 and over	
7 Total self-help need for independent graduate students	$

Summary

1 Total self-help need for dependent graduate students	$
2 Total self-help need for independent graduate students	$
3 Total self-help need for all graduate students (1 + 2)	$

Determination of Self-Help Need for Eligible Dependent Undergraduate Students

1	2	3	4	5	6
Income	Expected family contribution	25 pct × average cost	Average cost less expected family contribution	Number of eligible students	Need: Lesser of col. 3 × col. 5 or col. 4 × col. 5
0 to $2,999					
$3,000 to $5,999					
$6,000 to $8,999					
$9,000 to $11,999					
$12,000 to $14,999					
$15,000 to $17,999					
$18,000 to $20,999					
$21,000 to $23,999					
$24,000 to $26,999					
$27,000 to $29,999					
$30,000 to $32,999					
$33,000 to $35,999					
$36,000 to $38,999					
$39,000 to $41,999					
$42,000 to $44,999					
$45,000 and over					
7 Total self-help need for dependent undergraduate students					$

Determination of Self-Help Need for Eligible Independent Undergraduate Students

0 to $999					
$1,000 to $1,999					
$2,000 to $2,999					
$3,000 to $3,999					
$4,000 to $4,999					
$5,000 to $5,999					
$6,000 to $6,999					
$7,000 to $7,999					
$8,000 to $8,999					
$9,000 to $9,999					
$10,000 to $10,999					
$11,000 to $11,999					
$12,000 to $12,999					
$13,000 to $13,999					
$14,000 to $14,999					
$15,000 and over					
7 Total self-help need for independent undergraduate students					$

Summary

1 Total self-help need for dependent undergraduate students	$
2 Total self-help need for independent undergraduate students	$
3 Total self-help need for all undergraduate students (1 + 2)	$

§ 675.7 Application review—approval of request.

(a) An institution may request a review of the amount it is scheduled to receive under § 675.6.

(b) A National Review Panel appointed by the Secretary reviews each institution's request. The panel consists of student financial aid administrators and Education Department personnel.

(c) In setting an award amount, the Secretary considers the panel's recommendations and its reasons for the recommendations.

(d) The Secretary sets an award amount based on procedures in § 675.6 and the review panel's recommendations.

(42 U.S.C. 2756)

§ 675.8 Institutional agreement.

To participate in the CWS program, an institution of higher education must enter into an agreement with the Secretary. The agreement provides that the institution will—

(a) Use the funds it receives solely for the purposes specified in this part;

(b) Administer the CWS program in accordance with The Act, the provisions of this part and the Student Assistance General Provisions, 34 CFR Part 668;

(c) Make non-CWS institutional jobs reasonably available to the extent of available funds to all students in the institution who want to work; and

(d) Award CWS employment, to the maximum extent practicable, which will complement and reinforce each recipient's educational program or career goals.

(42 U.S.C. 2753 and 20 U.S.C. 1094)

§ 675.9 Student eligibility.

(a) *Eligibility.* A student at an institution of higher education is eligible for part-time employment under CWS if the student—

*(1) Is a regular student;

(2) Is enrolled or accepted for enrollment in an eligible program as a graduate or undergraduate student at that institution;

*(3) (i) Is a U.S. citizen or National;

(ii) Is a permanent resident of the U.S.;

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands;

*(4) Has financial need;

*(5) Is maintaining satisfactory progress in the course of study he or she is pursuing according to the standards and practices of that institution;

*(6) Does not owe a refund on a Pell Grant, Supplemental Grant, or State Student Incentive Grant received to meet the cost of attending that institution; and

*(7) Is not in default on any National Defense/Direct Student Loan, Guaranteed Student Loan, or Parent Loans for Undergraduate Students received to meet the cost of attending that institution.

*(b) *Member of a religious order—financial need.* The Secretary considers that a member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education has no financial need if that religious order—

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) (i) Directs the member to pursue the course of study; or

(ii) Provides subsistence support to its members.

(c) *Institutional responsibility for determining eligibility.* The institution is responsible for determining the eligibility of the students participating in its program whether the students work on- or off-campus.

(d) *Selection.* (1) An institution may use not more than 10 percent of its allocation to pay the compensation of

eligible students who are enrolled as less than half-time students.

(2) An institution must make employment under CWS reasonably available (to the extent of available funds) to all eligible students who demonstrate need.

(3) The institution's selection procedures must be—

(i) Uniformly applied;

(ii) In writing; and

(iii) Maintained in the files of the student financial assistance office.

(4) The institution must maintain on file all CWS employment applications for the period specified in § 675.19(c)(2).

(e) *Determination of satisfactory progress.* (1) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses itself BEFORE the end of the payment period, the institution may give a CWS job to the student for the entire period.

(2) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses itself AFTER the end of the payment period, the institution may NOT provide the student employment for that period OR make adjustments in subsequent financial aid payments to compensate for the loss of aid for that period.

(f) *Overpayment of grants.* Conditions under which an institution may allow a student who is overpaid a grant to continue his or her CWS job:

(1) *Overpayment of a Pell Grant.* If an institution makes an overpayment of a Pell Grant to a student, it may continue to employ that student if—

(i) The student is otherwise eligible; and

(ii) It can eliminate the overpayment in the award year in which it occurred by adjusting the subsequent Pell Grant payments for that award year.

(2) *Overpayment of a Pell Grant due to institutional error.* If the institution makes an overpayment of a Pell Grant as a result of its own error and cannot correct it as specified in subparagraph (1), it may continue to make payments to that student if the student—

(i) Is otherwise eligible; and

(ii) Acknowledges in writing the amount of overpayment and agrees to repay it in a reasonable period of time.

(3) *Overpayment of an SEOG.* An institution may continue to employ a student who receives an overpayment on an SEOG if—

(i) The student is otherwise eligible; and

(ii) It can eliminate the overpayment by adjusting financial aid payments (other than Pell Grants) in the same award year in which the overpayment occurred.

(4) *Definition.* Overpayment of a grant means that a student's grant payments are greater than the amount he or she is entitled to receive.

(g) *Default on loans.* Conditions under which an institution may provide CWS employment to a student who is in default on loans made for attendance at that institution:

(1) *Guaranteed loan and Parent Loans for Undergraduate Students (PLUS).* An institution may provide CWS employment to a student who is in default on a Guaranteed Student Loan or a PLUS if the Secretary (for a Federally insured loan) or a guarantee agency (for a loan insured by that guarantee agency) determines that the student has made satisfactory arrangements to repay the defaulted loan.

(2) *National Defense/Direct Student Loan.* An institution may provide CWS employment to a student who is in default on a National Defense/Direct Student Loan made at that institution if the student has made arrangements, satisfactory to the institution, to repay the loan.

(h) *Bankruptcy.* The Secretary considers a National Defense Student Loan, a National Direct Student Loan, a Guaranteed Student loan, or a PLUS that is discharged in bankruptcy to be in default for purposes of this section.

(i) *GSL/PLUS—Reliance on student's statement.* An institution, in determining whether a student is in default on a loan made under the Guaranteed Student Loan Program, or the PLUS Program, may rely upon the student's written statement that he or she is not in default unless the institution has information to the contrary.

(42 U.S.C. 2753; 20 U.S.C. 1091)

§ 675.10 Special sessions.

(a) During a special session (e.g., summer school) or during a full-time work period of a cooperative education program, a student is eligible for employment under CWS if he or she—

(1) Is otherwise eligible (see § 675.9); and

(2)(i) Was enrolled at that institution during the preceding term and will complete his or her course of study during the special session; or

(ii) Has been accepted for the subsequent term.

(b) The Secretary considers a student to be accepted for the subsequent term if the student will be studying in an eligible program of study abroad.

(c)(1) If an institution provides CWS employment to a student during a special session when the student was not enrolled during the preceding term, it must maintain a written record demonstrating—

(i) That it accepts the student for the subsequent term; and

(ii) That the student accepts its offer.

(2) The institution may not provide CWS employment to a student if it believes the student does not intend to enroll in the subsequent term.

(3) The institution must immediately terminate a student's employment if it becomes aware after employment begins that the student does not intend to enroll in the subsequent term.

(42 U.S.C. 2753)

***§ 675.11 Cost of attendance.**

(a) A student's cost of attendance includes—

(1) Tuition and fees normally assessed a full-time student at the institution at which the student is in attendance;

(2) An allowance for books, supplies, transportation, and miscellaneous personal expenses;

(3) An allowance for room and board costs incurred by the student which—

(i) Beginning in academic year 1981–82 shall be an allowance of not less than $1,100 for a student without dependents residing at home with parents;

(ii) For students without dependents residing in institutionally owned or operated housing, shall be a standard allowance determined by the institution based on the amount normally assessed most of its residents for room and board;

(iii) For all other students without dependents shall be a standard allowance determined by the institution based on the expenses reasonably incurred by the students for room and board; and

(iv) For students with dependents, shall be an allowance based on the expenses reasonably incurred by the students for room and board;

(4) For a student engaged in a program of study by correspondence, only tutition and fees and, if required, books and supplies, and travel and room and board costs incurred specifically in fulfilling a required period of residential training;

(5) For a student enrolled in an academic program which normally includes a formal program of study abroad, reasonable costs associated with that study;

(6) For a student with dependent children, an allowance based on the expenses reasonably incurred for child care; and

(7) For a handicapped student, an allowance for those expenses related to his or her handicap, including special services, transportation, equipment and supplies that are reasonably incurred

and not provided for by other assisting agencies.

(b) *Adjustments.* The institution, in individual cases, may adjust the cost of attendance if—

(1) The financial aid administrator believes the cost of attendance determined in accordance with paragraph (a) does not accurately reflect the student's actual cost of attendance; and

(2) The institution documents all adjustments in writing with an accompanying explanation and makes them part of the institution's records.

(20 U.S.C. 1089(d))

***§ 675.12 Expected family contribution.**

(a) *Dependent students.* In determining the amount a dependent student and his or her spouse and parents are expected to contribute to the student's cost of attendance, the financial aid adminstrator must consider—

(1) Any serious illness in the family. (Family members include the student, the student's parents and spouse, and any other persons the parents may claim as exemptions under the Internal Revenue Code);

(2) The number of the parents' dependent children;

(3) The number of the parents' dependent children attending institutions of higher education;

(4) Tuition costs of dependent children attending elementary and secondary schools; and

(5) Any other circumstances that could affect the ability of the student, the student's spouse, and the student's parents to contribute to his or her cost of attendance.

(b) *Independent students.* In determining the amount an independent student and spouse are expected to contribute to the student's cost of attendance, the financial aid administrator must consider—

(1) Any serious illness in the family. (Family members include the student, his or her spouse, and any other persons the student or spouse may claim as exemptions under the Internal Revenue Code);

(2) The number of the student's dependent children;

(3) The number of the student's dependent children attending institutions of higher education;

(4) Tuition costs of dependent children attending elementary and secondary schools; and

(5) Any other circumstances that could affect the ability of the student or spouse to contribute to the student's cost of attendance.

(c) *Special determination of dependent student-parent relationship.* (1) The student financial aid administrator must determine whether the relationship between a student and his or her parents makes it unreasonable to expect the parents to contribute to the student's cost of attendance, regardless of their ability to do so, if requested by a student who does not—

(i) Live with his or her parents;

(ii) Visit his or her parents for periods longer than typical for other adult family members; or

(iii) Receive gifts from his or her parents more valuable than those typically given to other adult nondependent offspring.

(2) Before determining that it is unreasonable for a parent of a dependent student to contribute to the student's attendance costs, the financial aid administrator must determine whether the student's parents are, in fact, willing to contribute toward those costs.

(3) The student financial aid administrator must make that determination part of the institution's written record.

(d) *Native American students.* To determine a Native American's expected family contribution, an institution may not consider the following as income or assets of the student or his or her family:

(1) Awards made under the Distribution of Judgment Funds Act (25 U.S.C. 1401 et seq.) or the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(2) Property that may not be sold or encumbered without the consent of the Secretary of the Interior.

(3) Any other property held in trust for the student or his or her family by the U.S. Government.

(e) *Annual determinations.* An institution must determine a student's need at least annually.

(42 U.S.C. 2753)

***§ 675.13 Approved need analysis systems.**

(a) An institution must use a Secretary approved need analysis system or calculation method in complying with the requirements in § 675.12 (expected family contribution).

(b) *Preapproved systems for dependent students.* The Secretary has approved the following systems for dependent students:

(1) The method of computing an expected family contribution used in the Pell Grant program (34 CFR Part 690).

(2) The income tax system if adjusted to reflect the number of the parents' dependent children who are attending institutions of higher education. The expected family contribution produced under this system is the sum of—

(i) The money the student is reasonably able to contribute;

(ii) The amount of Federal income tax paid by the student's parents;

(iii) 5% of the parents' net assets in excess of $17,000 if there are no farm or business assets; or

(iv) 5% of the parents' net assets in excess of $50,000 if there are farm and business assets. However, no more than $17,000 may be deducted for assets other than farm and business assets.

(c) *Criteria for other systems for dependent students.* (1) The Secretary approves other need analysis systems for dependent students that are properly submitted (see paragraph (e)), if the system produces expected family contribution figures that—

(i) Increase incrementally as the parents' financial strength, measured in constant dollars, increases;

(ii) Are equal for families of equal financial strength; and

(iii) Are within $50 of the expected family contribution figures in 75% of the sample cases supplied by the Secretary.

(2) The Secretary computes the sample cases by:

(i) Deducting from the sum of the parents' adjusted gross income and nontaxable income—

(A) The amount of Federal income taxes and social security taxes;

(B) An 8% allowance on total income for State and local taxes; and

(C) A family maintenance allowance (excluding the student during the academic year) using Department of Labor estimates at a low standard of living;

(ii) Adding to this remainder, 12% of the net market value of the parents' assets, after deducting a standard asset reserve; and

(iii) Applying a rate schedule that the Secretary will publish annually with the sample cases.

(3)(i) In developing sample cases, the Secretary selects cases where the main wage earner is 45 years of age.

(ii) The Secretary does not select cases that involve medical and dental expenses, casualty and theft losses, housekeeping allowances, farm or business assets, more than one family member attending a postsecondary institution as an undergraduate, social security or veteran's benefits, or any unusual circumstances.

(4) In comparing figures from systems submitted for approval with figures from sample cases, the Secretary treats an expected parental contribution of less than zero as zero.

(5) In order to insure measurement in constant dollars, the Secretary revises

sample case figures for inflation annually by adjusting—

(i) Deductions for family maintenance;

(ii) The standard deduction from assets; and

(iii) The rate of contribution from income and assets.

(d) *Systems for independent students.* The Secretary approves the following systems for independent students:

(1) The method of computing an expected family contribution used in the Pell Grant program (34 CFR Part 690).

(2) The systems of need analysis for independent students published by those organizations approved for dependent students under paragraph (c).

(e) *Application procedures for system approval.* (1) An organization or individual wishing to have a system for dependent students approved must also submit a system for independent students. Both systems must be submitted to the Secretary by June 30.

(2) The Secretary lists approved systems in the **Federal Register** by the following September 1.

(3) Applications for approval must include—

(i) Information the Secretary needs to determine whether or not the system meets the requirements of paragraph (c); and

(ii) The expected family contribution amounts produced by that system for the sample cases.

(f) *Duration of approval.* (1) There is no specified expiration date for need analysis systems for dependent students approved under paragraph (b).

(2) An institution may use the need analysis systems for dependent and independent students approved under paragraphs (c) and (d) to determine student eligibility and amount of assistance under Campus Based Programs for an academic year that begins—

(i) No earlier than the following June 1; or

(ii) No later than 12 months after that June 1 date.

(g) *Adjustments.* The institution, in individual cases, may further adjust expected family contributions computed according to one of the approved systems if—

(1) The student financial aid administrator believes the expected family contribution does not accurately reflect the student's (or parent's) ability to contribute; and

(2) The institution documents all adjustments in writing with an accompanying explanation and makes them part of the institution's records.

(42 U.S.C. 2753)

***§ 675.14 Coordination of student financial aid programs, award amount, and overaward.**

(a) *Coordinating official.* An institution must appoint a coordinating official for its CWS and other Federal and non-Federal student financial aid programs.

(b) *Overaward prohibited, general rule.* (1) An institution may not award CWS assistance to a student if the CWS, when combined with all other resources, exceeds the student's financial need. The institution, however, does NOT violate this rule if—

(i) The student receives additional funds after the institution awards aid, and total resources exceed his or her financial need by $200 or less by the end of the academic year; or

(ii) The student earns more money from employment than the institution anticipated when it awarded the CWS, and it treats the earnings in accordance with paragraph (c) (prevention of overaward).

(2) A student's financial need may not exceed his or her cost of education.

(3) If a student's resources exceed his or her need by more than $200, and the excess is not from employment, the overaward is the amount that exceeds the $200.

(c) *Prevention of overaward by treatment of earnings.* An institution must take the following steps when it learns that a CWS recipient has earned, or will earn, more than $200 over his or her financial need:

(1) It must decide whether the student needs the money to pay for necessary additional attendance costs, unanticipated when it awarded financial aid to the student. If the student does, no further action is necessary.

(2) If the student's earnings still exceed need by $200 or more after the institution subtracts any additional costs, it must cancel any unpaid loan or grant (other than Pell Grants) to avoid exceeding need by more than $200.

(3) If the student's earnings still exceed his or her need by more than $200 after the institution takes the steps required in the two preceding subparagraphs, and the student is enrolled for the next academic year, the institution must use the amount that exceeds $200 as—

(i) A resource to help pay the student's cost of attendance in the following year; or

(ii) A substitute for the student's expected family contribution for the current year unless a GSL or PLUS is used for that purpose.

(4) If the student's earnings still exceed his or her need by more than $200 after the institution takes the steps required in subparagraphs (1) and (2), and the student is NOT enrolled for the next academic year, no further action is necessary.

(d) *Resources.* The Secretary considers that "resources" include, but are not limited to, any—

(1) Funds the student is entitled to receive from a Pell Grant, regardless of whether the student applies for it;

(2) Waiver of tuition and fees;

(3) Scholarship or grant, including a SEOG or athletic scholarship;

(4) Fellowship or assistantship;

(5) Insurance programs for the student's education, including any social security educational benefits not included in computing EFC;

(6) GSL or PLUS as indicated under paragraph (e);

(7) Long-term loans, including NDSL but excluding GSL, and PLUS, made by the institution;

(8) Net earnings from employment, including any part of an independent student's net earnings not included as part of the student's EFC. ("Net earnings" means gross earnings minus taxes and job related costs); and

(9) Veterans benefits (except that part included as part of the student's EFC).

(e) *Treatment of Guaranteed Student Loans (GSL) and Parent Loans for Undergraduate Students (PLUS).* (1) A student may use a GSL or a PLUS as a substitute for his or her expected family contribution.

(2) However, if the loan amounts under one or both of these programs exceeds the student's expected family contribution, the Secretary considers the excess to be a resource.

(f) *Administrative responsibility.* (1) An institution is responsible ONLY for the resources it—

(i) Makes available to its students;

(ii) Knows about; or

(iii) Can reasonably anticipate at the time it awards CWS assistance to the student.

(2) An institution must take reasonable steps to stay informed about the earnings of a student employed outside the institution.

(g) The provisions of paragraph (b) of this section are retroactive to October 12, 1976.

(42 U.S.C. 2753)

§ 675.15 Coordination with BIA grants.

*(a) To determine the amount of CWS compensation for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution must prepare a package of student aid—

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible for a BIA education grant.

*(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

*(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted and may be deducted only from the other assistance, not the BIA education grant.

(2) The institution must deduct the excess in the following sequence: loans, work-study awards, and grants other than Pell Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

*(d) To determine the financial need of a BIA-eligible student, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(42 U.S.C. 2753)

§ 675.16 Payment to students.

(a)(1)(i) An institution must pay a student at least once a month. The Federal share of each payment must be paid to the student by check, or similar instrument, that the student can cash on his or her own endorsement.

(ii) The institution may not directly transfer the Federal share of any payment to the student's account at the institution or elsewhere to pay expenses or bills.

(2) Regardless of who employs the student, the institution is responsible for ensuring that the student is paid for work performed during the previous payroll period.

(3) A student's CWS wages are obligated when the student performs the work.

(b)(1) If an institution pays a student its share of his of her CWS wages by check, it must pay the student at the same time it pays the Federal share.

(2) If an institution pays a student its CWS share for an award period in the form of tuition, fees, services, or equipment, it must pay that share before the student's final payroll period.

(3) If an institution pays its CWS share in the form of prepaid tuition, fees, services, or equipment for a forthcoming academic period, it must give the student a statement before the close of his or her final payroll period listing the amount of tuition, fees, services, or equipment earned.

(c) Before an institution employs a student under CWS, it must—

(1) Get a written employment acceptance statement from the student; and

(2) Give the student a statement listing—

(i) The amount of the student's CWS award;

(ii) All other student financial aid it made available to the student; and

(iii) The condition that continued CWS employment depends upon the student's maintaining satisfactory academic progress as an eligible student during the academic year.

(d)(1) An institution may not pay a student College Work-Study wages unless the student files a statement of educational purpose with the institution in which the student declares that he or she will use those wages solely for educational expenses in connection with attendance at the institution.

(2) The Secretary considers the following statement as satisfying this requirement.

Statement of Educational Purpose

I declare that I will use the wages or salary I receive under the College Work-Study program solely for expenses connected with attendance at ———— (name of institution).

———— (Date)

———— (Signature)

* * * * *

(20 U.S.C. 1068g; 28 U.S.C. 1746)

(e) *Correspondence study.* A correspondence student must submit his or her first completed lesson before receiving a payment.

(f) If an institution computes a student's need using estimated data submitted before January 1 of the previous award year, the institution may not pay the student unless it verifies that information.

(42 U.S.C. 2753; 20 U.S.C. 1091)

***§ 675.17 Federal interest in allocated funds.**

Except for funds received for the administrative cost allowance (see § 675.18(b)), funds received by an institution under the CWS program are held in trust for the intended student beneficiaries. Funds may not be used or hypothecated (i.e., serve as collateral) for any other purpose.

(42 U.S.C. 2751–56)

§ 675.18 Use of funds.

(a) *General.* Funds allocated to an institution under the CWS program may only be used to—

(1) Pay the Federal share of CWS wages;

(2) Transfer to the institution's SEOG program (see § 675.21);

(3) Carry out the activities described in paragraph (b); and

(4) Meet the cost of a job location and development program under Subpart B.

(b) *Administrative cost allowance.* An institution participating in the CWS program is entitled to an administrative cost allowance.

(1) The amount of the allowance equals—

(i) Five (5) percent of the first $2,750,000 of the institution's expenditures in an award year under the CWS, SEOG, and NDSL programs; plus

(ii) Four (4) percent of its expenditures which are greater than $2,750,000 but less than $5,500,000; plus

(iii) Three (3) percent of its expenditures in excess of $5,500,000.

(2) However, for the purpose of calculating the allowance in paragraph (b)(1) this section, CWS expenditures made under the Community Service Learning program (§ 675.28) or NDSL loans that are assigned to the Secretary under section 463(a)(6)(B) of the Higher Education Act are not included.

(3) An institution must use its administrative cost allowance to offset its costs of administering the Pell Grant, CWS, SEOG, and NDSL programs. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of Subpart C of the Student Assistance General Provisions, 34 CFR Part 668.

(4)(i) In addition to the amount calculated in paragraph (b)(1) of this section, an institution's administrative cost allowance includes ten (10) percent of its expenditures under the Community Service Learning program set forth in § 675.28.

(ii) This portion of its administrative cost allowance must be taken from the institution's CWS allocation.

(iii) The institution may use this portion of its administrative cost allowance to offset the costs of administering the Pell Grant, CWS, SEOG, and NDSL programs and to pay the administrative costs of conducting its Community Service Learning program. These latter costs may include the costs of—

(A) Developing mechanisms to assure the academic quality of the student experience;

(B) Assuring student access to educational resources, expertise, and supervision necessary to achieve community service objectives; and

(C) Collaborating with public and private nonprofit agencies in the

planning and administering of these programs.

(c) An institution may carry forward and expend in the next award year up to ten (10) percent of its current award year CWS allocation.

(d) An institution may spend up to ten (10) percent of its current award year CWS allocation in and for expenses incurred in the previous award year. However, the Secretary must approve the amount of funds that may be spent in this manner.

(e) An institution may not charge any administrative expenses against its CWS allocation for an award year unless it provides CWS employment to its students for that year.

(20 U.S.C. 1096; 42 U.S.C. 2753, 2756, and 2756b.)

§ 675.19 Fiscal procedures and records.

*(a) *Fiscal procedures.* (1) In administering its CWS program, an institution must establish and maintain an internal control system of checks and balances that insures that no office can both authorize payments and disburse funds to students.

(2) If an institution uses a fiscal agent, that agent may perform only ministerial acts.

(3) A separate bank account for CWS funds is not required. However an institution must notify any bank in which it deposits CWS funds of all accounts in that bank in which it deposits Federal funds. The institution may give this notice by either—

(i) Including in the name of the account the fact that Federal funds are deposited; or

(ii) Notifying the bank in writing of the accounts in which it deposits Federal funds. The institution must retain a copy of this notice in its files.

(b) *Records and reporting.* (1) An institution must establish and maintain on a current basis financial records that reflect all program transactions. The institution must establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution must also establish and maintain program and fiscal records that—

(i) Include a certification that each student has worked and earned the amount being paid. The student's supervisor, an official of the institution or off-campus agency, must sign the certification. The certification must include—

(A) For students paid on an hourly basis, a time record showing the hours each student worked; and

(B) For all students, a statement of whether the work was performed in a satisfactory manner.

(ii) Include a payroll voucher containing sufficient information to support all payroll disbursements;

(iii) Include a noncash contribution record to document any payment of the institution's share of the student's earnings in the form of services and equipment (see § 675.27(a));

(iv) Identify each student's account and status;

(v) Show the eligibility of each student aided under the program;

(vi) Show the amount of need and how the need was met for each student;

(vii) Identify the administrator who determined the need; and

(viii) Are reconciled at least monthly.

(3) Each year an institution must submit a Fiscal-Operations Report plus other information the Secretary requires. The institution must comply with requirements to insure the information reported is accurate and must submit it on the form and at the time specified by the Secretary.

(c) *Retention of records.* (1) *Records.* Each institution must keep intact and accessible records of the receipt and expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

*(2) *Period of retention.* Except for audit questions, an institution must keep records for an award year for five years after it submits its Fiscal-Operations Reports for that year.

*(3) *Microfilm copies.* An institution may substitute microfilm copies for original records in meeting the requirements of this section.

*(4) *Audit questions.* An institution must keep records in any claim or expenditure questioned by Federal audit until resolution of any audit questions. However, the institution does not have to retain records beyond 5 years if the actions taken by the United States to recover funds are barred by the Federal statute of limitation in 28 U.S.C. 2415(b).

*(d) *Audits-Federal.* An institution must give the Secretary, the Comptroller General of the United States, or their duly authorized representatives access to the records specified in paragraphs (c) (1) and (2) and to any other pertinent books, documents, papers, and records.

*(e) *Audits—Non-Federal.* (1) An institution must audit, or have audited under its direction, CWS transactions to determine at a minimum—

(i) The fiscal integrity of financial transactions and reports; and

(ii) If those transactions are in compliance with the applicable laws and regulations.

(2) The audits must be performed in accordance with the Education Department's "Audit Guide" for student financial aid programs.

(3) The institution must have an audit performed at least once every two years unless the Secretary approves a longer interval.

(4) Each audit must cover the entire period of time since the last audit.

*(f) *Audit reports.* The institution must submit audit reports to its local regional office of the Education Department's Office of Inspector General Audit Agency. It must give the Secretary and the Inspector General access to records or other documents necessary to the audit's review.

(42 U.S.C. 2753; 20 U.S.C. 1232c)

§ 675.20 Maintenance of effort.

(a) For each award year it receives a CWS allocation, an institution must spend from its own scholarship and student financial aid program at least one-third its aid program expenditures for the 3 award years preceding the latest of the following:

(1) The effective date of any agreement required by section 443 of the College Work-Study Program (42 U.S.C. 2753) or section 407 of the Educational Opportunity Grants Program (20 U.S.C. 1067) that was in effect on June 30, 1973.

(2) The award year the institution received its first CWS allocation.

(3) The award year the institution received its first Educational Opportunity Grant Program allocation (20 U.S.C. 1061–1067, 1069).

(4) The award year the institution received its first SEOG allocation (20 U.S.C. 1070b–1070b–3) if it did not participate in the Educational Opportunity Grant Program during the 1972–1973 award year.

(b) The Secretary may waive the maintenance of effort requirements for an award year because of the following special circumstances:

(1) Fund withdrawals from outside sources (Public appropriations are not considered outside sources for public institutions).

(2) An enrollment decline if the institution continues to spend from its own scholarship and student financial aid program the average amount it spent per student during the 3-year base period.

(3) Voluntary withdrawal as a GSL lender. The Secretary waives that portion of the failure that equals one-third the amount of loans the institution made as a lender during the 3-year base period. However, to have this portion waived, the institution must arrange alternate sources of financing for its

students at least equal to the amount the Secretary waives.

(4) Termination as a GSL lender by the Secretary.

(i) The Secretary waives, for the year the institution is terminated as a lender, the portion of the failure that equals one-third the amount of loans the institution made as a lender during the 3-year base period.

(ii) The Secretary also waives, for succeeding years, the portion of the failure that equals one-third of the amount of loans the institution made as a lender during the 3-year base period if the institution arranges alternate sources of assistance for its students at least equal to the amount the Secretary waives.

(5) The Secretary considers that an institution has provided alternate sources of assistance for its students if it provides the assistance under a written agreement between the funding source and the institution.

(c) An institution, to obtain a waiver, must submit to the Secretary—

(1) A request for a waiver; and

(2) A description of circumstances justifying the waiver.

(d) An institution's "own scholarship and student financial aid program" includes—

(1) Any expenditures of its own funds for scholarships, grants, loans, tuition waivers, fee waivers, and fee remissions;

(2) The institution's employment of its graduate and undergraduate students, whether or not they are eligible for the SEOG or CWS programs; and

(3) Any funds donated to the institution for student financial aid if the institution chooses the recipients and the award amounts. However, the institution may not claim funds from Federal sources as part of its "own scholarship and student financial aid program."

(e) (1) According to an institution's stated practices, scholarships and other student financial aid given to faculty members' dependents or to institution employees may be considered as either—

(i) Student financial aid; or

(ii) Employee benefits.

(2) Fellowships and assistantships count as financial aid unless it is the institution's stated practice to consider the holders faculty members.

(3) Alternatives in subparagraphs (1) and (2) apply to both the base year period and current expenditures. Any change must have the Secretary's written approval.

(20 U.S.C. 1094)

§ 675.21 Transfer of funds.

(a) An institution may transfer up to 10% of its allocation for an award year from its CWS program to its SEOG program and vice versa. The institution must use the funds, when transferred, according to the requirements of the program to which they were transferred.

(b) An institution may use CWS funds transferred to the SEOG program for initial or continuing grants, as the institution sees fit.

(c) An institution must report any funds transferred on the Fiscal-Operations Report required under § 675.19(b).

(d) An institution shall transfer back to the SEOG program any funds unexpended at the end of the award year that it transferred to the CWS program from the SEOG program.

(20 U.S.C. 1095)

§ 675.22 Project eligibility.

(a)(1) College Work-Study employment, except for students attending a proprietary institution, may involve work—

(i) For the institution itself, i.e., the institution is the employer; or

(ii) In the public interest for a Federal, State, or local public agency or a private nonprofit organization.

(2) *Proprietary institution eligibility.* (i) CWS employment for students attending a proprietary institution may involve only work in the public interest for a Federal, State, or local public agency or for a private nonprofit organization.

(ii) A proprietary institution of higher education, for the purposes of this paragraph, also includes any nonprofit organization owned or controlled by the proprietary institution or by a corporation, association, partnership, or individual that owns or controls the proprietary institution.

(b) Work for the institution itself also includes work in those operations the institution typically performs directly for its students but sometimes contracts for if—

(1) The work contracted for is in food service, cleaning, maintenance, or security; and

(2) The contract specifies—

(i) The number of students to be employed; and

(ii) That the institution selects the students to be employed and determines each student's pay rate.

(c) *CWS employment in the public interest.* The Secretary considers work in the public interest to be work performed for the national or community welfare rather than work performed to benefit a particular interest or group. Work is NOT in the public interest if—

(1) It primarily benefits the members of a limited membership organization such as a credit union, a fraternal or religious order, or a cooperative;

(2) A student works for an elected official outside the regular administration of Federal, State, or local government; or

(3) A student's political support or party affiliation is taken into account in hiring him or her.

(d) *Non-related profitmaking activities of institutions.* (1) Employment connected with an institution's non-related profitmaking activities does not qualify as "work for the institution" or "work in the public interest." Activities conducted as part of the institution's own educational, cultural, or athletic programs are not considered "non-related."

(2) Non-related profitmaking activities include the operation or rental of athletic fields, auditoriums, theaters, and parking lots.

(3) This restriction also applies to administrative functions at the institution connected with the non-related profitmaking activities.

(e) *CWS employment limitations and conditions.* (1) CWS employment must be governed by employment conditions, including pay, that are appropriate and reasonable in terms of—

(i) Type of work;

(ii) Geographical region;

(iii) Employee proficiency; and

(iv) Any applicable Federal, State, or local law.

(2) CWS employment may not—

(i) Impair existing service contracts;

(ii) Displace employees;

(iii) Fill jobs that are vacant because the employer's regular employees are on strike;

(iv) involve the construction, operation, or maintenance of any part of a facility used or to be used for religious worship or sectarian instruction;

(v) Involve any partisan or nonpartisan political activity associated with a faction in an election for public or party office;

(vi) involve lobbying on the Federal level; or

(vii) Include employment for the Department of Education.

(f) *Agreement between an institution and an organization.* (1) The institution must enter into a written agreement with a Federal, State, or local public agency or with a nonprofit organization that employs its students. The agreement must set forth the CWS work conditions (see Appendix B for a sample agreement).

(2) The institution may enter into an agreement ONLY with a reliable agency

or organization that has professional direction and staff.

(3) The institution is responsible for insuring that—

(i) Payment for work performed under each agreement is properly documented; and

(ii) Each student's work is properly supervised in accordance with CWS requirements.

(42 U.S.C. 2753)

§ 675.23 Eligible jobs.

(a) *General.* (1) A CWS eligible job is a job that an employer normally has paid other persons to do outside the CWS program.

(2) If no other person has held that job for that employer, it must be a job for which other employers would normally pay.

(b) *Work for academic credit.* Work that is otherwise eligible is not ineligible because it satisfies a requirement for a degree or certificate.

(42 U.S.C. 2753)

§ 675.24 Establishment of wage rates under CWS.

(a) *Wage rate.* (1) Except as provided in subparagraph (2) of this paragraph, CWS compensation must be computed on an hourly wage basis for actual time on the job. Fringe benefits may not be counted as part of the wage rate. An institution may not pay a student a salary, commission, or fee.

(2) An institution may pay a graduate student it employs a salary or on an hourly wage basis, in accordance with its usual practices.

(b) *Minimum wage rate.* The minimum wage rate for a student employee under the CWS program is the current minimum wage rate required under section 6(a) of the Fair Labor Standards Act of 1938.

(42 U.S.C. 2753)

§ 675.25 Earnings applied to cost of attendance.

(a) *Attribution.* (1) The institution determines the amount of earnings from a CWS job to be applied to a student's cost of attendance (attributed earnings) by subtracting taxes and job related costs from the student's gross earnings.

(2) If a student is employed under CWS during a vacation or other period when he or she is not attending classes, the institution applies the attributed earnings to the cost of attendance for the next period of enrollment except as specified in paragraph (c).

(b) *Job related costs.* (1) Job related costs are costs the student incurs because of his or her job. Examples are uniforms and transportation to and from work. Another example is room and board during vacation periods, except as provided in paragraph (c).

(2) If a student is on an academic year budget, job related costs, including room and board during a vacation period, are the lesser of—

(i) $300; or

(ii) 20% of net earnings.

(3) If all reasonably available jobs during the vacation period require the student to exceed the job related limits in subparagraph (2), the institution may allow a higher limit up to the lesser of—

(i) $600; or

(ii) 40% of net earnings.

(c) *12-month budget.* An institution may compute a student's budget for an academic year or for 12 months. If the institution uses a 12 month budget—

(1) The student's room and board costs for the entire 12 months are a cost of attendance rather than job related costs; and

(2) The institution must compute the student's expected family contribution on a 12-month basis.

(42 U.S.C. 2753)

§ 675.26 CWS Federal share limitations.

(a)(1) The Federal share of CWS compensation paid to a student may not exceed 80%, unless the Secretary approves a higher share (see paragraph (e)).

(2) An institution may not use CWS funds to pay a student after he or she has earned $200 over his or her financial need.

(b) The institution may NOT include the following when determining the Federal share:

(1) Fringe benefits such as paid sick days, paid vacations, or paid holidays.

(2) The employer's share of social security, workmen's compensation, retirement, or any other welfare or insurance program that the employer must pay on account of the student employee.

(c) Either the institution or the student's employer may pay a student employed off-campus. The employment agreement between the institution and the employing agency or organization may require the employer to pay—

(1) The non-Federal share of the student earnings;

(2) Required employer costs such as the employer's share of social security or workmen's compensation; and

(3) The institution's administrative costs not already paid from the institution's administrative cost allowance.

(d) If an institution receives more money under an employment agreement from an off-campus employer than required employer costs, its non-Federal share, and its CWS administrative costs, excess funds must be—

(1) Used to reduce the Federal share on a dollar-for-dollar basis;

(2) Held in trust for off-campus student employment next year; or

(3) Refunded to the off-campus employer.

(e)(1) The Secretary may approve a Federal share greater than 80% of CWS compensation if the institution—

(i) Is designated a "developing institution of higher education" under 34 CFR Part 624; or

(ii) Proves that at least 50% of its students who are at least half-time students have parents whose annual adjusted gross income is less than $7,500 a year.

(2) The Secretary pays a 100% Federal share for that part of CWS compensation that exceeds—

(i) The amount of CWS compensation paid to students during the 1975–1976 award years; or

(ii) An amount the Secretary specifies for institutions not participating in the CWS program during the 1975–1976 award year.

(3) An institution, in order to receive a Federal share of more than 80% for an award year, must indicate its intent to request the additional funds as part of its regular funding application for that year.

(42 U.S.C. 2753 and 20 U.S.C. 1055)

§ 675.27 Nature and source of institutional share.

(a)(1) An institution may use any resource available to it, except funds allocated under the CWS program, to pay the institutional share of CWS compensation to its students. The institutional share may be paid in the form of services and equipment, e.g., tuition, room, board, and books.

(2) The institution must document all amounts claimed as non-cash contributions.

(3) Non-cash compensation may not include forgiveness of a charge assessed solely because of a student's employment under the CWS program.

(b) A school may not solicit or accept fees, commissions, contributions, or gifts as a condition for CWS employment, nor permit any organization with which it has an employment agreement to do so.

(42 U.S.C. 2753.)

§ 675.28 Community Service Learning Program.

(a)(1) From its allocation under the CWS program, an institution may employ its students in a Community Service Learning Program designed to develop, improve or expand services for low-income individuals and families, or

to solve particular problems related to the needs of low-income individuals.

(2) All the provisions of this part governing the employment of students are applicable to the Community Service Learning Program.

(b) A Community Service Learning Program is a program of student work that—

(1) Provides tangible community services for or on behalf of low-income individuals; and

(2) Provides students with work-learning opportunities related to their educational or vocational programs or goals.

(c) As used in this section—

(1) Low-income individual means an individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of the Census.

(2) Community services means direct service, or planning or applied research activities, designed to—

(i) improve the quality of life for community residents, particularly low-income individuals, or

(ii) solve particular problems relating to the needs of low-income individuals.

(3) Community services may include activities related to such fields as health care, education, welfare, social services, public safety, crime prevention and control, transportation, recreation, housing and neighborhood improvement, rural development and community improvement.

(42 U.S.C. 2756b)

Subpart B—Job Location and Development Program

§ 675.31 Purpose.

The purpose of the job location and development program is to expand off-campus job opportunities for students enrolled in eligible institutions of higher education who want jobs, regardless of their financial need.

(42 U.S.C. 2756a.)

§ 675.32 Federal contribution allowed.

To create a job location and development project or expand an existing one, an institution may use, from its CWS allocation for each award year, the lesser of—

(a) 10%; or

(b) $25,000.

(42 U.S.C. 2756a.)

§ 675.33 Allowable costs.

(a) Costs reasonably related to carrying out a CWS job location and development project are allowable.

(b) Costs related to the purchase, construction, or alteration of physical facilities or indirect administrative costs are NOT allowable.

(42 U.S.C. 2756a.)

§ 675.34 Federal share of allowable costs.

An institution may use Federal funds allowed it under § 675.32 for a job location and development project to pay up to 80% of allowable costs.

(42 U.S.C. 2756a.)

§ 675.35 Institutional share.

An institution's share of allowable costs may be in cash or in the form of services. However, the institution may not use Federal funds as the institution's share of its job location and development project. The institution must keep records documenting the amount and source of its share.

(42 U.S.C. 2756a.)

§ 675.36 Multi-institutional job location and development project; arrangements with nonprofit organizations.

(a) Institutions participating in CWS may enter into a cooperative arrangement to establish and operate a job location and development project for their students.

(b) An institution participating in CWS may, separately or in combination with other participating institutions, arrange for a nonprofit organization to establish and operate a job location and development project for the institution's students. The nonprofit organization, however, must have professional direction and staff.

(c) Each institution must sign a written agreement with all other institutions in the cooperative arrangement or with the nonprofit organization acting on its behalf. The agreement must—

(1) Designate the administrator of the job location and development project;

(2) Specify the terms, conditions, and performance standards of the project; and

(3) Provide for an audit, as required in paragraph (d) of this section.

(d) The administrator of a cooperative arrangement or the nonprofit organization operating a project on an institution's behalf, must provide—

(1) For an audit, as required in § 675.19(d); and

(2) One copy of the audit report to each participating institution.

(e) Each institution retains responsibility for the proper disbursement of its Federal funds administered through a cooperative arrangement or by a nonprofit organization.

(42 U.S.C. 2756a)

§ 675.37 Restrictions.

A job location and development project may not—

(a) Locate or develop jobs for any institution;

(b) Locate or develop jobs for students upon graduation;

(c) Displace employees; or

(d) Impair existing contracts for services.

(42 U.S.C. 2756a)

§ 675.38 Agreement.

(a) A CWS-participating institution, to establish or expand a job location and development project, must enter into an agreement with the Secretary.

(b) The agreement must provide—

(1) That the Federal share of the project's cost not exceed 80%;

(2) That the institution submit to the Secretary an annual report on the use of the funds and an evaluation of the project's effectiveness in benefiting the institution's students; and

(3) Satisfactory assurances that—

(i) The institution will not use project funds to develop jobs at the institution;

(ii) The institution will continue to spend in its own job location and development project (from sources other than CWS funds) in each award year at least ⅓ of its expenditures for locating jobs for its students during the 3 most recent fiscal years preceding the date of the agreement;

(iii) The institution will use project funds to locate and develop jobs for students during and between periods of attendance at the institution, NOT upon graduation;

(iv) The project will not displace employees or impair existing service contracts;

(v) Project funds can realistically be expected to generate total student wages exceeding the total amount of the Federal funds spent under this subpart; and

(vi) If the institution uses Federal funds to contract with another organization, suitable performance standards will be part of that contract.

(42 U.S.C. 2756a)

§ 675.39 Maintenance of effort.

(a) An institution must continue to spend in each award year on its own job location and development project (from sources other than CWS funds) at least ⅓ of its expenditures for locating jobs for its students during the 3 most recent fiscal years preceding the date of its agreement with the Secretary.

(b) An institution's "own job location and development project" includes any expenditures of institutional funds to

create off-campus jobs for enrolled students. This includes costs for staff salaries, travel, printing and mailing, telephone calls, and project equipment furnished by the institution.

(42 U.S.C. 2756a)

§ 675.40 Procedures and records.

Procedures and records concerning the administration of a job location and development project established and operated under this subpart are governed by applicable provisions of § 675.19.

(42 U.S.C. 2756a)

§ 675.41 Termination and suspension.

(a) If the Secretary terminates or suspends an institution's CWS project, the action also applies to the institution's job location and development project.

(b) The Secretary pays an institution's financial obligations incurred and allowable before the termination but not incurred—

(1) During a suspension; or

(2) In anticipation of a suspension.

(c) However, the institution must cancel as many outstanding obligations as possible.

(42 U.S.C. 2756a)

Appendix A.—*Allotments of Funds to States for Fiscal Year 1972*

Alabama	$5,802,379
Alaska	222,401
Arizona	2,163,160
Arkansas	3,357,696
California	19,625,311
Colorado	2,643,202
Connecticut	2,537,476
Delaware	520,542
District of Columbia	1,110,472
Florida	6,830,771
Georgia	6,390,308
Hawaii	796,559
Idaho	899,577
Illinois	10,371,320
Indiana	5,396,896
Iowa	3,925,939
Kansas	2,844,022
Kentucky	4,770,515
Louisiana	5,759,805
Maine	1,156,396
Maryland	3,549,625
Massachusetts	5,863,354
Michigan	9,157,777
Minnesota	4,773,195
Mississippi	4,885,174
Missouri	5,420,293
Montana	933,670
Nebraska	2,015,607
Nevada	335,527
New Hampshire	767,114
New Jersey	5,111,397
New Mexico	1,548,112
New York	16,923,121
North Carolina	8,181,440
North Dakota	1,067,895
Ohio	10,424,770
Oklahoma	8,522,127
Oregon	2,401,584
Pennsylvania	12,087,462
Rhode Island	995,991
South Carolina	4,483,023
South Dakota	1,185,126
Tennessee	5,964,544
Texas	14,171,730
Utah	1,532,910
Vermont	613,709
Virginia	5,605,999
Washington	3,641,590
West Virginia	2,934,188
Wisconsin	5,012,671
Wyoming	416,528
Outlying areas [1]	4,748,000
Total	237,400,000

[1] Outlying areas include Puerto Rico, Virgin Islands, Guam, American Samoa, and Trust Territory of the Pacific Islands.

Appendix B.—Model Off-Campus Agreement

(The paragraphs below are suggested as models for the development of a written agreement between an institution of higher education and a Federal, State, or local public agency or private nonprofit organization which employs students participating in the college work-study program. Institutions and agencies or organizations may devise additional or substitute paragraphs which are not inconsistent with the statute or regulations.)

This agreement is entered into between ——————, hereinafter known as the "Institution," and ——————, hereinafter known as the "Organization," a (Federal, State, or local public agency), (private nonprofit organization), (strike one), for the purpose of providing work to students eligible for the College Work-Study Program (CWS).

Schedules to be attached to this agreement from time to time must be signed by an authorized official of the institution and the organization and must set forth—

(1) brief descriptions of the work to be performed by students under this agreement;

(2) the total number of students to be employed;

(3) the hourly rates of pay; and

(4) the average number of hours per week each student will be used.

These schedules will also state the total length of time the project is expected to run, the total percent, if any, of student compensation that the organization will pay to the institution, and the total percent, if any, of the cost of employers' payroll contribution to be borne by the organization. The institution will inform the organization of the maximum number of hours per week a student may work.

Students will be made available to the organization by the institution to perform specific work assignments. Students may be removed from work on a particular assignment or from the organization by the institution, either on its own initiative or at the request of the organization. The organization agrees that no student will be denied work or subjected to different treatment under this agreement on the grounds of race, color, national origin, or sex. It further agrees that it will comply with the provisions of the Civil Rights Act of 1964 (Pub. L. 88–352; 78 Stat. 252) and Title IX of the Education Amendments of 1972 (Pub. L. 92–318) and the Regulations of the Department of Education which implement those Acts.

(Where appropriate any of the following 3 paragraphs or other provisions may be included.)

(1) Transportation for students to and from their work assignments will be provided by the organization at its own expense and in a manner acceptable to the institution.

(2) Transportation for students to and from their work assignments will be provided by the institution at its own expense.

(3) Transportation for students to and from their work assignments will not be provided by either the institution or the organization.

(Whether the institution or the organization will be considered the employer of the students covered under the agreement depends upon the specific arrangement as to the type of supervision exercised by the organization. It is advisable to include some provision to indicate the intent of the parties as to who is considered the employer. As appropriate, one of the following two paragraphs may be included.)[1]

(1) The institution is considered the employer for purposes of this agreement. It has the ultimate right to control and direct the services of the student for the organization. It also has the responsibility to determine that the students meet the eligibility requirements for employment under the college work-study program, to assign students to work for the organization, and to determine that the students do perform their work in fact. The organization's right is limited to direction of the details and means by which the result is to be accomplished.

(2) The organization is considered the employer for purposes of this agreement. It has the right to control and direct the services of the student, not only as to the result to be accomplished, but also as to the means by which the result is to be accomplished. The institution is limited to determining that the students meet the eligibility requirements for employment under the college work-study program, to assigning students to work for the organization, and to determining that the students do perform their work in fact.

(Wording of the following nature may be included, as appropriate, to locate responsibility for payroll disbursements and payment of employers' payroll contributions.)

Compensation of students for work performed on a project under this agreement will be disbursed—and all payments due as an employer's contribution under State or local workmen's compensation laws, under Federal or State social security laws, or under other applicable laws, will be made—by the (organization) (institution) (strike one).

(Where appropriate any of the following paragraphs may be included.)

(1) At times agreed upon in writing, the organization will pay to the institution an amount calculated to cover the organization's share of the compensation of students employed under this agreement.

[1] It should be noted that although the following paragraphs attempt to fix the identity of the employer, they will not necessarily be determinative if the actual facts indicate otherwise. Additional wording which specifies the employer's responsibility in case of injury on the job may also be advisable, since Federal funds are not available to pay for hospital expenses or claims in case of injury on the job. In this connection it may be of interest that one or more insurance firms in at least one State have in the past been willing to write a workmen's compensation insurance policy which covers a student's injury on the job regardless of whether it is the institution or the organization which is ultimately determined to have been the student's employer when he or she was injured.

(2) In addition to the payment specified in paragraph (1) above, at times agreed upon in writing, the organization will pay, by way of reimbursement to the institution, or in advance, an amount equal to any and all payments required to be made by the institution under State or local workmen's compensation laws, or under Federal or State social security laws, or under any other applicable laws, on account of students participating in projects under this agreement.

(3) At times agreed upon in writing, the institution will pay to the organization an amount calculated to cover the Federal share of the compensation of students employed under this agreement and paid by the organization. Under this arrangement the organization will furnish to the institution for each payroll period the following records for review and retention:

(a) Time reports indicating the total hours worked each week and containing the supervisor's certification as to the accuracy of the hours reported and of satisfactory performance on the part of the students;

(b) A payroll form identifying the period of work, the name of each student, each student's hourly wage rate, the number of hours each student worked, each student's gross pay, all deductions and net earnings, and the total Federal share applicable to each payroll; [2] and

(c) Documentary evidence that students received payment for their work, such as photographic copies of cancelled checks.

3. Part 676 of Title 34 of the Code of Federal Regulations is revised to read as follows:

PART 676—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

Note.—An asterisk (*) indicates provisions that are common to Parts 674, 675, and 676. The use of asterisks will assure participating institutions that a provision of one regulation is identical to the corresponding provisions in the other two.

Sec.

676.1 Purpose and identification of common provisions.
676.2 Definitions.
676.3 Apportionment and reapportionment.
676.4 Allocation, reallocation, and payment to institutions.
676.5 Application.
676.6 Funding procedures.
676.7 Application review—approval of request.
676.8 Institutional agreement.
676.9 Student eligibility.
676.10 Special sessions.
*676.11 Cost of attendance.
*676.12 Expected family contribution.
*676.13 Approved need analysis systems.
*676.14 Coordination of student financial aid programs, award amount, and overaward.
676.15 Coordination with BIA grants.
676.16 Payment of grant.
*676.17 Federal interest in allocated funds.
676.18 Use of funds.
676.19 Fiscal procedures and records.
676.20 Maintenance of effort.
676.21 Transfer of funds.
676.22 Duration of student eligibility.
676.23 Types of grant awards.
676.24 Amount of grant.
Appendix A—Allotment of funds to States for fiscal year 1972.

Authority: Sec. 413A–413D of Title IV–A–2 of HEA, Pub. L. 89–329.

(20 U.S.C. 1070b–1070b–3), unless otherwise noted.

§ 676.1 Purpose, and identification of common provisions.

(a) The Supplemental Educational Opportunity Grant Program (SEOG) awards grants to students with financial need attending institutions of higher education to help meet their costs of postsecondary education.

*(b) Provisions in these regulations that are common to all campus-based regulations are identified with an asterisk.

§ 676.2 Definitions.

The following definitions are set forth in Subpart A of the Student Assistance General Provisions, 34 CFR Part 668, Subpart A:

Ability to Benefit;

Institution of higher education (including Public or Private nonprofit institution of higher education, proprietary institution of higher education, and postsecondary vocational institution);

One-year training program;

Recognized equivalent of a high school diploma; and

Six-month training program.

Other definitions used in this part are:

**Academic year:* A period of time in which a full-time student is expected to complete—

(a) The equivalent of at least 2 semesters, 2 trimesters, or 3 quarters at an institution using credit hours; or

(b) At least 900 clock hours of training for each program at an institution using clock hours.

Act: Title IV–A–2 of the Higher Education Act of 1965 (HEA).

**Award year:* The period of time between July 1 of one year and June 30 of the following year.

**Campus Based Programs:* (a) The National Direct Student Loan Program (NDSL–34 CFR Part 674);

(b) The College Work-Study Program (CWS–34 CFR Part 675); and

(c) The Supplemental Educational Opportunity Grant Program (SEOG–34 CFR Part 676).

**Clock Hour:* The equivalent of —

(a) A 50 to 60 minute class, lecture, or recitation; or

(b) A 50 to 60 minute faculty supervised laboratory, shop training, or internship.

College Work-Study Program (CWS): The part-time employment program for students authorized by Title IV–C of the HEA.

(42 U.S.C. 2751–2756b)

Continuing grant: A Supplemental Grant that follows and continues an initial grant (see initial grant).

**Dependent student:* A student who does not qualify as an independent student (see independent student).

Eligible Program: An undergraduate program of education or training that—

*(a) Admits as regular students only persons who—

(1) Have a high school diploma;

(2) Have a General Education Certificate (GED) or a state certificate received after passing a State authorized examination which the State recognizes as the equivalent of a high school diploma; or

(3) Are beyond the age of compulsory school attendance in the State in which the institution is located, and have the ability to benefit from the education or training offered.

(b)(1) Leads to a bachelor, associate, or undergraduate professional degree;

(2) Is at least a 2 year program that is acceptable for full credit toward a bachelor degree;

(3) Is at least a 1 year program leading to a certificate or degree that prepares a student for gainful employment in a recognized occupation; or

(4) Is, for a proprietary institution or a postsecondary vocational institution, at least a six-month program leading to a certificate or degree which prepares students for gainful employment in a recognized occupation.

**Expected family contribution:* The amount a student and his or her spouse and family are expected to pay toward his or her cost of attendance.

**Financial need:* The difference between a student's cost of attendance and his or her expected family contribution.

**Guaranteed Student Loan Program (GSL):* The student loan program authorized by Title IV-B of the HEA.

(20 U.S.C. 1071 et seq.)

**Half-time student:* An enrolled student who is carrying a half-time academic work load as determined by the institution according to its own standards and practices. However, the institution's half-time standards must equal or exceed the equivalent of the following minimum requirements:

[2] These forms, when accepted, must be countersigned by the institution as to hours worked and satisfactory performance, as well as to the accuracy of the total Federal share which is to be reimbursed to the off-campus organization.

(a) 6 semester hours or 6 quarter hours per academic term in an institution using standard semester, trimester, or quarter systems.

(b) 12 semester hours or 18 quarter hours per academic year for an institution using standard credit hours to measure progress, but not using a standard semester, trimester, or quarter system, or the prorated equivalent for a program of less than 1 year.

(c) 12 clock hours per week for an institution using clock hours.

(d) 12 hours of preparation per week for a student enrolled in a program of study by correspondence.

Independent student (effective through June 30, 1981):

(a) A student who for 1979 and 1980—

(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by his or her parent(s);

(2) Has not received and will not recieve financial assistance of more than $750 in each year from his or her parent(s); and

(3) Has not lived and will not live for more than six weeks in each year in the home of his or her parent(s).

(b) If a student's mother and father are divorced or separated, only one parent will be considered to be the parent of the student for purposes of applying the criteria in paragraph (a) of this section. To determine that parent—

(1) Choose the parent with whom the student resided for the greater portion of the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(2) If the preceding criterion does not apply, choose the parent who provided the greater portion of the student's support for the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(3) If neither of the preceding criteria apply, choose the parent who provided the greater support for the period commencing January 1 of the calendar year which immediately precedes the first calendar year of the award period and ending 12 months prior to the date of application to have an expected family contribution determined under an approved need analysis system.

(c) If either of the parents have died, the institution shall consider only the surviving parent as the parent of the student for purposes of applying the criteria in paragraph (a) of this definition. If both parents have died, the institution shall not consider either parent.

**Independent student (effective July 1, 1981 through June 30, 1982):*

(a) A student who for 1980 and 1981—

(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by his or her parent(s);

(2) Has not received and will not receive financial assistance of more than $1,000 in each year from his or her parent(s); and

(3) Has not lived and will not live for more than six weeks in each year in the home of his or her parent(s).

(b) If a student's mother and father are divorced or separated, only one parent will be considered to be the parent of the student for purposes of applying the the criteria in paragraph (a) of this section. To determine that parent—

(1) Choose the parent with whom the student resided for the greater portion of the 12-month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(2) If the preceding criterion does not apply, choose the parent who provided the greater portion of the student's support for the 12-month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(3) If neither of the preceding criteria apply, choose the parent who provided the greater support for the period commencing January 1 of the calendar year which immediately precedes the first calendar year of the award period and ending 12 months prior to the date of application to have an expected family contribution determine under an approved need analysis system.

(c) If either of the parents have died, the institution shall consider only the surviving parent as the parent of the student. If both parents have died, the institution shall not consider either parent.

Initial grant: The first SEOG awarded and paid to a student by any institution for either—

(a) An academic year; or

(b) A portion of an academic year if the student was not enrolled for the entire year.

**Legal guardian:* An individual appointed by a court to be a legal guardian of a person and who is specifically required by the court to use his or her own financial resources to support that person.

National Direct Student Loan Program (NDSL): The student loan program authorized by Title IV–E of the HEA.

(20 U.S.C. 1087aa–1087ii)

**National of the United States:* A citizen of the United States or a noncitizen who owes permanent allegiance to the United States.

(8 U.S.C. 1101(a)(22))

**Nonprofit institution:* An institution owned and operated by one or more nonprofit corporations or associations where no part of the net earnings of the institution benefits any private shareholder or individual.

(20 U.S.C. 1141(c))

**Parent:* Parent means the student's mother, father, or legal guardian. An adoptive parent is considered to be the student's mother or father.

**Parent Loans for Undergraduate Students Program (PLUS):* The parent loan program authorized by Title IV–B of the HEA.

**Payment period:* A semester, trimester, or quarter. For an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of an academic year.

**Pell Grant Program:* The grant program, formerly known as the Basic Educational Opportunity Grant Program, authorized by Title IV–A–1 of the HEA.

**Regular student:* A person who is enrolled or accepted for enrollment in an eligible program in an institution of higher education for the purpose of obtaining a degree or certificate.

**Secretary:* The Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

**State:* The States of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(20 U.S.C. 1141(b); 20 U.S.C. 1088(a))

**State Student Incentive Grant Program (SSIG):* The program authorized by Title IV–A–3 of the HEA.

(20 U.S.C. 1070c et seq.)

Undergraduate student: A student enrolled in an undergraduate course of study at an institution of higher education who—

(a) Has not been awarded a bachelor or first professional degree; and

(b) Is in an undergraduate course of study that usually does not exceed 4 academic years, or is enrolled in a 5 academic year program designed to lead to a first degree. A student enrolled in any other length program is considered an undergraduate student for only the first 4 academic years.

(20 U.S.C. 1070b–1070b–3 unless otherwise noted)

§ 676.3 Apportionment and reapportionment.

(a) *Apportionment—Initial grants.* The Secretary apportions—

(1) 90% of appropriated funds for initial grants according to 413D(a) of the Act. If necessary, the Secretary apportions additional amounts to each State to make that State's apportionment equal to its allotment for fiscal year 1972. The 1972 allotments are shown in Appendix A; and

(2) The remaining funds so that each institution in each State receives the amount for initial grants computed under § 676.6 or § 676.7.

(b) *Apportionment—Continuing grants.* The Secretary apportions funds appropriated for continuing grants so that each institution receives the amount computed under § 676.6 or § 676.7.

(c) *Reapportionment—Initial grants.* (1) The Secretary reapportions the amount of a State's apportionment that exceeds the approved requests for initial grants of institutions in the State.

(2) The Secretary reapportions those funds among the remaining States according to institutional need for initial year funds as computed under § 676.6 or § 676.7.

(20 U.S.C. 1070b–3)

§ 676.4 Allocation, reallocation, and payment to institutions.

(a) *Definition.* As used in this section and in section 676.6, "current year" means the 12-month period ending on the June 30 immediately following the closing date for filing a SEOG application.

(b) *Allocation.* The Secretary distributes SEOG funds according to §§ 676.6 or 676.7

(c) *Reallocation.* (1)(i) If an institution anticipates not using all its allocation for initial and continuing grants by the end of an award period, it must specify the anticipated unused amount to the Secretary, who reduces the institution's allocation accordingly.

(ii) Other institutions may apply for those funds on the form and at the time specified by the Secretary.

(iii) The Secretary distributes those funds to applicant institutions in accordance with paragraph (c)(2) of this section.

(2)(i) If the funds that become available under paragraph (c)(1) of this section come from the State's initial allotment under § 676.3(a)(1), the Secretary reallocates those funds equitably to other institutions in that State. The Secretary reapportions those funds that are not needed to maintain the State's initial allotment, and any funds that do not come from that initial allotment, in accordance with paragraphs (c)(2) (ii), (iii), and (iv) of this section.

(ii) The Secretary increases awards to institutions whose students have suffered financial hardships as a result of natural disasters within the preceding 12 months.

(iii) If any funds remain, the Secretary then increases awards to institutions whose awards are less than their national fair shares determined under § 676.6. The Secretary calculates each applicant's increase as follows:

Institution's remaining shortfall/remaining shortfall of all applicants for reallocation × remaining amount available for reallocation

(An institution's remaining shortfall is the difference between its national fair share (see § 676.6 (f)(4) and (g)(4) and its award calculated in § 676.6 and this section through paragraph (c)(2)(ii))).

(iv) If any funds still remain, the Secretary reallocates the funds in a manner that best carries out the purposes of this part.

(d) *Payment to institutions.* The Secretary allocates funds for initial and continuing year grants for a specific period of time. The Secretary pays funds to an institution in advance or by reimbursement. The Secretary bases the amount to be paid on periodic fiscal reports.

(20 U.S.C. 1070b–3)

§ 676.5 Application.

(a) To participate in the SEOG program, an institution must file an application with the Secretary before an annually established closing date.

(b) The application must be on a form approved by the Secretary and contain information needed to determine the institution's allocation under §§ 676.6 and 676.7.

(c) The application must contain the information needed to determine whether the institution is complying with maintenance of effort requirements under § 676.20.

(20 U.S.C. 1070b–3)

§ 676.6 Funding procedure.

(a) *General.* (1) Each institution applying for SEOG initial year (IY) or continuing year (CY) funds receives an amount computed in the following stages:

(i) A "conditional guarantee";

(ii) An IY State increase based on its "fair share" of the State's IY apportionment;

(iii) An IY national increase based on its "fair share" of the national IY portion of the SEOG appropriation; and

(iv) A CY national increase based on its "fair share" of the national CY portion of the SEOG appropriation.

(2) Definition—As used in this section—

(i) "Base year" means the 12-month period ending on the June 30 preceding the closing date for filing an SEOG application;

(ii) "Current year" is defined in section 676.4.

(b) *Conditional guarantee.* The Secretary provides each institution a conditional guarantee computed in the following way:

(1) An institution that participated in the SEOG program in the base year receives an SEOG conditional guarantee equal to the sum of its award year 1979–80 IY and CY expenditures.

(2) An institution applying to participate in the SEOG program for the first time receives a conditional guarantee equal to the greater of—

(i) $5,000; or

(ii) (A) 90 percent of the average IY base year expenditure per student in eligible institutions offering comparable programs of instructions, multiplied by the applicant institution's base year enrollment; and

(B) The average CY base year expenditure per student in eligible institutions offering comparable programs of instruction, multiplied by the applicant institution's base year enrollment.

(3) An institution applying to participate in the SEOG program for the second time receives a conditional guarantee equal to the greatest of—

(i) $5,000;

(ii) (A) 90 percent of the average IY base year expenditure per student in eligible institutions offering comparable programs of instruction, multiplied by the applicant institution's base year enrollment; and

(B) The average CY base year expenditure per student in eligible institutions offering comparable programs of instructions, multiplied by the applicant institution's base year enrollment; or

(iii) 90 percent of its current year IY allocation and 100 percent of its current year CY allocation.

(4) The Secretary divides each institution's conditional guarantee between IY and CY funds based on the percentage that the institution's request for each type of grant bears to its total request.

(c) *SEOG need of an institution.* (1) The Secretary allocates additional funds to an institution under paragraph (e) (IY

State increase), paragraph (f) (IY national increase), and paragraph (g) (CY national increase) based in part on the institution's need for SEOG funds.

(2) The Secretary computes an institution's need for IY and CY SEOG funds by the following formula: SEOG need=75% of cost of attendance – (Total expected family contribution+Pell Grants—State Student Incentive Grants—25% of institutional grants for undergraduate students).

(3) As used in paragraph (d) of this section:

(i) *Average cost of attendance* means the attendance costs for undergraduate students. These costs include tuition, fees, standard living expenses, books, and supplies. (The institution reports its total tuition and fee revenues, and the Secretary uses this amount to determine the average cost of attendance.)

(ii) *Eligible students* means for award year 1981–82 students who—

(A) Were enrolled as regular students in good standing on at least a half-time basis in an eligible program during the base year;

(B) Met program regulation requirements for citizenship or residency in the United States for the base year; and

(C) Applied for financial assistance for the base year, and for whom the institution has on file taxable and non-taxable income data and all the other information necessary to perform a needs analysis using a methodology approved by the Secretary.

(iii) State Student Incentive Grants (SSIG) means:

State's total SSIG for the 1977–78 *award year (Federal plus match)* Total undergraduate State grants for the 1977–78 award year (including the Federal SSIG allotment) X Institution's total undergraduate *State grants for the* 1977–78 award year

(For purposes of this formula, "State" means the State in which the institution is located.)

(iv) *Institutional grants* means the sum of undergraduate gift aid included in determining the maintenance of effort amount under § 676.20 during the award year 1977–78. Institutional grants shall not include student financial assistance that an institution is required by State law to provide from its own funds and is not free under any law in effect on January 1, 1979 to select the recipients or adjust the criteria by which the recipients are selected. Institutional grants shall also not include any student financial assistance that an institution contributed on behalf of the State for the SSIG Program.

(d) *SEOG need of eligible undergraduate students.* To determine the need for SEOG funds of an institution's eligible undergraduate students, the Secretary—

(1) Establishes various income categories for dependent and independent undergraduate students;

(2) Establishes an EFC for each income category of dependent and independent undergraduate students, using a need analysis method approved under § 676.13;

(3) Determines 75 percent of the average cost of attendance;

(4) Subtracts from 75 percent of the average cost of attendance the computed EFC for each income category; (Seventy-five percent of the average cost of attendance minus EFC may not be less than zero.)

(5) Multiplies the remainder by the number of eligible students in that income category;

(6) Adds the amounts obtained in all categories;

(7) Subtracts from that sum Pell Grants received by students at that institution in the base year, State Student Incentive Grants, and 25 percent of institutional grants; and

(8) Divides the institution's total SEOG need between IY and CY based on the percentage that the institution's request for each type of grant bears to its total request.

The following charts show the income categories and calculations.

BILLING CODE 4110-02-M

DETERMINATION OF SEOG NEED FOR ELIGIBLE DEPENDENT UNDERGRADUATE STUDENTS

1 INCOME	2 EFC	3 70% x COST	4 NEED COL. 3 LESS COL. 2	5 NUMBER OF ELIGIBLE STUDENTS	6 COL. 4 x COL. 5
$ 0 - $ 2,999					
$ 3,000 - $ 5,999					
$ 6,000 - $ 8,999					
$ 9,000 - $11, 999					
$12,000 - $14,999					
$15,000 - $17,999					
$18,000 - $20,999					
$21,000 - $23,999					
$24,000 - $26,999					
$27,000 - $29,999					
$30,000 - $32,999					
$33,000 - $35,999					
$36,000 - $38,999					
$39,000 - $41,999					
$42,000 - $44,999					
$45,000 - Over					
7 TOTAL FOR DEPENDENT UNDERGRADUATE STUDENTS					$ _____

DETERMINATION OF SEOG NEED FOR ELIGIBLE INDEPENDENT UNDERGRADUATE STUDENTS

1 INCOME	2 EFC	3 70% x COST	4 NEED COL. 3 LESS COL. 2	5 NUMBER OF ELIGIBLE STUDENTS	6 COL. 4 x COL. 5
$ 0 - $ 999					
$ 1,000 - $ 1, 999					
$ 2,000 - $ 2,999					
$ 3,000 - $ 3,999					
$ 4,000 - $ 4,999					
$ 5,000 - $ 5,999					
$ 6,000 - $ 6,999					
$ 7,000 - $ 7,999					
$ 8,000 - $ 8,999					
$ 9,000 - $ 9,999					
$10,000 - $10,999					
$11,000 - $11,999					
$12,000 - $12,999					
$13,000 - $13,999					
$14,000 - $14,999					
$15,000 - Over					
7 TOTAL FOR INDEPENDENT UNDERGRADUATE STUDENTS					$

SUMMARY AND CALCULATION OF SEOG NEED

1 TOTAL FOR DEPENDENT UNDERGRADUATE STUDENTS	$
2 TOTAL FOR INDEPENDENT UNDERGRADUATE STUDENTS	$
3 TOTAL FOR ALL UNDERGRADUATE STUDENTS (1 + 2)	$
4 ALL BEOG	$
5 ALL STATE GRANT AID	$
6 50% OF ALL INSTITUTIONAL GRANT AID	$
7 TOTAL OF ITEMS 4, 5, and 6	$
8 ITEM 3 (TOTAL ALL UNDERGRADUATE STUDENTS) LESS ITEM 7 EQUALS TOTAL SEOG NEED	$

BILLING CODE 4110-02-C

(e) *IY State increase.*

(1) For any year the Secretary increases IY awards to institutions in a State ("IY State increase") if the combined IY conditional guarantees of all institutions in that State are less than the State's IY apportionment under § 676.3(a).

(2) The Secretary calculates an institution's IY State increase according to the following formula—

Institution's IY State increase = its IY State shortfall/IY State shortfalls of all institutions in the State × SEOG IY funds available for shortfall

(3) As used in the formula in paragraph (e) of this section—

(i) "SEOG IY funds available for State shortfall" is calculated by subtracting from the State IY apportionment, the IY conditional guarantees of all institutions in the State.

(ii) An institution's "IY State shortfall" is calculated by subtracting from an institution's IY State fair share its IY conditional guarantee.

(iii) An institution's "IY State fair share" is calculated as follows—

Institution's IY State fair share = its SEOG IY need/SEOG IY need of all institutions in the State applying for SEOG funds × State apportionment for SEOG IY

(f) *IY national increase.* (1) For any year the Secretary will further increase IY awards to institutions ("IY national increase") if the sum of the IY conditional guarantees and IY State increases awarded to institutions is less than the SEOG IY appropriation for that year.

(2) The Secretary calculates an institution's IY national increase according to the following formula—

Institution's IY national increase = its IY national shortfall IY national shortfall of all institutions × SEOG IY funds available for national shortfall

(3) As used in the formula in paragraph (f)(2) of this section—

(i) "SEOG IY funds available for national shortfall" is calculated by subtracting from the SEOG appropriation the IY conditional guarantees and State increases of all institutions.

(ii) An institution's "IY national shortfall" is calculated by subtracting from its "IY national fair share", its IY conditional guarantee and State increase.

(4) An institution's "IY national fair share" is calculated as follows:

Institution's IY national fair share = its SEOG IY need/SEOG IY need of all institutions applying for SEOG funds × SEOG IY appropriation

(g) *CY national increase.* (1) For any year the Secretary will further increase awards to institutions ("CY national increase") if the sum of the CY conditional guarantees awarded to institutions is less than the SEOG CY appropriation for that year.

(2) The Secretary calculates an institution's CY national increase according to the following formula—

Institution's CY national increase = its CY national shortfall CY national shortfall of all institutions × SEOG CY funds available for national shortfall

(3) As used in the formula in paragraph (g)(2) of this section—

(i) "SEOG CY funds available for national shortfall" is calculated by subtracting from the SEOG CY appropriation the CY conditional guarantees of all institutions.

(ii) An institution's "CY national shortfall" is calculated by subtracting from its "CY national fair share", its CY conditional guarantee.

(4) An institution's "CY national fair share" is calculated as follows:

Institution's CY national fair share = its SEOG CY need/SEOG CY need of all institutions applying for SEOG funds × SEOG CY appropriation

(h) No institution may receive more IY or CY SEOG funds than it requests.

(20 U.S.C. 1070b-3)

The following charts show the income categories and calculations for eligible undergraduate students:

1 Income	2 Expected family contribution	3 75 pct × cost	4 (need) Col. 3 less col. 2	5 Number of eligible students	6 Col. 4 × col. 5
Determination of SEOG Need for Eligible Dependent Undergraduate Students					
0 to $2,999					
$3,000 to $5,999					
$6,000 to $8,999					
$9,000 to $11,999					
$12,000 to $14,999					
$15,000 to $17,999					
$18,000 to $20,999					
$21,000 to $23,999					
$24,000 to $26,999					
$27,000 to $29,999					
$30,000 to $32,999					
$33,000 to $35,999					
$36,000 to $38,999					
$39,000 to $41,999					
$42,000 to $44,999					
$45,000 and over					
7 Total for dependent undergraduate students					$
Determination of SEOG Need for Eligible Independent Undergraduate Students					
0 to $999					
$1,000 to $1,999					
$2,000 to $2,999					
$3,000 to $3,999					
$4,000 to $4,999					
$5,000 to $5,999					
$6,000 to $6,999					
$7,000 to $7,999					
$8,000 to $8,999					
$9,000 to $9,999					
$10,000 to $10,999					
$11,000 to $11,999					
$12,000 to $12,999					
$13,000 to $13,999					
$14,000 to $14,999					
$15,000 and over					
7 Total for independent undergraduate students					$

Summary and Calculation of SEOG Need

1	Total for dependent undergraduate students	$
2	Total for independent undergraduate students	$
3	Total for all undergraduate students (1 + 2)	$
4	All Pell grants	$
5	State student incentive grants	$
6	25 pct of institutional grants	$
7	Total of items 4, 5, and 6	$
8	Item 3 (total all undergraduate students) less item 7 equals total SEOG need	$

§ 676.7 Application review—Approval of request.

(a) An institution may request a review of the amount it is scheduled to receive under § 676.6.

(b) A National Review Panel appointed by the Secretary reviews each institution's request. The panel consists of student financial aid administrators and Education Department personnel.

(c) In setting an award amount, the Secretary considers the panel's recommendations and its reasons for the recommendations.

(d) The Secretary sets an award amount based on procedures in § 676.6 and the review panel's recommendations.

(20 U.S.C. 1070b–3)

§ 676.8 Institutional agreement.

To participate in the SEOG program, an institution of higher education must enter into an agreement with the Secretary. The agreement provides that the institution will—

(a) Use the funds it receives solely for the purposes specified in this part; and

(b) Administer the SEOG program in accordance with the Act, the provisions of this part, and the Student Assistance General Provisions, 34 CFR Part 668.

(20 U.S.C. 1070b et seq. and 1094.)

§ 676.9 Student eligibility.

(a) *Eligibility.* A student is eligible to receive an SEOG at an institution of higher education if the student—

*(1) Is a regular student;

(2) Is enrolled or accepted for enrollment in an eligible program as an undergraduate student at that institution;

*(3)(i) Is a U.S. citizen or National;

(ii) Is a permanent resident of the U.S.;

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands;

*(4) Has financial need;

*(5) Is maintaining satisfactory progress in the course of study he or she is pursuing according to the standards and practices of that institution;

*(6) Does not owe a refund on a Pell Grant, Supplemental Grant or State Student Incentive Grant received to meet the cost of attending that institution; and

*(7) Is not in default on any National Defense/Direct Student Loan, Guaranteed Student Loan, or Parent Loans for Undergraduate Students (PLUS) received to meet the cost of attending that institution.

*(b) *Member of a religious order—financial need.* The Secretary considers that a member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education has no financial need if that religious order—

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3)(i) Directs the member to pursue the course of study; or

(ii) Provides subsistence support to its members.

(c) *Selection.* (1) An institution may use not more than 10 percent of its allocation to award SEOGs to eligible students who are enrolled as less than half-time students.

(2) An institution must make SEOG funds reasonably available (to the extent of available funds) to all eligible students who demonstrate financial need.

(3) The institution's selection procedures must be—

(i) Uniformly applied;

(ii) In writing; and

(iii) Maintained in the files of the student financial assistance office.

(4) The institution must maintain on file all SEOG applications for the period specified in § 676.19(c)(2).

*(d) *Determination of satisfactory progress.*

(1) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses itself BEFORE the end of the payment period, the institution may pay an SEOG to the student for the entire payment period.

(2) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses itself AFTER the end of the payment period, the institution may NOT pay the student an SEOG for that payment period OR make adjustments in subsequent financial aid payments to compensate for the loss of aid for that period.

*(e) *Overpayment of grants.* Conditions under which an institution may pay an SEOG to a student who is overpaid a grant:

(1) *Overpayment of a Pell Grant.* If an institution makes an overpayment of a Pell Grant to a student, it may continue to make SEOG payments to that student if—

(i) The student is otherwise eligible; and

(ii) It can eliminate the overpayment in the award period in which it occurred by adjusting the subsequent Pell Grant payments for that award year.

(2) *Overpayment of a Pell Grant due to institutional error.* If the institution makes an overpayment of a Pell Grant as a result of its own error and can not correct it as specified in subparagraph (1) of this paragraph, it may continue to make payments to a student if the student—

(i) Is otherwise eligible; and

(ii) Acknowledges in writing the amount of overpayment and agrees to repay it in a reasonable period of time.

(3) *Overpayment of an SEOG.* An institution may continue to make SEOG payments to a student who receives an overpayment on an SEOG if—

(i) The student is otherwise eligible; and

(ii) It can eliminate the overpayment by adjusting financial aid payments (other than Pell Grants) in the same award period in which the overpayment occurred.

(4) *Definition.* Overpayment of a grant means that a student's grant payments are greater than the amount he or she is entitled to receive.

*(f) *Default on loans.* Conditions under which an institution may pay an SEOG to a student who is in default on loans made for attendance at that institution:

(1) *Guaranteed loan and Parent Loans for Undergraduate Students.* An institution may pay an SEOG to a student who is in default on a Guaranteed Student Loan or a PLUS if the Secretary (for a Federally insured loan) or a guarantee agency (for a loan insured by that guarantee agency) determines that the student has made satisfactory arrangements to repay the defaulted loan.

(2) *National Defense/Direct Student Loan.* An institution may pay an SEOG to a student who is in default on a National Defense/Direct Student Loan made at that institution if the student has made arrangements, satisfactory to the institution, to repay the loan.

*(g) *Bankruptcy.* The Secretary considers a National Defense Student Loan, a National Direct Student Loan, a Guaranteed Student Loan, or a PLUS that is discharged in bankruptcy to be in default for purposes of this section.

*(h) *GSL/PLUS—Reliance on student's statement.* An institution, in determining whether a student is in default on a loan made under the Guaranteed Student Loan Program or the PLUS program, may rely upon the student's written statement that he or she is not in default unless the institution has information to the contrary.

(20 U.S.C. 1070b–2 and 1091f)

§ 675.10 Special sessions.

(a) A student enrolled at an institution in a special session (e.g., summer school) is eligible for an SEOG if he or she—

(1) Is otherwise eligible (see § 676.9);

(2)(i) Is registered at that institution for that session; or

(ii) Is taking all of the courses required to complete his or her certificate or degree; and

(3)(i) Was attending that institution during the preceding term; or

(ii) Has been accepted for the subsequent term.

(20 U.S.C. 1070b–1)

§ 676.11 Cost of attendance.

(a) A student's costs of attendance includes—

(1) Tuition and fees normally assessed a full-time student at the institution at which the student is in attendance;

(2) An allowance for books, supplies, transportation, and miscellaneous personal expenses;

(3) An allowance for room and board costs incurred by the student which—

(i) Beginning in academic year 1981–1982 shall be an allowance of not less than $1,100 for a student without dependents residing at home with parents;

(ii) For students without dependents residing in institutionally owned or operated housing, shall be a standard allowance determined by the institution based on the amount normally assessed most of its residents for room and board;

(iii) For all other students without dependents, shall be a standard allowance determined by the institution based on the expenses reasonably incurred by the students for room and board; and

(iv) For students with dependents, shall be an allowance based on the expenses reasonably incurred by the students for room and board;

(4) For a student engaged in a program of study by correspondence, only tuition and fees and, if required, books and supplies, and travel and room and board costs incurred specifically in fulfilling a required period of residential training;

(5) For a student enrolled in an academic program which normally includes a formal program of study abroad, reasonable costs associated with that study;

(6) For a student with dependent children, an allowance based on the expenses reasonably incurred for child care; and

(7) For a handicapped student, an allowance for those expenses related to his or her handicap, including special services, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies.

(b) *Adjustments.* The institution, in individual cases, may adjust the cost of attendance if—

(1) The financial aid administrator believes the cost of attendance determined in accordance with paragraph (a) does not accurately reflect the student's actual cost of attendance; and

(2) The institution documents all adjustments in writing with an accompanying explanation and makes them part of the institution's records.

(20 U.S.C. 1089 (d))

***§ 676.12 Expected family contribution.**

(a) *Dependent students.* In determining the amount a dependent student and his or her spouse and parents are expected to contribute to the student's cost of attendance, the financial aid administrator must consider—

(1) Any serious illness in the family. (Family members include the student, the student's parents and spouse, and any other persons the parents may claim as exemptions under the Internal Revenue Code);

(2) The number of the parents' dependent children;

(3) The number of the parents' dependent children attending institutions of higher education;

(4) Tuition costs of dependent children attending elementary and secondary schools; and

(5) Any other circumstances that could affect the ability of the student, the student's spouse, and the student's parents to contribute to his or her cost of attendance.

(b) *Independent students.* In determining the amount an independent student and spouse are expected to contribute to the student's cost of attendance, the financial aid administrator must consider—

(1) Any serious illness in the family. (Family members include the student, his or her spouse, and any other persons the student or spouse may claim as exemptions under the Internal Revenue Code);

(2) The number of the student's dependent children;

(3) The number of the student's dependent children attending institutions of higher education;

(4) Tuition costs of dependent children attending elementary and secondary schools; and

(5) Any other circumstances that could affect the ability of the student or spouse to contribute to the student's cost of attendance.

(c) *Special determination of dependent student-parent relationship.* (1) The student financial aid administrator must determine whether the relationship between a student and his or her parents makes it unreasonable to expect the parents to contribute to the student's cost of attendance, regardless of their ability to do so, if requested by a student who does not—

(i) Live with his or her parents;

(ii) Visit his or her parents for periods longer than typical for other adult family members; or

(iii) Receive gifts from his or her parents more valuable than those typically given to other adult nondependent offspring.

(2) Before determining that it is unreasonable for a parent of a dependent student to contribute to the student's attendance costs, the financial aid administrator must determine whether the student's parents are, in fact, willing to contribute toward those costs.

(3) The student financial aid administrator must make that determination part of the institution's written record.

(d) *Native American students.* To determine a Native American's expected family contribution, an institution may not consider the following as income or assets of the student or his or her family:

(1) Awards made under the Distribution of Judgment Funds Act (25 U.S.C. 1401 et seq.) or the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(2) Property that may not be sold or encumbered without the consent of the Secretary of the Interior.

(3) Any other property held in trust for the student or his or her family by the U.S. Government.

(e) *Annual determinations.* An institution must determine a student's need at least annually.

(20 U.S.C. 1070b–2.)

***§ 676.13 Approved need analysis systems.**

(a) An institution must use a Secretary approved need analysis system or calculation method in complying with the requirements in § 676.12 (expected family contribution).

(b) *Preapproved systems for dependent students.* The Secretary has approved the following systems for dependent students:

(1) The method of computing an expected family contribution used in the Pell Grant Program (34 CFR Part 690).

(2) The income tax system if adjusted to reflect the number of the parents' dependent children who are attending institutions of higher education. The expected family contribution produced under this system is the sum of—

(i) The money the student is reasonably able to contribute;

(ii) The amount of Federal income tax paid by the student's parents;

(iii) 5% of the parents' net assets in excess of $17,000 if there are no farm or business assets; or

(iv) 5% of the parents' net assets in excess of $50,000 if there are farm and business assets. However, no more than $17,000 may be deducted for assets other than farm and business assets.

(c) *Criteria for other systems for dependent students.* (1) The Secretary approves other need analysis systems for dependent students that are properly submitted (see paragraph (e)), if the system produces expected family contribution figures that—

(i) Increase incrementally as the parents' financial strength, measured in constant dollars, increases;

(ii) Are equal for families of equal financial strength; and

(iii) Are within $50 of the expected family contribution figures in 75% of the sample cases supplied by the Secretary.

(2) The Secretary computes the sample cases by:

(i) Deducting from the sum of the parents' adjusted gross income and nontaxable income—

(A) The amount of Federal income taxes and social security taxes;

(B) An 8% allowance on total income for State and local taxes; and

(C) A family maintenance allowance (excluding the student during the academic year) using Department of Labor estimates at a low standard of living;

(ii) Adding to this remainder, 12% of the net market value of the parents' assets, after deducting a standard asset reserve; and

(iii) Applying a rate schedule that the Secretary will publish annually with the sample cases.

(3) (i) In developing sample cases, the Secretary selects cases where the main wage earner is 45 years of age.

(ii) The Secretary does not select cases that involve medical and dental expenses, casualty and theft losses, housekeeping allowances, farm or business assets, more than one family member attending a postsecondary institution as an undergraduate, social security or veteran's benefits, or any unusual circumstances.

(4) In comparing figures from systems submitted for approval with figures from sample cases, the Secretary treats an expected parental contribution of less than zero as zero.

(5) In order to insure measurement in constant dollars, the Secretary revises sample case figures for inflation annually by adjusting—

(i) Deductions for family maintenance;

(ii) The standard deduction from assets; and

(iii) The rate of contribution from income and assets.

(d) *Systems for independent students.* The Secretary approves the following systems for independent students:

(1) The method of computing an expected family contribution used in the Pell Grant program (34 CFR Part 690).

(2) The systems of need analysis for independent students published by those organizations approved for dependent students under paragraph (c).

(e) *Application procedures for system approval.* (1) An organization or individual wishing to have a system for dependent students approved must also submit a system for independent students. Both systems must be submitted to the Secretary by June 30.

(2) The Secretary lists approved systems in the **Federal Register** by the following September 1.

(3) Applications for approval must include—

(i) Information the Secretary needs to determine whether or not the system meets the requirements of paragraph (c); and

(ii) The expected family contribution amounts produced by that system for sample cases.

(f) *Duration of approval.* (1) There is no specified expiration date for need analysis systems for dependent students approved under paragraph (b).

(2) An institution may use the need analysis systems for dependent and independent students approved under paragraphs (c) and (d) to determine student eligibility and amount of assistance under Campus Based Programs for an academic year that begins—

(i) No earlier than the following June 1; or

(ii) No later than 12 months after that June 1 date.

(g) *Adjustments.* The institution, in individual cases, may further adjust expected family contributions computed according to one of the approved systems if—

(1) The student financial aid administrator believes the expected family contribution does not accurately reflect the student's (or parent's) ability to contribute; and

(2) The institution documents all adjustments in writing with an accompanying explanation and makes them part of the institution's records.

(42 U.S.C. 2754)

§ 676.14 Coordination of student financial aid programs, award amount, and overaward.

(a) *Coordinating official.* An institution must appoint a coordinating official for its SEOG and other Federal and non-Federal student financial aid programs.

(b) *Overaward prohibited, general award.* (1) An institution may not award an SEOG to a student if the SEOG, when combined with all other resources, exceeds the student's financial need.

The institution, however, does NOT violate this rule if—

(i) The student receives additional funds after the institution awards aid, and total resources exceed his or her financial need by $200 or less by the end of the academic year; or

(ii) The student earns more money from employment than the institution anticipated when it awarded the SEOG, and it treats the earnings in accordance with paragraph (c) (prevention of overaward).

(2) A student's financial need may not exceed his or her cost of attendance.

(3) If a student's resources exceed his or her need by more than $200, and the excess is not from employment, the overaward is the amount that exceeds the $200.

(c) *Prevention of overaward by treatment of earnings.* An institution must take the following steps when it learns that an SEOG recipient has earned, or will earn, more than $200 over his or her financial need:

(1) It must decide whether the student needs the money to pay for necessary additional educational costs, unanticipated when it awarded financial aid to the student. If the student does, no further action is necessary.

(2) If the student's earnings still exceed need by $200 or more after the institution subtracts any additional costs, it must cancel any unpaid loan or grant (other than Pell Grants) to avoid exceeding need by more than $200.

(3) If the student's earnings still exceed his or her need by more than $200 after the institution takes the steps required in the two preceding subparagraphs, and the student is enrolled for the next academic year, the institution must use the amount that exceeds $200 as—

(i) A resource to help pay the student's cost of attendance in the following year; or

(ii) A substitute for the student's expected family contribution ("EFC") for the current year unless a GSL of PLUS is used for that purpose.

(4) If the student's earnings still exceed his or her need by more than $200 after the institution takes the steps required in subparagraphs (1) and (2), and the student is NOT enrolled for the next academic year, no further action is necessary.

(d) *Resources.* The Secretary considers that "resources" include, but are not limited to, any—

(1) Funds the student is entitled to receive from a Pell Grant, regardless of whether the student applies for it;

(2) Waiver of tuition and fees;

(3) Scholarship or grant, including an SEOG or athletic scholarship;

(4) Fellowship or assistantship;

(5) Insurance programs for the student's education, including any social security educational benefits not included in computing EFC;

(6) GSL or PLUS as indicated under paragraph (e);

(7) Long-term loans, including NDSL but excluding GSL and PLUS, made by the institution;

(8) Net earnings from employment including any part of an independent student's net earnings not included as part of the student's EFC. ("Net earnings" means gross earnings minus taxes and job related costs); and

(9) Veterans benefits (except that part included as part of the student's EFC).

(e) *Treatment of Guaranteed Student Loans (GSL) and Parent Loans for Undergraduate Students (PLUS).* (1) A student may use a GSL or a PLUS as a substitute for his or her expected family contribution.

(2) However, if the loan amounts under one or both of these programs exceeds the student's expected family contribution, the Secretary considers the excess to be a resource.

(f) *Administrative responsibility.* (1) An institution is responsible ONLY for the resources it—

(i) Makes available to its students;

(ii) Knows about; or

(iii) Can reasonably anticipate at the time it awards SEOG funds to the student.

(2) An institution must take reasonable steps to stay informed about the earnings of a student employed outside the institution.

(g) The provisions of paragraph (b) of this section are retroactive to October 12, 1976.

(20 U.S.C. 1070b—1070b–3.)

§ 676.15 Coordination with BIA grants.

*(a) To determine the amount of a Supplemental Grant for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution must prepare a package of student aid—

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible for a BIA education grant.

*(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

*(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted and may be deducted only from the other assistance, not the BIA education grant.

(2) The institution must deduct the excess in the following sequence: loans, work-study awards, and grants other than Pell Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

*(d) To determine the financial need of a BIA-eligible student, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(20 U.S.C. 1070b–1)

§ 676.16 Payment of grant.

(a)(1) An institution using a semester, trimester, or quarter system must pay each term a portion of a Supplemental Grant awarded for a full academic year.

(2) The institution determines the amount paid each term by the following fraction:

$$\frac{\text{SEOG}}{\text{N}}$$

Where SEOG = total SEOG award and N = the number of semesters, trimesters, or quarters in that year.

(3) If the total SEOG award is to a student attending less than a full academic year, the institution determines the amount of each payment by the following fraction:

$$\frac{\text{SEOG}}{\text{R}}$$

Where SEOG = total SEOG award and R = the number of semesters, trimesters, or quarters remaining in the academic year.

(b)(1) An institution NOT using a semester, trimester, or quarter system must pay a Supplemental Grant at least twice during an academic year.

(2) The institution must make one payment at the beginning and another at the midpoint of the academic year.

(3) The institution may not pay more than half the award before the midpoint payment.

(c)(1) Within each payment period, an institution may pay the student at such time and in such amounts as it determines best meets the student's needs.

(2) It may pay the student directly by check or by crediting his or her account with the institution. However, if it credits the account, the institution must give the student a receipt.

(d) Only one payment is necessary if the total amount the institution awards a student under the Campus Based Programs is less than $301.

(e) A 6 month training program that prepares students for gainful employment in a recognized occupation equals a full academic year for purposes of disbursement.

(f) Before making the first SEOG payment for any year, an institution must get written acceptance of the grant amount from the student and give the student a statement explaining—

(1) The nature and sources of other financial aid made available through the institution; and

(2) That payment of the SEOG depends upon the student's—

(i) Maintaining satisfactory progress in his or her course of study, according to the institution's prescribed standards; and

(ii) Remaining an eligible student.

(g) A correspondence student must submit his or her first completed lesson before receiving an SEOG payment.

(h)(1) An institution may not pay a Supplemental Educational Opportunity Grant unless the student files a statement of educational purpose in which the student declares that he or she will use the grant solely for educational expenses in connection with attendance at the institution.

(2) The Secretary considers the following statement as satisfying this requirement.

Statement of Educational Purpose.

I declare that I will use any funds I receive under the Supplemental Grant Program for expenses connected with attendance at

(Name of institution) _____

(Dated) _____

(Signature) _____

(i) If an institution computes a student's need using estimated data submitted before January 1 of the previous award year, the institution may not pay the student an SEOG unless it verifies that information.

(U.S.C. 1070b, 1091)

***§ 676.17 Federal interest in allocated funds.**

Except for funds received for the administrative cost allowance (see § 676.18(b)), funds received by an institution under the SEOG program are held in trust for the intended student beneficiaries. Funds may not be used or hypothecated (i.e., serve as collateral) for any other purpose.

(20 U.S.C. 1070b—1070b–3)

§ 676.18 Use of funds.

(a) *General.* Funds allocated to an institution under the SEOG program may be used only to—

(1) Make grants to eligible students;

(2) Transfer to the institution's CWS program (see § 676.21); and

(3) Carry out the activities described in paragraph (b).

(b) *Administrative cost allowance.* An institution participating in the SEOG program is entitled to an administrative cost allowance.

(1) The amount of the allowance equals—

(i) Five (5) percent of the first $2,750,000 of the institution's expenditures in an award year under the CWS, SEOG, and NDSL programs; plus

(ii) Four (4) percent of its expenditures which are greater than $2,750,000 but less than $5,500,000; plus

(iii) Three (3) percent of its expenditures in excess of $5,500,000.

(2) However, for the purpose of calculating the allowance in paragraph (b)(1) of this section, CWS expenditures made under the Community Service Learning program (§ 675.28) or NDSL loans that are assigned to the Secretary under section 463(a)(6)(B) of the Higher Education Act are not included.

(3) An institution must use its administrative cost allowance to offset its costs of administering the Pell Grant, CWS, SEOG, and NDSL programs. Administrative cost also include the expenses incurred for carrying out the student consumer information services requirements of Subpart C of the Student Assistance General Provisions, 34 CFR Part 668.

(4) An institution may not charge any administrative expenses against its SEOG IY allocation for an award year unless it awards initial grants to students for that year. Similarly it may not charge any administrative expenses against its CY allocation for an award year unless it awards continuing grants to students for that year.

(c)(1) An institution may use funds allocated to it for initial and continuing year awards in any manner the institution determines best suits the purposes of the program.

(2) An institution must report initial year expenditures and continuing year expenditures separately on the Fiscal Operations Report required under § 676.19(b).

(d) An institution may use up to 10 percent of its SEOG allocation to make awards to less than half-time eligible students.

(20 U.S.C. 1096; 20 U.S.C. 1070b et seq.)

§ 676.19 Fiscal procedures and records.

*(a) *Fiscal procedures.* (1) In administering its SEOG program, an institution must establish and maintain an internal control system of checks and balances that insures that no office can both authorize payments and disburse funds to students.

(2) A separate bank account for SEOG funds is not required. However an institution must notify any bank in which it deposits SEOG funds of all accounts in that bank in which it deposits Federal funds. The institution may give this notice by either—

(i) Including in the name of the account the fact that Federal funds are deposited; or

(ii) Notifying the bank in writing of the accounts in which it deposits Federal funds. The institution must retain a copy of this notice in its files.

(20 U.S.C. 1070b; 20 U.S.C. 1232c)

(b) *Records and reporting.* (1) An institution must establish and maintain on a current basis financial records that reflect all program transactions. The institution must establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution must also establish and maintain program and fiscal records that—

(i) Identify each student's account and status including separation of initial and continuing grant amounts;

(ii) Show the eligibility of each student aided under the program;

(iii) Show the amount of need and how the need was met for each student; and

(iv) Identify the administrator who determined the need.

(3) Each year an institution must submit a Fiscal-Operations Report plus other information the Secretary requires. The institution must comply with requirements to insure the information reported is accurate and must submit it on the form and at the time specified by the Secretary.

(c) *Retention of records.* (1) *Records.* Each institution must keep intact and accessible records of the receipt and expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

*(2) *Period of retention.* Except for audit questions, an institution must keep records for an award year for five years after it submits its Fiscal-Operations Reports for that year.

*(3) *Microfilm copies.* An institution may substitute microfilm copies for

original records in meeting the requirements of this section.

*(4) *Audit questions.* An institution must keep records in any claim or expenditure questioned by Federal audit until resolution of any audit questions. However, the institution does not have to retain records beyond 5 years if the actions taken by the United States to recover funds are barred by the Federal statute of limitation in 28 U.S.C. 2415(b).

*(d) *Audits—Federal.* An institution must give the Secretary, the Comptroller General of the United States, or their duly authorized representatives access to the records specified in paragraphs (c) (1) and (2) and to any other pertinent books, documents, papers, and records.

*(e) *Audits—Non-Federal.* (1) An institution must audit, or have audited under its direction, SEOG transactions to determine at a minimum—

(i) The fiscal integrity of financial transactions and reports; and

(ii) If those transactions are in compliance with the applicable laws and regulations.

(2) The audits must be performed in accordance with the Education Department's "Audit Guide" for student financial aid programs.

(3) The institution must have an audit performed at least once every two years unless the Secretary approves a longer interval.

(4) Each audit must cover the entire period of time since the last audit.

*(f) *Audit reports.* The institution must submit audit reports to its local regional office of the Education Department's Office of Inspector General. It must give the Secretary and the Inspector General access to records or other documents necessary to the audit's review.

(42 U.S.C. 1070b; 1232c)

§ 676.20 Maintenance of effort.

(a) For each award year it receives an SEOG allocation, an institution must spend from its own scholarship and student financial aid program at least one-third its aid program expenditures for the three award years preceding the latest of the following:

(1) The effective date of any agreement required by section 443 of the College Work-Study Program (42 U.S.C. 2753) or section 407 of the Educational Opportunity Grants Program (20 U.S.C. 1067) that was in effect on June 30, 1973.

(2) The award year the institution received its first CWS allocation.

(3) The award year the institution received its first Educational Opportunity Grant Program allocation (20 U.S.C. 1061–1067, 1069).

(4) The award year the institution received its first SEOG allocation if it did not participate in the Educational Opportunity Grant Program during the 1972–1973 award year.

(b) The Secretary may waive the maintenance of effort requirements for an award year because of the following special circumstances:

(1) Fund withdrawals from outside sources (Public appropriations are not considered outside sources for public institutions).

(2) An enrollment decline if the institution continues to spend from its own scholarship and student financial aid program the average amount it spent per student during the three-year base period.

(3) Voluntary withdrawal as a GSL lender. The Secretary waives that portion of the failure that equals one-third the amount of loans the institution made as a lender during the three-year base period. However, to have this portion waived, the institution must arrange alternate sources of financing for its students at least equal to the amount the Secretary waives.

(4) Termination as a GSL lender by the Secretary.

(i) The Secretary waives, for the year the institution is terminated as a lender, the portion of the failure that equals one-third the amount of loans the institution made as a lender during the three-year base period.

(ii) The Secretary also waives, for succeeding years, the portion of the failure that equals one-third of the amount of loans the institution made as a lender during the three-year base period if the institution arranges alternate sources of assistance for its students at least equal to the amount the Secretary waives.

(5) The Secretary considers that an institution has provided alternate sources of assistance for its students if it provides the assistance under a written agreement between the funding source and the institution.

(c) An institution, to obtain a waiver, must submit to the Secretary—

(1) A request for a waiver; and

(2) A description of circumstances justifying the waiver.

(d) An institution's "own scholarship and student financial aid program" includes—

(1) Any expenditures of its own funds for scholarships, grants, loans, tuition waivers, fee waivers, and fee remissions;

(2) The institution's employment of its graduate and undergraduate students, whether or not they are eligible for the SEOG or CWS programs; and

(3) Any funds donated to the institution for student financial aid if the institution chooses the recipients and the award amounts. However, the institution may not claim funds from Federal sources as part of its "own scholarship and student financial aid program."

(e) (1) According to an institution's stated practices, scholarships and other student financial aid given to faculty members' dependents or to institution employees may be considered as either—

(i) Student financial aid; or

(ii) Employee benefits.

(2) Fellowships and assistantships count as financial aid unless it is the institution's stated practice to consider the holders faculty members.

(3) Alternatives in subparagraphs (e) (1) and (2) of this section apply to both the base year period and current expenditures. Any change must have the Secretary's written approval.

(20 U.S.C. 1094)

§ 676.21 Transfer of funds.

(a) An institution may transfer up to 10% of its allocation for an award year from its SEOG program to its CWS program and vice versa. The institution must use the funds, when transferred, according to the requirements of the program to which they are transferred.

(b) An institution may transfer SEOG funds without regard to whether they were allocated for initial or continuing grants.

(c) An institution may use CWS funds transferred to the SEOG program for initial or continuing grants, as the institution sees fit.

(d) An institution must report any funds transferred on the Fiscal-Operations Report required under §676.19(b).

(e) An institution shall transfer back to the CWS program any funds unexpended at the end of the award year that it transferred to the SEOG program from the CWS program.

(20 U.S.C. 1095)

§ 676.22 Duration of student eligibility.

(a) A student is eligible to receive a Supplemental Grant for the period of time needed to complete the first undergraduate baccalaureate course of study being pursued by that student.

(20 U.S.C. 1070b–1)

§ 676.23 Types of grant awards.

(a) An institution may award only one initial grant to a student. The maximum duration of an initial grant is one academic year.

(b) However, if a student receives an initial grant from one institution and transfers to another, the Secretary considers any Supplemental Grant awarded by the second institution to be a continuing grant.

(20 U.S.C. 1070b)

§ 676.24 Amount of grant.

(a) As a general rule, a Supplemental Grant awarded for an academic year equals the amount the institution determines necessary for a student to continue his or her studies. However, no grant may be awarded for a full academic year that is—

(1) Less than $200; nor

(2) More than $2,000.

(b) If a student is enrolled for less than a full academic year, the institution reduces the grant awarded for that period in proportion to the length of the period of attendance compared to the length of the full academic year.

Appendix A.—*Allotment of Funds to States for Fiscal Year 1972*

Alabama	$1,136,295
Alaska	37,532
Arizona	794,102
Arkansas	645,033
California	8,125,711
Colorado	1,092,555
Connecticut	994,752
Delaware	174,114
District of Columbia	568,864
Florida	2,066,032
Georgia	1,291,155
Hawaii	296,396
Idaho	320,388
Illinois	3,743,393
Indiana	1,967,198
Iowa	1,331,999
Kansas	1,082,749
Kentucky	1,080,641
Louisiana	1,276,332
Maine	308,431
Maryland	1,168,652
Massachusetts	2,758,217
Michigan	3,339,267
Minnesota	1,663,842
Mississippi	863,948
Missouri	1,754,719
Montana	323,599
Nebraska	713,689
Nevada	116,425
New Hampshire	322,323
New Jersey	1,321,749
New Mexico	412,226
New York	6,234,166
North Carolina	1,783,607
North Dakota	351,555
Ohio	3,568,791
Oklahoma	1,176,300
Oregon	1,035,037
Pennsylvania	3,751,149
Rhode Island	393,990
South Carolina	690,479
South Dakota	347,053
Tennessee	1,398,807
Texas	4,038,448
Utah	781,127
Vermont	236,506
Virginia	1,293,349
Washington	1,525,138
West Virginia	707,338
Wisconsin	1,916,003
Wyoming	151,836
Guam	13,218
Puerto Rico	555,030
Virgin Islands	4,745
Total	75,050,000

[FR Doc. 81-399 Filed 1-16-81; 8:45 am]

BILLING CODE 4000-01-M

34 CFR Parts 674, 675, and 676

National Direct Student Loan Program, College-Work Study Program, and Supplemental Educational Opportunity Grant Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking: Cross-reference.

SUMMARY: In this issue of the **Federal Register** the Secretary of Education has promulgated final regulations for the campus-based student financial assistance programs. These programs are the National Direct Student Loan (NDSL) program, 34 CFR Part 674, the College Work Study (CWS) program, 34 CFR Part 675, and the Supplemental Educational Opportunity Grant (SEOG) program, 34 CFR Part 676. The Secretary has however requested comments on specific provisions of those regulations. These provisions include the new deferment provisions for the NDSL program, 34 CFR 174.34a, and the new CWS Community Service Learning program, 34 CFR 175.28. In addition, the Secretary requests comments concerning the definition of a half-time student in each of the program regulations as well as on whether provisions and definitions common to all three program regulations should be deleted from each program regulation and consolidated in one comprehensive regulation that would govern all the Title IV student financial assistance programs.

The texts of the regulations on which the Secretary invites comments are published in the Rules and Regulations section of this issue of the **Federal Register**. They have been adopted as final regulations and will govern these programs until the Secretary issues new regulations based on public comment.

DATES: All comments, suggestions, or objections must be received on or before March 20, 1981.

ADDRESSES: Comments should be addressed to: Lynn Laverentz, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Lynn Laverentz, Telephone: (202) 245–9720.

INVITATION TO COMMENT: For additional details on how to comment, see the Preamble of the final regulations for these programs published in this issue of the **Federal Register.**

(Catalog of Federal Domestic Assistance Numbers 84.038, National Direct Student Loan Program; 84.033, College Work-Study Program; and 84.007, Supplemental Educational Opportunity Grant Program)

Dated: January 8, 1981.

Shirley M. Hufstedler,

Secretary of Education.

[FR Doc. 81-1400 Filed 1-16-81; 8:45 am]

BILLING CODE 4000-01-M

federal register

Monday
January 19, 1981

Part IV

Department of Transportation

Research and Special Programs Administration and Federal Highway Administration

Radioactive Materials; Routing and Driver Training and Routing Exemptions

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 177

[Docket No. HM-164, Amdt. Nos. 171-59, 172-64, 173-143, 177-52]

Radioactive Materials; Routing and Driver Training Requirements

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: These amendments establish routing and driver training requirements for highway carriers of large quantity packages of radioactive materials. Such carriers are required to follow highway routes designated by appropriate State agencies. In the absence of State action, carriers are required to use Interstate System highways subject to the specific conditions set forth in the rules. In addition, carriers are required to prepare written route plans for eventual submission to the Department of Transportation. Irradiated reactor fuel must be shipped under a comprehensive physical security program approved by the Department to be equivalent to that established by the Nuclear Regulatory Commission.

Motor vehicles carrying any radioactive material for which placarding is required, other than those containing large quantity packages as identified in the regulations, must comply with a general routing rule to minimize radiological risk. Also contained in this document is a Departmental policy statement which addresses the appropriate role of Federal, State and local governments in the regulation of radioactive material transportation.

EFFECTIVE DATE: February 1, 1982.

ADDRESS: Copies of public comments and supporting documents (Final Regulatory Evaluation and Environmental Assessment; Supplement to Docket HM-164: Summary and Analysis of Public Comments) are available for inspection and reproduction at the following address: Dockets Branch/DOT/RSPA/MTB, Room 8426, 400 7th Street, S.W., Washington, D.C. 20590, (202) 426-3148.

FOR FURTHER INFORMATION CONTACT: John C. Allen, Office of Hazardous Materials Regulation, (202-472-2726) or Douglas A. Crockett, Office of the Chief Counsel, Research and Special Programs Administration (202-755-4972), 400 7th Street, SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

I. Background

The history of these amendments is summarized in the Notice of Proposed Rulemaking (NPRM) of January 31, 1980 (45 FR 7140). Individuals interested in this docket should review that publication as well as the Advance Notice of Proposed Rulemaking (ANPRM) of August 17, 1978 (43 FR 36492) since references are made to both documents. To set the context for the present discussion, however, the most important background items relating to these amendments are briefly summarized here.

In 1976, truck shipments of irradiated reactor fuel (spent fuel) from Brookhaven National Laboratories' Long Island facility were interrupted by an amendment to the New York City Health Code. The Health Code amendment had the practical effect of banning most commercial shipments of radioactive materials in or through the City. Associated Universities, Inc., which operates Brookhaven National Laboratories, asked DOT whether that ordinance was preempted by Federal transportation safety requirements issued under the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. 1801 *et seq.).* On April 20, 1978, DOT published an Inconsistency Ruling (43 FR 16954) in which it viewed the City's Health Code amendment as an extreme routing requirement intended to protect the very dense urban population found inside the City. DOT concluded that the HMTA could preempt local requirements such as New York City had implemented, but because highway routing authority had not yet been exercised under the HMTA, the City's Health Code was not preempted by HMTA requirements. Since this ruling a number of other State and local governments have either passed, or proposed, legislation that severely restricts transportation of certain radioactive materials through their jurisdictions.

The Department of Transportation subsequently published the ANPRM entitled "Highway Routing of Radioactive Materials; Inquiry" in August, 1978. The public was invited to comment on the need and possible methods for establishing routing requirements pertaining to highway carriers of radioactive materials under the HMTA. A public hearing was held in conjunction with the ANPRM on November 29, 1978 in Washington, D.C. The Department received over 550 comments from a broad cross-section of the public including representatives from State and local governments, public interest and environmental organizations, the motor carrier industry, the shipping industry, bridge and turnpike authorities, Federal agencies, and Congressional officials, in addition to the many individual citizen comments. Based upon these comments and the Department's own judgment an NPRM was published on January 31, 1980.

The NPRM set out specific proposals for routing certain types of radioactive materials shipped by highway, and driver training requirements. The stated purpose of those proposals was to reduce the possibility of exposure and inadvertent releases in normal and accident situations in transportation, and to clarify the scope of permissible State and local actions. The four month public comment period scheduled in the NPRM was subsequently extended to five months. The Materials Transportation Bureau (MTB) conducted seven public hearings from late March to early June of 1980. The seven hearings were held in Philadelphia, Atlanta, Chicago, Denver, Seattle, Boston and New York. In addition, MTB conducted public meetings in Akron, Ohio, Eugene, Oregon and Union City, California. The Department has recieved and reviewed over 1,000 public comments on the January 31 notice. In addition, over 1,600 pages of transcripts from the seven public hearings have been reviewed as well as statements made at the three public meetings.

Because of the great interest generated by these routing proposals and because of the many and varied issues involved, DOT has decided to include an extended discussion of public comments as a supplement to the final rules document. Although principal comments are discussed in this preamble, inclusion in the docket of a supplementary discussion of public comments allows the Department to provide more detailed responses than would be practical in the preamble. For those readers interested in public comments on the Advance Notice, a summary is provided on pages 7141 and 7142 of the January 31 NPRM. In addition to the supplement of public comments, all individual public comments and all public hearing transcripts are available for inspection at the address previously listed.

Other essential background information covered by the NPRM includes an analysis of the existing DOT safety program for the transportation of radioactive materials, DOT accident experience with nuclear material transportation, a technical discussion of projected public risk from the transport

of radioactive materials in the United States, the Nuclear Regulatory Commission (NRC) physical security program for shipments of spent nuclear fuel by its licensees, DOT's interrelationship with NRC's transport requirements, and an extensive discussion of the proposed routing and training requirements. The present document will reference some of this information. However, those discussions will not be restated here except as they relate to substantive public comments.

II. General Discussion

The Department of Transportation has examined the transportation of radioactive materials exhaustively since issuing the ANPRM nearly two and a half years ago. This process has included the review of over 1600 public comments and 2000 pages of transcripts from public hearings in addition to a number of risk assessment studies on the subject. On the basis of these comments, documented risk studies and past accident experience for radioactive material transport, the Department has concluded that the public risks in transporting these materials by highway are too low to justify the unilateral imposition by local governments of bans and other severe restrictions on the highway mode of transportation. Other modes of transport generally do not appear to offer alternatives which clearly lower public risks to the extent that use of the highway mode should be substantially restricted. DOT also believes, however, that these currently low risks will be further minimized by the adoption of driver training requirements and provisions of a method for selecting the safest available highway routes for carriers of large quantity radioactive materials, as accomplished in this rule.

The estimated low risks in transporting radioactive materials also support the belief that the present packaging requirements are adequate to protect the public. A detailed discussion of DOT's packaging requirements was presented in the NPRM. As was clearly pointed out in the proposed rules, this rulemaking is not an examination of packaging requirements, the adequacy of which is assessed by DOT and NRC on a continuing basis. There has been no new documented evidence presented during the public comment process to show that the current packaging requirements result in unacceptable risks to the public.

Many commenters question the need for these routing rules and some view them as nothing more than a method of accommodating the transportation requirements of the nuclear power industry. Some maintain that State and local restrictions have been applied mostly to nuclear fuel cycle shipments such as spent fuel and have not frustrated shipments of radiopharmaceuticals or other "necessary" small quantity radioisotopes. They suggest that DOT's stated intention of providing uniformity and consistency, at least in part, to ensure shipments of needed nuclear medical materials is based on an invalid perspective.

The Department has examined many of the local restrictions for radioactive material transportation and continues to believe that many result in unnecessary restrictions on the transportation of all types of radioactive materials, including non-fuel cycle materials. Some public comments support this. For example, the Society of Nuclear Medicine presented the following comments at the Chicago hearing on April 3, 1980.

> The Society has great concern for the proliferation of State and local statutes and ordinances enacted to control the transportation of radioactive materials into, through, and out of these jurisdictions. It can be stated that this non-uniformity of controls in the transportation of these medical necessities constitutes one of the most rapidly increasing and serious impediments to nuclear medicine health care delivery with which we are faced. Thus, the Society views with favor those portions of this docket which will provide for uniformity of regulation, on a national basis, while still providing for adequate state and local input in the implementation of the final rule.
>
> The Society points out that over 3,300 medical centers, hospitals and clinics in the U.S. are engaged in nuclear medicine, and it estimates that one out of every two patients admitted to hospitals require some type of "nuclear medicine procedure."

The Petroleum Equipment Suppliers Association, a trade association representing 251 companies that supply goods and services to over 10,000 companies engaged in petroleum drilling and production, point out that the relatively small quantities of industrial isotopes which its members ship are often covered by State and local restrictions:

> Increasingly, state and municipal governments are enacting routing restrictions and prohibitions and requirements for prenotification and escorts. The rising tide of these regulations and ordinances threaten not only to burden interstate commerce involving the use of radioactive sources by (oil and gas well) service companies, but to actually destroy the ability of these companies to provide these services. Without these services the exploration and production of oil and gas in this country will effectively cease.

DOT remains firm in its belief that the impact of piecemeal State and local restrictions on the transportation of all radioactive materials, including non-fuel cycle materials, signifies a need for nationally consistent routing rules.

It is also the Department's determination that public safety can be improved through a nationally uniform rule that ensures the use of available highway routes that are known to be safe for large quantity radioactive materials. In developing this rule, three basic conclusions underlie the approach taken:

(1) Route selection should be based on some valid measure of reduced risk to the public,

(2) Uniform and consistent rules for route selection are needed from both a practical and safety standpoint, and

(3) Local views should be carefully considered in routing decisions since routing is a site-specific activity unlike other transport controls such as marking and packing.

With respect to the first conclusion, DOT is of the opinion that an assessment of risk to the public should include a consideration of both normal radiological exposure which is inherent in the transportation of radioactive materials as well as a consideration of potential accidents which could result in additional radiological exposure. Further, an assessment of risk to the public from accidents involving large quantity radioactive materials should include a balanced consideration of factors which affect both the likelihood of an accident as well as the consequences.

Many commenters seem to be concerned only with consequence—particularly high consequence accidents involving large quantity radioactive materials in a heavily populated urban center. Local authorities, for example, are concerned with postulated "worst-case" accidents because of a fear that their emergency response capabilities are insufficient for such hypothetical catastrophes. The Department, also, is concerned with such events and is mindful of the large economic consequences estimated for such hypothetical events by a recent draft environmental assessment completed for the NRC by Sandia National Laboratories (Transportation of Radionuclides in Urban Environs: Draft Environmental Assessment", July, 1980). These estimates relate to a scenario which assumes the worst credible accident for certain truck shipments of spent fuel and polonium in densely populated urban areas. One could conclude from the study that a way to lower the possibility of such high

consequences is to reroute the shipments away from urban areas entirely. However, the study also indicates that this may not be the best alternative if one considers overall risks to the public, since routes that avoid the urban areas may have much higher accident rates which increase the chance of a severe accident occurring in the first place. It is DOT's opinion that public policy for the routing of radioactive materials should be based not only upon a concern for worst-case accident consequences, but also upon all other factors which contribute to the overall risk involved in transporting large quantity radioactive materials. This policy is embodied in this rulemaking by requiring use of Interstate highways which generally have much lower accident rates than other roadways, while at the same time requiring that cities be avoided where possible by using either Interstate beltways or State-designated bypass routes to minimize the possibility of worse-case accidents.

With respect to the second conclusion, DOT recognizes the need to balance local and national interests in providing for uniformity and consistency in routing. DOT is providing a national framework for highway routing of radioactive materials within which State and local concerns can be addressed. This framework is needed because of the current patchwork of conflicting State and local routing requirements. It is recognized that there may be local situations which are so unusual that they cannot be adequately accommodated within this framework. These situations can be called to the attention of the Department through existing administrative channels that may involve either special or general rulemaking. However, because of the role of the State governments in designating routes and the nature of the routing guidelines being provided to the States which stress the participation of local govenments, DOT does not expect such situations to be numerous.

The third conclusion, which concerns the need for local input in routing decisions, also serves as a basis for the routing rules developed under this rulemaking. Routing as a safety control for the transport of any hazardous material is different from the more traditional safety conrols such as packaging, package marking, vehicle placarding and loading. Routing is largely a site-specific activity which cannot be entirely accommodated at the Federal level. Therefore, DOT is encouraging a decentralized decision-making process in this area within a Federally-provided regulatory framework. The Department believes that in the interest of uniformity and safety, it is both appropriate and practical for many routing decisions to be made at the State level. The fifty State governments are in a better position than the Federal government to respond to local concerns and likewise are in a better position than the 23,000 or so local jurisdictions to consider overall safety impacts from routing decisions. To ensure adequate consideration of local viewpoints, DOT believes an advisory group primarily composed of local officials should be established in each State to periodically review the effectiveness of the State/local consultation (discussed in more detail elsewhere in this document).

III. Federal/State/Local Role in Routing Radioactive Materials

The Hazardous Materials Transportation Act grants DOT the authority to regulate the transportation of hazardous materials. Among other things, section 105(a) of the HMTA specifically identifies routing as one form of regulation that the Secretary may deem necessary and appropriate for the safe transportation of hazardous materials. Before the issuance of the ANPRM for Docket HM-164, the Department had not implemented routing regulations for any hazardous material under this clear authority granted by the HMTA. A general routing provision does exist at 49 CFR 397.9 providing guidance to carriers and drivers of placarded motor vehicles. That provision predates the issuance of the HMTA and has not yet been adopted in regulations issued under the authority of that Act.

However, a number of actions by State and local governments relating to a specific hazardous material (radioactive material) and a specific mode of transportation (highway) have raised the question of whether more specific Federal routing requirements should be issued. The DOT must consider the overall safety impact of piecemeal, uncoordinated local actions on hazardous material transportation. The ANPRM and the NPRM made clear the Department's intention to consider only routing requirements for radioactive materials shipped by highway, the focus of most State and local actions, rather than undertake a comprehensive regulatory proceeding to consider all classes of hazardous materials and all modes of transportation. The fact that this proceeding considers only one hazard class and one mode does not rule out future Federal actions for other hazardous materials and other modes of transportation.

By issuing these regulations the Department has made the determination that routing requirements can improve safety—not only by providing for the use of the safest highway routes, but also by addressing the safety impacts of narrowly conceived local actions. In order to fulfill the mandate on hazardous material routing, it is DOT's responsibility to set out a national framework within which legitimate local concerns can be addressed. To establish this framework the DOT has the authority to make the basic decision as to what radioactive materials pose a significantly serious risk such that routing controls are necessary, and how these materials should be routed. The Department has made these decisions in this rulemaking and a brief synopsis now follows.

First, a general routing rule is established for all radioactive material shipments by highway which require a warning placard. These include many of the thousands of shipments of radiopharmaceuticals, industrial isotopes, and low-level wastes that are made annually. The general rule emphasizes that the carrier choose routes which minimize radiological risk by considering such factors as population, accident rates, and transit time.

Second, special requirements apply to motor vehicles transporting large quantity packages of radioactive materials. These requirements include preferred routing, written route plans and driver training certification. Preferred routes are identified as Interstate highways and State-designated routes.

The Interstate highway system lays the basic Federal framework for providing safe and efficient routes for large quantity radioactive materials. Accident rates along these roadways are sharply lower than on any other type of roadway. Several studies also support the safety and efficiency of the Interstate highway system for the carriage of hazardous materials. In comments to Docket HM-164, the NRC developed a hypothetical case study of routing alternatives using information generated by NUREG 0170 ("Final Environmental Statement on the Transportation of Radioactive Materials by Air and Other Modes", December, 1977). Both the NRC case study and NUREG 0170 are discussed extensively in the NPRM and in the Final Regulatory Evaluation and Environmental Assessment prepared in support of this document. The case study clearly shows that use of Interstate highways generally

result in lower radiological risks from the transportation of radioactive materials. Also, pilot tests were conducted for the Federal Highway Administration to apply routing criteria developed for all hazardous materials ("Development of Criteria to Designate Routes for Transportating Hazardous Materials by Highway", July, 1980). These tests were performed with the help of local officials in Nashville, Tennessee and Seattle, Washington and the results clearly demonstrate the advantages of the Interstate highways as compared to other roadways in minimizing risks associated with hazardous material transportation.

Carriers of large quantity radioactive materials are required to use Interstate beltways when possible to avoid city centers. Carriers are allowed off the Interstate system only to follow a State-designated route; in a documented case of emergency; to obtain necessary fuel or vehicle repairs; or to travel to and from a pick-up or delivery site not located on an Interstate System highway.

The Department believes that use of Interstate highways ensures a safe route of travel for large quantity radioactive materials. However, the Department recognizes the limitations of relying solely on the Interstate System and, as already mentioned, the inherent site-specific nature of routing. There is a clear need for a mechanism to accommodate these factors. Several examples serve to point this out:

1. Most points of origin and destination for large quantity radioactive materials shipments are not located on interstate highways. Additional safety benefits may be realized if access routes between the Interstates and these points are designated by the State.

2. The low accident rate associated with interstate highways is based on a national average. DOT recognizes there are situations where accident rates will be higher for a particular segment of an Interstate than for a nearby alternate route.

3. The accident rate is not the only important element to consider in assessing risk to the public—one must also consider the consequences of a serious accident, even though the probability of that accident may be small. Therefore, the population along the route of travel should also be considered. Since Interstate highways serve to connect population centers, the benefits of using an Interstate highway with its lower accident rate going through a city should be carefully examined and compared with the benefits of using a more circuitous, secondary road around the city.

4. Use of the Interstate highway system may necessitate circuitous travel resulting in some increase in normal radiological exposure and, in some cases, higher accident risks. More direct non-Interstate routes may exist which could provide greater safety to the public.

The task which confronted DOT in this rulemaking was to provide for a more site-specific analysis to resolve these situations while at the same time maintaining national uniformity and a safe, viable transport system for nuclear materials.

Many commenters feel that local governments should be responsible for routing within their jurisdictions. First, they argue that local governments have the primary responsibility for protecting the health and safety of their citizens and therefore should determine if routes through their jurisdictions are acceptable. It is the town, city or county which provides initial emergency response to protect health and property in the event of an accident. Secondly, they argue that route selection is a site-specific process and that local officials are the most knowledgeable of local roads and local conditions. However, DOT sees serious problems from both a practical and safety standpoint associated with placing ultimate routing authority with each of the 23,000 local jurisdictions in the country.

Local jurisdictions are inherently limited in perspective with respect to establishing routing requirements. While the Department recognizes that local governments are accountable only to their own citizens, such a limited accountability has some undesirable effects. For example, a routing restriction in one community may have adverse safety impacts on surrounding jurisdictions. Also, some communities in determining that they do not have the appropriate expertise or manpower to perform a routing analysis, may find attractive the option of completely prohibiting the transport of radioactive materials through their jurisdictions. This has already happened in some cases. Uncoordinated and unilateral local routing restrictions placed on carriers of radioactive materials would simply not be conducive to safe transportation. There is a clear need for national uniformity and consistency.

DOT believes that the role of State governments is the key for ensuring that the safest highway routes are used by carriers of large quantity radioactive materials. A State government has a much broader perspective than local governments since it is charged with providing for the safety and welfare of all its communities. The safety impacts of a routing decision on all communities within the State can be assessed.

There are a number of other advantages to the exercise of route designation authority at the State level. States have the capability to incorporate local input directly into their routing analyses through existing State administrative and lawmaking procedures. At the same time States have the capability of working with the Federal government and are familiar with implementing regulations under a variety of Federal programs. States often have the greater manpower and technical training necessary to perform a routing analysis which adequately considers all factors related to public risk. For example, many States exercise authority under the NRC's Agreement State Program to regulate possession and use of certain source and by-product nuclear materials. Many States have radiation safety officials as well as knowledgeable transportation officials available to collaborate on a routing analysis.

States not only have the capability to consider local viewpoints on route selection, but also can address concerns of tunnel, turnpike and bridge authorities. The Department does not seek to force the use of all such facilities for nuclear material transportation. Rather this rulemaking establishes a system by which the State can consider the use of these facilities on the basis of overall risk to the public. A State government, after a careful evaluation of the total risks to the public, may conclude that a safer route is available and that certain facilities should be avoided.

Many commenters have reservations about the role of the States and the efficacy of the State route designation process. Probably the greatest reservation is shown by local officials who are concerned that the States may not actively pursue local interests before routes are designated. The State Planning Council on Radioactive Waste Management submitted comments supporting the concept of State-designating routing. However, the Council, composed of State and local officials, strongly encouraged DOT to "develop appropriate mechanisms and procedures to enable local participation in routing decisions."

The Department also wants to ensure that local communities have input into the State route selection process. DOT believes that the key to incorporation of local viewpoint into routing decisions is the cooperation between State and local governments before designation of

routes. The Department has considered establishing specific guidelines for States to follow to ensure a formalized procedure for local consultation. However, there is great difficulty associated with this approach given the variations in organizational structure and administrative processes from State to State.

Instead, the Department is taking two steps to ensure that consideration is given to local viewpoints. First, the final rules contain a general requirement that the States consult with affected local jurisdictions before establishing a preferred route. DOT believes that the States must adequately consider local input, especially in light of the routing guidelines which necessitate the accumulation of local data relating to accident rates, population characteristics and other information that would require local cooperation.

However, the Department also understands that reasonable differences of opinion may exist in this sensitive area. As a result, DOT believes that each State should establish an advisory group composed largely of city and county officials. The purpose of the group would be to meet periodically, recommend to the State appropriate methods of consulting with local jurisdictions, and review the effectiveness of those measures in actual practice. Such State advisory groups would provide a valuable oversight function that should help to continually improve the State routing program.

State officials commented that the preferred routing system places a large burden on State governments and requested clear guidance from DOT on routing decisions. The Department also believes this to be extremely important in the interests of both national uniformity and safety. As a result, DOT is preparing a publication entitled "Guidelines for Selecting Preferred Highway Routes for Large Quantity Shipments of Radioactive Materials" ("DOT Guidelines") which is discussed in more detail elsewhere in this preamble.

IV. Prenotification and Time-of-Day Restrictions

An extremely large number of commenters favored some type of requirements relating to prenotification and time-of-day controls. The Department notes that most State officials strongly endorsed these measures. In light of these public comments the Department has carefully reconsidered both types of controls.

Prenotification

A number of reasonable arguments have been made in support of prenotification: To aid the State in its route designation activity; to ensure better enforcement by utilizing State and local enforcement personnel in addition to Federal inspectors; and to more rapidly facilitate emergency response capability in case of vehicular accident. Prenotification on a case-by-case basis for all shipments of radioactive materials would result in a severe burden not only on shippers and carriers but also on the governmental units receiving this voluminous information with a doubtful increase in safety. Many commenters agreed with DOT, except for shipments of certain high-level radioactive materials. In most cases, the desire for prenotification by State and local officials centers around spent fuel and certain other nuclear waste materials.

On June 30, 1980, Congress enacted legislation (section 301 of the NRC Authorization Act, Pub. L. 96–295) directing the NRC to develop regulations which will require its licensees to provide State governments with advance notification for certain shipments of nuclear wastes. The NRC issued an NPRM on this matter on December 9, 1980 (45 FR 81058), proposing to require prenotification for licensee shipments of all wastes required to be shipped in Type B packaging, which include spent fuel. The NRC has asked for the public to comment on the NPRM before March 9, 1981. Since these proposals would apply to a substantial number of shippers and carriers regulated by DOT, a discussion of the proposed requirements bears on the issue of prenotification raised in comment on the proposals for highway routing made in this docket by DOT.

In its NPRM, NRC proposed two sets of prenotification requirements. One set of proposed requirements concerns shipments of spent fuel in quantities greater than 100 grams mass. Such shipments are large quantity shipments subject to the routing requirements established by DOT in this docket when transported by highway. This treatment of spent fuel separately from other nuclear wastes is necessary because spent fuel shipments are also subject to physical security requirements which the NRC has imposed to guard against theft and sabotage. Information concerning exact schedules used in spent fuel shipments therefore must be considered sensitive. In the NPRM, the NRC proposes to require licensees to notify the governor of each State through which a shipment will pass at least four days before arrival at the State boundary. The notification would identify the shipper, carrier, receiver, the material to be transported, and the times of departure from origin and arrival at the State boundary. The licensee would have to immediately notify the State governor if the transportation schedule changes by more than six hours.

The confidentiality of information concerning the exact schedule of such sensitive shipments (i.e. dates and times of shipments) would have to be protected by the governor's office as if it were national security information (see proposed 10 CFR 73.21 in the NRC NPRM). Although treated as confidential, the information could be passed on to local officials as long as it is tranferred under the security conditions described by NRC in its proposal. Other shipment information would not be considered confidential. Confidential information could be declassified ten days following the departure of the shipment (or the last shipment in a series) from the State.

The second set of prenotification requirements proposed by NRC in its NPRM would apply to any other nuclear wastes that are required to be shipped in Type B packaging. This category of materials includes large quantity radioactive waste shipments which also are subject to the routing system established in this docket. The NRC would require advance notice of shipment to the governor at least four days before the beginning of an estimated seven-day period of departure from the shipment origin. Information to be supplied would include the point of origin, the estimated seven-day period or periods of arrival both at the State boundary and at the shipment destination, and a point of contact for schedule changes. Prenotification information for nuclear wastes, other than spent fuel as described previously, would not be considered sensitive information and the State governor would not have to protect its confidentiality. The NRC estimates that over 24,000 waste shipments, including spent fuel, will be subject to these advance notice requirements annually, although only a small portion will be large quantity shipments.

The NRC prenotification proposals would not apply to two particular groups of large quantity radioactive materials shipments. First, nonlicensee shipments of nuclear waste, primarily those in support of DOE research and development activities, are not covered by the NRC prenotification proposals. Second, radioactive materials that are not waste products (primarily large

source teletherapy shipments and possibly some other large source medical and industrial isotopes) also are not covered by the NRC prenotification proposals.

Further, there remain some unanswered questions concerning the nature of a prenotification system—what specific materials should be covered, how early the advance notice should be given, how the State or local governments would handle what may be voluminous paperwork, and what information is necessary. Congress has provided an indication of what is appropriate in this controversial area and the NRC is considering proposals which will not be made final for some time.

Another recent development also may prove useful to DOT in determining the efficacy of a prenotification system. The Puget Sound Council of Governments (PSCOG) is conducting a study in prenotification for certain materials as part of a comprehensive regional study of hazardous materials transportation under contract to DOT. PSCOG will present its findings on the effectiveness and practicality of advance notice to DOT in early 1981.

Two other facts also should be noted. First, the NRC intends to publish an atlas of all highway routes that have been approved for shipment of spent fuel. This information therefore will be publicly available to all State and local governments and other interested parties. Second, the existing NRC physical security program for spent fuel requires confidential notification and coordination with affected local officials (local law enforcement agencies) concerning approved routes.

In light of these considerations, DOT has decided not to take final action at this time concerning prenotification. In order to prevent a possibly severe inconsistency between NRC and DOT transportation requirements, the DOT will have to wait at least until final rules are issued for NRC licensees before undertaking a rulemaking proceeding to consider specific prenotification requirements for other types of large quantity shipments. In its further consideration of prenotification, DOT will also consider the role of escort vehicles provided by State or local governments. This subject is addressed later in this document in the general discussion of the preemptive effects of Docket HM–164.

Time-of-day restrictions

Many commenters are also strongly in favor of some kind of time-of-day restriction for nuclear material transportation. Again, most commenters are concerned with high-level nuclear wastes and spend fuel. There are practical as well as safety problems associated with uncoordinated time restrictions. For example, it has been estimated that the average shipment distance for a large quantity package of radioactive materials is approximately 2,200 kilometers. This implies travel through a large number of State, county and municipal jurisdictions. Even if the various time restrictions for these jurisdictions were known in advance by the carrier, delays enroute could be numerous. Some commenters argue that the delays caused by certain time restrictions are justified on the basis of the increased accident risks which exist during rush hour traffic in an urban area. However, the Department must also consider the added risks of normal radiological exposure accruing to the vehicle driver and bystanders at any temporary delay site. This may be a more important consideration from the standpoint of overall public risk, especially when one considers that several temporary delays could occur for each shipment. Also, there may be additional security problems related to the temporary delay of spent fuel shipments.

The Department does see some need for a coordinated effort to carefully examine the transportation of large quantity materials during periods of heavy rush hour travel in large urban areas. DOT believes that the States can address this situation as part of their route designation program by providing for suitable alternative routes to avoid certain heavily traveled highways during peak travel times. This would amount to a time of day restriction on certain highways, but would not require the hazardous material be unnecessarily delayed in one area.

V. Other Transportation Controls Realted to Routing

The notice of proposed rulemaking also addressed a number of other State and local actions generally related to the routing of radioactive materials. This included not only prenotification and time-of-day restrictions, but also escort requirements, restrictions pertaining to special personnel or equipment and any other action which would have the effect of unnecessarily limiting the transportation of radioactive materials through a jurisdiction. For the most part, DOT views these transport controls differently from the site specific nature of routing in one important aspect. These requirements are not directly related to characteristics that are peculiar to a specific geographical location. With the possible exception of the previously mentioned prenotification and time-of-day restrictions, the Department does not believe that public safety concerning the transportation of radioactive materials can be measurably improved by such State and local actions.

The Department has noted that the rationale supporting the need for various State and local actions often involves concerns in three areas: the adequacy of the emergency response system for hazardous material transportation; questions over liability for nuclear materials involved in highway accidents; and doubts over the effectiveness of the Federal enforcement of regulations. As a result, many citizens, as well as some State and local officials, believe that additional controls at the State and local level are justified, no matter how fragmented they may be. The Department does not subscribe to this philosophy. Even in cases where criticism may be justified, piecemeal State and local action instituted because of a concern over these issues and limiting the carriers' ability to function would not solve the problems. In fact, steps are now being taken by DOT and other Federal agencies to improve Federal, State and local capabilities in these critical areas.

With respect to emergency response, the Department of Transportation has prepared a comprehensive training program for responding to radioactive material transportation accidents. This training program "Handling Radioactive Materials Transportation Emergencies" is directed to "first-on-the-scene" emergency service personnel such as local fire, police and ambulance organizations. The comprehensive training package consists of slides, tapes, student workbooks and instructor guides. It is a simple and straightforward instruction kit to provide local and State personnel with a basic understanding of the subjects of radiation and associated hazards, packaging required for nuclear material, transportation regulations, protective measures and procedures, and planning and preparedness for transportation accidents. DOT has been coordinating the development of this training program for the past two years with emergency service personnel as well as State and local officials. This 6 to 8 hour training package supplements the 20 hour training program already available to emergency response personnel responding to other hazardous material transportation emergencies. The entire training program will be distributed to governors of each State upon request.

A booklet entitled "Response to Radioactive Materials Transportation Accidents" is also nearing completion. It was distributed as an interim edition in the spring of 1980 and the response from State radiation control program directors and emergency management authorities has been very favorable. It is intended to provide local emergency response authorities with basic information on the first steps to take at the scene of an accident until the arrival of State or other radiological response teams.

The Federal Emergency Management Agency (FEMA) is the agency primarily responsible for coordinating Federal assistance to State and local governments that are developing plans for responding to radiological accidents at both fixed nuclear facilities and at the scene of transportation accidents. FEMA has taken a number of steps toward this end. Recently proposed rules (45 FR 42341) were published on procedures and criteria for reviewing and approving the adequacy of State and local plans and preparedness. FEMA has also established the Federal Radiological Preparedness Coordinating Committee (FRPCC) consisting of a number of separate Federal agencies including DOT. This committee is coordinating all Federal assistance and guidance to various State and local agencies for developing and testing emergency response plans. The FRPCC responsibilities in this area include the following:

—Establish policy and guidance to other Federal agencies

—Develop preparedness criteria

—Provide direct assistance to State and local governments

—Review and approve State radiological emergency plans and preparedness

—Implement a program of public education

—Develop and manage an emergency response training program including field test exercise materials

—Issue guidance for radiation instrumentation systems.

The Department of Transportation is providing assistance to FEMA in the preparation of Federal guidance to State and local governments for use in developing the transportation portions of radiological emergency response plans. DOT will also assist FEMA in its review and approval of State and local plans and in the evaluation of exercises to test those plans.

In support of this effort, a Federal interagency task force was recently organized. The task force, with participation by State and local authorities, is preparing an important planning document "Guidance for Developing State and Local Radiological Emergency Response Plans for Transportation Accidents." Federal agencies including DOT, NRC, FEMA, DOE and the Environmental Protection Agency have collaborated on this effort to provide State and local authorities with guidelines to develop effective response plans. A preliminary guidance document will be published in the **Federal Register** for public review and comment during the first quarter of 1981.

A committee composed only of State and local officials has been organized to provide direct input into activities conducted by this task force. The Interorganizational Advisory Committee, composed of State civil defense and radiation control authorities and local emergency management officials, should prove to be an effective sounding board for planning and guidance documents developed by the task force.

It should also be noted that the routing scheme established by this docket will enhance State and local emergency response planning. The International Association of Fire Chiefs, in its comments to Docket HM–164, states:

> * * * we fully support Docket HM–164, Highway Routing of Radioactive Materials, for the following reasons:
>
> 1. Some nation-wide method for the routing of radioactive truck shipments is necessary. For each local jurisdiction to impose specific routing requirements would present an untenable situation. However, under the proposed regulations, each state would establish the routing after reviewing local input. The key here is to require local jurisdiction input.
>
> 2. The requirements that the carrier file a route plan with MTB is very important. In this way MTB will be able to provide data on routes, amounts, and shipment frequencies. This data will then be used by the local fire departments for their emergency response planning guides.

Questions over the adequate availability of funds to reimburse local jurisdictions and individuals affected by nuclear transportation accidents seem to be another impetus to various State and local actions. Final responsibility for nuclear transportation accidents really depends upon accident specific factors and will usually be settled in the courts. Some of the factors affecting financial responsibility include the nature of the accident itself, the shipper or carrier involved, the type of radioactive material involved and the geographic location of the accident. For most types of radioactive materials the extent of financial liability and the types of costs to be reimbursed would be determined by the applicable State tort law.

If the origin or destination of the radioactive material is an indemnified facility such as a nuclear power plant, the provisions of the Price-Anderson Act (42 U.S.C. 2210) assure a source of funds to cover certain personal injury and property damage claims. The law extends to persons other than the licensee, such as the carrier, who may be liable for an accident. Insurance coverage up to $560 million per accident is provided by a combination of licensee private insurance policies and indemnity agreements between the licensees and the NRC.

The Federal Highway Administration (FHWA) is now in the process of determining appropriate levels of financial responsibility for motor carriers of hazardous materials. On July 1, 1980, the President signed the Motor Carrier Act of 1980 (Pub. L. 96–296) into law. Section 30 of the Act, among other things, establishes minimum levels of financial responsibility for motor carriers transporting hazardous materials in interstate or intrastate commerce (applicable to vehicles with a gross weight rating of 10,000 pounds or more). The purpose of section 30 is to assure the public that a motor carrier maintains an adequate level of financial responsibility sufficient to satisfy most claims covering public liability, property damage and environmental restoration.

The minimum levels set in the Act include $5 million for each vehicle operated by carriers of large quantity radioactive materials and certain other hazardous materials. DOT has unlimited authority to adjust this level upward and may also adjust downward to not less than $1 million for each vehicle for an initial two-year period.

The FHWA's Bureau of Motor Carrier Safety (BMCS) issued an ANPRM (Docket No. MC–94, 45 FR 57676) entitled "Minimum Levels of Financial Responsibility for Motor Carriers" on August 28, 1980. The purpose of the notice is to obtain public comments and data and to eventually make any necessary adjustments to the minimum levels scheduled by Congress to go into effect on July 1, 1981.

Many commenters have also suggested that doubts about Federal enforcement efforts have resulted in increased State and local regulatory activities. The major criticism of commenters to this docket is that the preemptive effect of DOT's routing rules will eliminate or frustrate enforcement efforts at the State and local level. It is contended that State and local enforcement is needed to supplement the Federal inspection effort.

Although it is clear that this rulemaking will preempt certain State

and local actions, DOT does not believe this will reduce enforcement efforts at any level. States have been increasingly active in the enforcement of Federal highway safety and hazardous material transport regulations. Many States have adopted the Federal Motor Carrier Safety Regulations and the Federal Hazardous Materials Regulations as strongly encouraged by DOT. Most States already have enforcement systems in place to carry out the provisions of these regulations. A number of States have initiated substantial hazardous material training programs for law enforcement and other personnel. DOT has provided training to State and local personnel at its Transportation Safety Institute in Oklahoma City. Such State-level enforcement activities will not be hampered by these final rules. In fact, it is DOT's contention that enforcement, particularly at the State level, will be enhanced by the States routing function provided by this rulemaking.

At the Federal level, the Department's BMCS has the primary responsibility for ensuring compliance with the Hazardous Materials Regulations by motor carriers. BMCS is now authorized 210 hazardous material or safety specialists in the field and expects additional positions next fiscal year. BMCS is now administering a four-State demonstration program which funds approximately 100 additional State inspectors. Also, pending before Congress is the Commercial Motor Vehicle Safety Act which, if enacted, would authorize a 50-State grant program that could result in a total of 2,200 State inspectors for motor carrier safety. Moreover, the NRC's enforcement staff of over 100 inspectors is directing its inspection efforts increasingly toward the transportation activities of their licensees. This will enhance the overall enforcement program particularly for transporters of nuclear fuel-cycle materials.

A number of commenters note that penalties were not mentioned in the January 31 NPRM and suggest the need for such. Penalties for violation of radioactive materials transportation requirements under the HMTA are the same as prescribed for other hazardous materials. Civil penalties may include a maximum fine of $10,000 for the occurrence of each violation for each day. Criminal penalties may include a fine and imprisonment up to $25,000 and five years. Civil and criminal penalty actions can be take against container manufacturers as well as shippers and carriers of radioactive materials. In addition, the States provide for civil and criminal penalties under their own legislation and the levels vary from State to State.

The Department believes that much is being done in the areas of emergency response planning and training, carrier financial responsibility, and regulatory enforcement. Furthermore, both local and State expertise have been solicited to help in the process of strengthening various programs. DOT certainly recognizes the legitimate concern and acknowledges the expertise of State and local officials in these areas. However, independently applied restrictions which frustrate the ability of a motor carrier to safely and expeditiously move nuclear materials are not the proper approach to enhance over-all public safety. It is DOT's opinion that State and local concerns can be more adequately satisfied under programs coordinated at the Federal level which incorporate State and local viewpoints.

VI. Preemptive Effect of Docket HM–164

Because of the extensive nature of the Part 177 amendments, the relationship among the levels of regulation of the different categories of radioactive materials, and the need for an understandable interface between Federal and State regulation of radioactive materials transportation, DOT believes that certain regulatory actions by State and local governments should not be taken. To explain this view, DOT sets out its policy on the relation of State and local regulation to the Federal requirements in Part 177 in a new appendix to that part. An appendix appears to be a more appropriate method of stating this policy than the regulatory text used in the January 1980 notice of proposed rulemaking, and an appendix permits a more extensive discussion of the policy. The section-by-section analysis appearing later in this preamble details the specific reasons for the policy. Some general issues will be discussed here.

The structure of the amendments to Part 177 accommodates State regulation of carriers' routes in defined circumstances, as well as some limited local regulation. Briefly, an appropriate State-wide agency may designate routes for motor vehicles transporting large quantity radioactive materials. Local governments, if permitted by State law, may exclude such motor vehicles from locations from which they are excluded by Part 177 or by State action consistent with Part 177. For placarded vehicles carrying lesser quantities of radioactive materials, both State and local governments may adopt § 177.825(a) verbatim. Section 177.825(a), established in this rulemaking, requires a carrier to consider certain information in route selection and to provide general guidance to the motor vehicle operator as to routes used. While State regulation is circumscribed as regards routes used by such carriers, adoption of § 177.825(a) will permit a State to directly enforce that provision without necessary recourse to Federal enforcement personnel. The same purpose is served by the limited local regulation permitted for placarded carriers of both large quantity and less than large quantity shipments. Routing restrictions for unplacarded motor vehicles are not necessary. The preemptive effects of the final rules in this docket are intended to occur at the effective date of the rules.

The basic justification for publishing a statement concerning the preemptive effects of Docket HM–164 was questioned by many commenters. The HMTA expressly preempts State and local requirements that are "inconsistent" with HMTA requirements, both the law itself and regulations issued under it. DOT has previously established procedures to permit it to interpret the HMTA's preemptive effects when so requested by State or local governments, or by other interested persons. These procedures, codified in Part 107 of 49 CFR, offer a less expensive alternative for resolving preemptive issues than litigation althought such issues are ultimately judicial in nature. It is apparent that new rules which deal extensively with matters of regulatory concern to State and local governments, such as those published in this Docket, will necessitate guidance from DOT as to the preemptive effects on State and local authority. DOT believes that this guidance will be considerably more useful if provided, as far as possible, before the rules become effective. The Part 177 appendix is intended to serve this purpose.

Underlying the appendix are several conclusions about the Federal-State relationship in the area of radioactive materials transportation. First, as expressed in the Part 107 preemption procedures, DOT believes that "inconsistent", as used in the HMTA, refers to State and local rules that directly conflict with HMTA requirements, and also to those that are "an obstacle to the accomplishment and execution" of the HMTA (§ 107.209(c)(2)). Therefore, the policy statement in the appendix concerns characteristics of State and local regulatory activity that are necessary to effect, or to avoid hindering, accomplishment of the goals and

purposes of the Part 177 amendments. Those amendments balance complementary national, State and local interests in regulating motor carriers to ensure that public health and safety are served by Federal, State and local rules that are widely applied and understood and that are based on a comprehensive examination of factors affecting radioactive materials transportation safety.

This rulemaking does not delegate Federal authority to regulate motor carriers, a fact that has been misunderstood by many commenters. The rules published in Docket HM-164 define and make Federally enforceable the use of Interstate System highways for carriers of large quantity radioactive materials. They also make Federally enforceable those routes designated by appropriate State agencies, based on DOT's own determination that such routes, if derived from an adequate safety analysis like the "DOT Guidelines" are likely to result in a further reduction of radiological risk that is reliable and reasonably related to the costs of evaluating, enforcing and using selected routes. Further, DOT has concluded that route designations that do not meet the conditions outlined in the Part 177 appendix are unreliable tools for minimizing radiological risk, may result in unconsidered safety impacts, may unnecessarily burden commerce, and generally result in a confused patchwork of safety regulation that is not conducive to compliance.

In the appendix, DOT has not attempted to specify in detail the process to be used by a State agency in route designation except in two respects. A safety analysis as described must be performed to ensure reliable results, and the designating State agency must consult with affected local or neighboring State jurisdictions. State consultation with affected local jurisdictions is necessary to ensure that the information used to perform a safety analysis is the best available. It is important, for this reason, that the consultative process between the State routing agency and local governments be both substantive and thorough.

In considering this need, DOT has concluded that an appropriate method for effecting the consultative process should include public notice and opportunity for comment, public hearing when appropriate, and direct notice to affected local juridictions. To ensure that these processes are adequate, DOT also believes that a standing advisory body consisting largely of local officials who are concerned with routing issues should be establish in each State to recommend to the State appropriate consultative methods and to evaluate the effectiveness of those methods in actual use. This is particularly important in States that are likely to impose frequent routing decisions or to deal with particularly controversial issues. An *ad hoc* advisory body may suffice in States that are unlikely to take frequent routing action. For example, a State that expects only limited traffic in large quantity shipments on an acceptable Interstate route may wish to conduct an initial review of the routes of travel using an advisory body convened for that specific purpose. Another consideration related to the State-local consultative process concerns routing actions which local governments believe should be taken within their jurisdictions. A local jurisdiction which requests State action, for example to shift traffic from an urban segment of Interstate highway, should identify potential alternate routes to the appropriate State routing agency and state why those other routes may be a better choice for routing large quantity shipments. A State advisory body might be able to provide a useful preliminary evaluation of local requests of this kind and to identify any need and possible methods for further State-local consultation.

Commenters also raised questions about the effect of this rulemaking on the local authority of Indian tribes. DOT believes that, where an Indian tribe has effective routing authority similar to that exercised by a counterpart State agency, it should be exercised as described in the Part 177 appendix. Tribal regulatory authority over motor carriers must exist separately from the Part 177 amendments, since those amendments do not delegate any such authority. The source of tribal authority may differ from that of State authority, in that tribal authority is recognized by treaty or Acts of Congress. Consequently, it is possible that limits on tribal authority may occur as a result of Federal law other than the HMTA. Rather than a question of HMTA preemption, tribal routing authority may involve a question of the proper relationship between the HMTA and other Federal law. In specific situations, it may be necessary to examine other Federal law to determine the practical limits on tribal authority to impose routing controls on motor vehicles carrying radioactive materials. In the Part 177 amendments, DOT is treating Indian tribes as it treats States. DOT recognizes, however, that specific factual and legal circumstances may differ from those that affect State authority and is prepared to examine these circumstances on an individual basis, as the need is shown.

DOT's decision against required use of escort vehicles is discussed in the section-by-section discussion of the new appendix to Part 177. However, an obvious relationship exists between prenotification and the voluntary provision of escort vehicles by jurisdictions through which a large quantity shipment may pass. DOT intends to examine situations where an escort might be provided voluntarily by a local jurisdiction, under circumstances in which the presence of an escort is not a precondition to passage through the jurisdiction, and in which the transport vehicle is not delayed at the jurisdictional boundary. Escort vehicles in some cases may also be provided by shippers of spent fuel under the existing NRC physical security program for transit through some heavily populated local jurisdictions. In view of this, DOT intends to examine the possible impact of such voluntary, locally provided escort services on the DOT routing rules, existing NRC physical security rules and proposed NRC prenotification rules.

VII. Section-by-Section Discussion of Final Rules

Summary of Changes from NPRM

There are several important changes from the proposals issued in the NPRM based upon the Department's review of the public comments. First, new provisions are added to Part 172 to aid shippers, carriers and enforcement personnel in the identification of radioactive materials shipments which are subject to the preferred routing system. These provisions include a new shipping paper entry and a white placard background applying only to shipments involving a large quantity package of radioactive materials.

Secondly, new definitions for "State routing agency," "preferred route", and "State-designated route" are added to the regulations. These definitions are added to answer questions concerning the appropriate routing agency designated by the States and the manner by which States exercise their authority to designate preferred routes.

The wording of both the general routing rule (proposed § 177.825(a)) and the preferred routing rule (proposed § 177.825(b)) have been modified somewhat. Although the effect of the general routing rule remains the same, the criteria for the carriers to use in selecting a route has been revised to make the rule more manageable and enforceable. Several points concerning the preferred routing rule may not have

been clear in the NPRM and should be emphasized.

It is important to emphasize that the final rule establishes the Interstate highway system as a self-functioning Federally prescribed routing network capable of providing for the safe movement of nuclear materials even if the States choose not to designate routes. However, because the level of safety provided through use of Interstate highways may be improved by site-specific evaluations, DOT believes that the States should be extended as much flexibility as possible in their route designation process. For example, the final rule does not require a carrier to use Interstate beltways or bypass routes when other routes have been designated by the States as substitutes. The States can consider the need for circumferential routes to avoid urban areas on a more site-specific basis in their own routing analyses. The beltway provision still applies to carriers using Interstate System preferred routes when the States have not designated another route. This flexibility is consistent with the routing guidelines being developed for the States.

Another change to the preferred routing rule is the reference to the DOT Routing Guidelines as criteria for States to use in designating preferred routes. As will be covered in more detail in the next section, the guidelines will provide the States with a clear, step-by-step procedure for performing a routing analysis that is both more understandable and flexible than the criteria presented in the January 31 NPRM.

The last major change between the proposed and final rule involves inconsistency between Federal and State/local transportation requirements. Proposed paragraph (d) of § 177.825 has been deleted. Instead of addressing this topic in the routing rule itself, DOT has chosen to include an expanded discussion of DOT policy in a separate appendix to Part 177 as mentioned previously.

The remainder of the final rules are basically unchanged from the NPRM, except for redesignation of certain paragraphs. The following section-by-section discussion provides a synopsis of DOT's rationale for each section including reference to substantive public comments. A more detailed discussion of public comments is provided in the previously mentioned docket supplement.

§ 171.7 Incorporation of State routing guidelines by reference

The publication "Guidelines for Selecting Preferred Highway Routes for Large Quantity Shipments of Radioactive Materials" (DOT Guidelines) is incorporated by reference in § 171.7. Repeated reference has been made to the need for State and local involvement in routing decisions on the one hand, and the need for uniformity and consistency of those decisions on the other. Many commenters, particularly State officials, support the preferred routing system for large quantity nuclear material to accommodate this goal, but only if DOT provides clear and practical guidelines for use by State authorities. The DOT Guidelines are intended to fulfill this function.

In developing the guidelines, the Department has drawn upon two recent research projects. The first is a study completed for the FHWA entitled "Development of Criteria to Designate Routes for Transporting Hazardous Materials by Highway". This research project involved a study of all factors which contribute to the selection of highway routes for all hazardous materials classes. The most important factors related to the lowering of public risk are then selected as the basic criteria upon which an agency should base its highway routing decisions. Although the Department does not consider this generic research to be final, the study does establish a methodology which can be useful after further refinements are made relating to the particular class of hazardous materials for which routing is to be evaluated.

With this in mind, the Department initiated another research project to develop routing criteria oriented specifically to the peculiar characteristics of radioactive materials transportation. This study is being conducted for the Materials Transportation Bureau and is titled "Guidelines for Selecting Routes for Highway Shipments of Large Quantity Radioactive Materials". The routing guidelines developed thus far provide flexibility to the appropriate State and tribal routing authorities, either to de-designate the use of an Interstate highway and provide an alternative, or to identify other appropriate routes. Further refinements in the guidelines are expected after the completion of pilot tests to be conducted with the help of two State governments in January 1981. It is expected that the guidelines will be published and made available to State agencies shortly thereafter.

Another important element of the guidelines relates to recommendations for the soliciting of local input into routing decisions. It should be noted that the routing guidelines provide for substantial local input in themselves. Much of the data necessary to perform the routing analysis will be generated from local sources: accident rates, population statistics, conditions of roadways, emergency response capabilities, property values, evacuation capabilities, and location of facilities such as schools and hospitals which require special consideration. Nevertheless, the Department believes it essential that the State specifically provide for a process of consultation with appropriate local authorities.

§ 171.8 Definitions

A number of commenters suggested that DOT specifically identify the agency in each State that would have the authority to designate preferred routes. As stated previously, the Department has no authority to do so. The designation of routes for large quantity radioactive materials is an authority which only the States can exercise for themselves. Each State has legal and organizational peculiarities relatings to the regulation of radioactive material transportation. Often, authority is divided among various agencies within the same State. Consequently, each State should determine for itself the appropriate routing agency within the general definition established by § 171.8.

The definition of "State routing agency" includes interstate compacts and appropriate Indian tribal authorities (see the discussion of § 177.825(b) relating to Indian lands). As specifically mentioned in the NPRM, this definition excludes a bridge/tunnel/turnpike authority unless that authority also is empowered to impose such rules concerning radioactive materials transportation on State highways generally. Routes designated by a State routing agency may be enforced by that agency, or by any other appropriate State agency. This definition may apply to more than one agency in a single State sharing responsibility for designating preferred highways.

Two other definitions are added. The first is the definition of a "preferred route". A preferred route includes "State-designated routes" which is also defined in § 171.8. A definition for State-designated routes is necessary to clearly show the criteria the State must follow in establishing preferred routes: application of DOT routing guidelines or an equivalent routing analysis, prior consultation with affected local agencies, and coordination with adjoining States to ensure continuity of routes.

§ 172.203(d)(1)(iii) Shipping papers

For identification and enforcement, a requirement is added to § 172.203 to require the shipper to enter "Large quantity" as part of the hazardous material description on the shipping paper. This will alert the carrier that he has received a package of radioactive materials for which routing controls are required and that a route plan must be prepared.

§ 172.507 and § 172.527 Placarding

Vehicle identification requirements are added to Part 172 to require a white background for the RADIOACTIVE warning placard. The white background will aid enforcement personnel to distinguish between large quantity shipments and other placarded shipments for which preferred routing is not required.

Public comments strongly favored some method of distinguishing between vehicles which contain large quantity packages and vehicles which do not contain large quantity packages but which still require the RADIOACTIVE warning placard. DOT considered several methods of accomplishing this. The white placard background is determined to be the most passive system considering effectiveness and cost of implementation. The white background system has been used for some time to distinguish certain hazardous materials shipped by rail for the purpose of car handling.

§ 173.22 (b) and (c) Shipper's responsibility for physical security, and filing of route plans

Without change from the proposals in the NPRM, the Department is adding provisions to § 173.22(b) to require shippers of irradiated reactor fuel (spent fuel) to provide physical protection under either a plan now required by the NRC (see "Physical Protection of Irradiated Reactor Fuel in Transit", 45 FR 37399, June 3, 1980, and 10 CFR Part 73) or a plan approved by MTB. Also, a provision is added to § 173.22(c) to require shippers of a large quantity package of radioactive materials to file a copy of the route plan prepared for that shipment within 90 days following the shipment with DOT. The Department intends to consolidate the information contained in the route plans and supply it to interested parties. For further discussion of route plans and physical security see the discussion of § 177.825(c) and § 177.825(e), respectively.

§ 177.810 Tunnels

Section 177.810 is revised to except radioactive materials from requirements that restrict their transportation through urban vehicular tunnels used for mass transportation. An informative sentence is also added which directs carriers to § 177.825. This action is being taken to facilitate achievement of the basic objective of the general routing rule to minimize radiological risk and to allow the States flexibility to designate preferred routes for large quantity shipments. The States, in exercising their routing prerogative under this rule, may determine through their routing analysis that a safer route exists which does not require the use of tunnels and other such facilities. In that case, the States may reimpose restrictions for large quantity radioactive materials.

Many commenters questioned the rationale behind the exception for radioactive materials in § 177.810 as opposed to restrictions for other hazardous materials. The State of California, which retains control over the shipment of hazardous materials through its tunnels, held that it is imperative that the State maintain the flexibility to prohibit such transportation. The Maryland Department of Transportation objected to the proposed revision of § 177.810 and took the position that any vehicle required to display the RADIOACTIVE placard should not be permitted to traverse an urban vehicular tunnel used for mass transit. DOT does not believe that this is necessarily the case from a health and safety standpoint. Traditional locally imposed restrictions on tunnel traffic frequently focus on explosives and flammable gases, for which the confinement provided by a tunnel may act to exacerbate the risk. In cases involving radioactive materials, the fact of confinement does not operate to increase overall risk.

For large quantity shipments, it is DOT's position that tunnel restrictions should not be based merely on the nature of the facility but on the overall risks between available routes, and that such restrictions should be imposed only by an agency with State-wide responsibilities that permit adequate consideration of other alternative routes. Thus, use restrictions on tunnels and similar facilities should not be determined solely by facility operators, but rather their use should be available for consideration as possible alternatives in the State procedures leading to route selection. The amendment to § 177.810 is necessary for States to be able to evaluate the site-specific risks involved over various routes without being hampered by locally imposed constraints which may be counterproductive. One proper factor that a State agency would consider in route designation is the potential property damage to the tunnel itself in the event of an accident.

In the absence of a State routing agency's action to review the status of tunnels and similar facilities located within its jurisdiction, a large quantity carrier will generally be limited to such facilities that are part of an Interstate System highway. Other placarded carriers could use such facilities only after considering the safety factors specified in new § 177.825(a)

§ 177.825(a) General routing rule

Paragraph (a) of this section is adopted with some change in wording from that proposed. The basic objective of the general routing rule remains the same: the carrier must examine all available highway routes and choose a route that minimizes radiological risk to the public. In making this determination, the carrier must consider available information on the most important factors which contribute to the minimization of radiological risk. These factors are identified in the final rule as population, accident rates of available highways, transit time, and the time of day and day of week during which the shipment occurs.

The NPRM also included such factors as terrain, physical features, weather conditions, and effectiveness of local emergency planning. These factors have been deleted from § 177.825(a) of the final rule for various reasons. The influence of terrain and physical features on public risk from transportation is largely accounted for by considering accident rates of the alternative roadways. It is not believed that these factors should be singled out for special consideration by the carrier since they are only two factors which contribute to overall highway accident rates. Weather condition is a factor over which the carrier has no control, has little advance knowledge of, and could often change during actual transportation. Determining the effectiveness of local emergency planning would be a difficult burden to place on the carrier in light of the subjective judgement that would be necessary and the lack of available information to the carrier. It is the Department's belief that effective emergency response planning is an activity that all communities should be involved with. As already discussed, DOT and FEMA are collaborating to provide an emergency response training and preparedness program to achieve

this end. Economic factors such as property values have not been included because they generally follow population density and are not otherwise readily available to carriers.

The last major change to the general routing rule involves the replacement of the term "risk radiological exposure to the fewest persons" with "minimize radiological risk." Risk minimization is the basic goal to be achieved. Certainly limiting exposure to the fewest people possible is one element of reducing overall radiological risk, but it is not the only consideration.

Many commenters reviewing this section took exception to what they called the non-specific, unquantifiable criteria carriers and drivers must evaluate in choosing a route which will minimize radiological risk. There was general agreement that placarded vehicles carrying other than large quantity packages of radioactive materials should not be forced to comply with the very specific routing rules established for those shipments. However, no one offered a more acceptable rule to govern general routing requirements. While most of those persons commenting on this section considered the lack of precise, measurable factors to be an advantage which carriers could use to operate vehicles at their own discretion, the American Trucking Association (ATA) expressed its concern over the rule's implication that only one possible route could qualify. The ATA went on to state that, given the dynamic state of affairs of the prescribed criteria, the optimum route could vary even during the course of actual transportation, and carriers would find themselves subject to the whim and fancy of respective State and local governments in issuing citations for unacceptable route selection.

DOT does not expect that any of the suggested actions of carriers or compliance personnel will occur with such frequency that the value of the rule as a general statement of meaning or intent will be diminished, especially in light of the improved wording of the rule. For clarification purposes DOT does acknowledge that more than one route could qualify as an acceptable alternative and it is not incumbent on the carrier or driver to make detailed calculations in selecting the most appropriate route.

The public interest group Rural America was alarmed by DOT's emphasis on routing vehicles carrying such materials in a manner that might affect the health and safety of small towns and rural people. Such a policy, they said, reflects the Department's failure to recognize the needs and rights of populations residing in rural areas, and they see in the rule a discriminatory stance regarding sparsely populated areas. In directing carriers to select routes which minimize radiological risk DOT does not agree that it is merely shifting a burden from one group of persons to another, although it is true that population density is one factor the carrier must consider. Rather, DOT expects to see a decrease in the amount of exposure to all persons in the general population.

The Department once again would like to point out that this general routing rule applies to thousands of shipments involving relatively low-hazard radiopharmaceuticals, and other medical and industrial isotopes. These shipments often involve multiple pickups and deliveries, interchanges with other modes of transportation, and the comingling of radioactive materials with non-hazardous materials on the same vehicle. A general requirement to accommodate a great number of shipments in such a complex transportation environment will necessarily involve some vagueness. The rule is intended to guide motor carriers by specifying important factors to consider in evaluating a number of available routes.

§ 177.825(b) Preferred Routes for Large Quantity Radioactive Materials

In the notice of proposed rulemaking DOT discussed its reliance on the Interstate System of highways as being the primary roadways over which radioactive materials shipped under a route plan are to be carried. The general designation as preferred highways is, therefore, granted to these highways based upon an overall performance rating with respect to lower accident rates and their capacity for reducing transit times. For the most part, public comment expressed support for this proposal as well as the related provision which allows States the prerogative to modify the preferred status of Interstate highways and designate other roads as acceptable alternatives.

Some commenters argued that specific segments of the Interstate System are not as safe as statistics indicate for the system as a whole and that DOT should not make such widespread designations without performing a mile by mile review of the roadway. The NPRM recognized that each mile of the entire 42,500 miles of Interstate highway is not so consistent in design engineering or accident history that there would be an even correlation of the system's parts equal to that of the whole. That is one of the reasons why an option is extended to the States which enables them to modify the preferred status of those segments for which there is a more acceptable alternative. As a basic system, however, even in the absence of State action, the Interstate System highways are well-suited for the use required by the rule. It also serves as a measure for use by the States in their designation of some additional highways which provide an essentially equivalent or greater level of safety. This basic system of highways as primary routes also supports emergency response planning by increasing the confidence of planners in their knowledge of routes of travel.

The requirement that carriers of large quantity radioactive material packages use an Interstate circumferential or bypass route around a city was generally recognized by commenters as a reasonable precaution. This requirement did not, however, receive unanimous approval.

One commenter suggested that the use of beltways would not automatically result in the avoidance of all heavily populated areas. The City of Baltimore expressed its opinion that during peak-hour traffic patterns, it may be less hazardous to direct shipments over an Interstate through route rather than over a beltway and wanted this option left open to the States in their modification of Interstate highways and designation of other preferred routes. Comments from the State of Massachusetts pointed to situations where some metropolitan areas have multiple beltways and they feared that the rule as proposed might allow for routing over the shorter circumferential route, even though a second route, with superior design standards and lower population density, is available.

In response to these comments, DOT must reaffirm its belief that packages of large quantity radioactive materials can be transported over any Interstate highway, and most other comparable routes, with a confident level of safety. However, this does not imply that reasonable routing rules should not be imposed by State governments which increase this level of confidence. Consequently, in applying a rule which addresses the broad national interest DOT has chosen to direct carriers to use urban Interstate circumferential beltways in the belief that, when considering both normal and accident conditions of radioactive materials transportation, an aggregate benefit will be realized. States are encouraged to exercise their option to designate other streets and highways as preferred routes and to modify the status of Interstate highways. Such action, if justified, could

include the direction of traffic onto Interstate through routes or onto a specific Interstate bypass. Each of the above referenced comments regarding beltways, then, would seem to be satisfied through a responsible exercising of the State's prerogative to designate routes and modify the status of Interstate highways. The guidelines developed by DOT to assist the States in their selection of preferred highways, and for similar use by local units of government in their consultation with the States, is also an effective means by which comprehensive, safety related routing decisions can be made.

In commenting on which radioactive materials should be restricted to preferred highways few persons took exception to the choice of large quantity packages. As a matter of fact there was widespread agreement, among those persons acknowledging the need to transport radioactive materials, that the Interstate System of highways and equivalent roads are the most appropriate routes for large quantity packages. As pointed out in the NPRM, Docket HM–169 will probably eliminate the term "Large Quantity". For routing purposes, some multiple of A_2 values (see the discussion on package curie limits in Docket HM–169, 44 FR 1852, January 8, 1979) will very likely be used to identify radioactive material packages now described as large quantity packages in § 173.389.

Several Indian organizations expressed a concern that the NPRM failed to recognize "the unique legal status of Indian tribal governments and tribally-owned lands." Specifically they contended that Indian tribes are, in effect, quasi-sovereign governments possessing rights of self-government under the terms of various treaties with the Federal government. As such, organizations such as the Council of Energy Resource Tribes (CERT) maintain that Indian tribes have the same prerogative as State governments to designate preferred routes for large quantity radioactive materials across tribal lands.

Commenters from Indian organizations support their arguments from the legal standpoint that DOT's preemptive authority may be limited by tribal ownership rights. CERT contends that:

> * * * Indian tribes do not lose title to the land on which State or interstate highway rights-of-way are obtained through negotiated agreements between the tribes and the State government. Thus, a tribe may not have relinquished its right to restrict the use of the easement for a purpose that the tribe feels endangers the health and safety of its people. The DOT may not have the authority to preempt such tribal restrictions because the Hazardous Materials Transportation Act does not expressly apply to Indian lands.

Indian commenters did not voice an objection to the transportation of radioactive material across their lands per se. The comments were oriented toward allowing the route-designation option with the Indian tribes the same as for the States. It is pointed out that many Indian reservations are located near mining or milling activities associated with nuclear materials as well as Federal disposal sites for radioactive waste materials. Further, many Indian lands are crossed or are in proximity to highways used for transportation of all types of nuclear materials.

The applicability of the HMTA to Indian tribal lands will depend on the specific facts and laws involved. Generally, however, DOT does recognize the special status of Indian tribal governments in the Federal system. Accordingly, the final rules allow Indian tribal governments to exercise routing authority in a similar manner as provided for the State governments. This is accomplished by including appropriate Indian tribal authorities in the definition of "State routing agency" in § 171.8.

While the Interstate System of preferred highways will permit the transport of radioactive materials between any two points, DOT recognizes that in some instances this may involve an excessive amount of time and mileage thereby reducing the overall effectiveness of the safety objectives intended by this rulemaking. However, rather than prescribing an arbitrary numerical percentage increase against which carriers would have a blanket approval to use non-Interstate System highways, DOT believes that the States are fully competent to deal with such actual cases as they arise and will respond to them in an appropriate fashion. It is anticipated that particular situations which involve a regular flow of materials will come before the State in the form of requests or petitions from carriers seeking the designation of preferred highway for a certain non-Interstate highway. Considering the key role played by the States in designating routes, it is believed that this approach is the most reasonable method to address circuitous travel that may result occasionally from use of the Interstate System. Also, this will likely result in the selection of a route based on a documented measure of public risk rather than one based on an arbitrary percentage figure. It is expected that the States, in considering the approval or denial of the carrier request or petition, will perform a routing analysis similar to that prescribed by the DOT Routing Guidelines. DOT will reevaluate the final rules in the first year after they become effective and will consider whether or not they need to be modified to provide other methods of dealing with circuitous travel.

One final point on the State designation of routes should be made. Commenters have questioned whether such a State-designate route would be established on a shipment by shipment basis or be a generic route established to handle shipments on a continuing basis. DOT is of the opinion that the application of the DOT routing guidelines or some other equivalent routing analysis by a State routing agency would be sufficient to establish preferred routes for routine use by carriers of large quantity radioactive material packages. State-designated routes are not considered to be shipment specific routes except under unusual, one-time-only shipment situations (see Section VI.D. of Appendix A to Part 177).

§ 177.825(c) Route Plans

An essential component of the final rule is the route plan prepared by the carrier or its designated representative. This document must be prepared by carriers of large quantity packages in compliance with the preferred routing system established in § 177.825(b). A similar requirement already exists for carriers transporting packages of Class A or Class B explosives. Admittedly, there are a great number of variables to be considered in route planning when one looks at the aggregate of total packages, multiple shipping locations, and widespread destinations. However, for any particular shipment the routing possibilities are somewhat limited by the safety criteria established by DOT and the practical alternatives such as available roadways. Accordingly, DOT does not forsee any severe administrative burdens being required of carriers beyond their capacity to perform, nor does it expect that carriers will be indiscriminate in their selection of routes. Certainly DOT recognizes the interest of shippers in routing decisions and expects that they will be very influential in the final selection. However, carriers remain the party with ultimate responsibility for compliance with § 177.825(c) and they are cautioned to carefully evaluate any route plan submitted for their adoption by other parties.

The proposal to require the preparation and filing of route plans for large quantity radioactive materials

packages drew a considerable amount of public comment. For the most part, persons who would be the beneficiaries of the information contained therein supported the proposed requirement while shippers who would be responsible for the administrative filing of the route plans seriously questioned the need for this information by DOT or any other unit of government. The objections can be synopsized as follows: that the States have not expressed any interest in such data; that DOT seems to want the data only for purposes of passing it on to the States; and that the filing of such information could lead to serious problems related to proprietary information as well as security.

In answer to these comments, DOT fails to agree that the States are not interested in the data which can be extracted from written route plans, that proprietary information would not be protected, or that the potential for sabotage would increase by any noticeable degree. Quite to the contrary, DOT is of the opinion that the States and other units of government extending all the way to cities and towns have expressed a very affirmative desire to share completely in the accessibility of detailed information contained in the route plan. Their motives in obtaining such data appear to be in fulfilling their role in compliance and emergency response preparedness activities related to protection of the local public health and safety. Many of these jurisdictions suggest a requirement for duplicative filing of route plans with all interested units of government. Such a burdensome filing requirement has not been adopted, and DOT believes it can meet the needs of local government through its periodic reports and answers to specific inquiries regarding any of the reportable information.

With respect to proprietary information and security, information which DOT can be expected to release on these shipments will deal with statistical accounting of package contents, routes used, identification of origins and destinations and the like. Effectively this is no more information than is currently available to those who wish to monitor the shipping activities of the relatively few facilities at which large quantity radioactive materials packages are handled. Also, any information for which confidential treatment is requested and justified may be protected from disclosure under 49 CFR 107.5. DOT remains firm in its belief that the requirements for preparation and filing of written route plans are reasonable and necessary.

There was an almost unanimous call from State and local officials, as well as interested persons, seeking information contained in the route plan prior to the actual transfer of the radioactive materials. These requests will be satisfied in part by the previously mentioned NRC rulemaking which will necessitate the prenotification of any interested State in which spent fuel or a Type B waste shipment is to be transported.

Other commenters interested in the specific form and substance of DOT's reports to the States requested clarification and updating as to how this information will be provided and to what agency. The agencies of primary interest in these reports is expected to be those organizations in the various States which are empowered to designate preferred highways. Consequently, they will be the principal addressees. In addition, copies will be furnished to the Office of the Governor of each State, to the tribal governments, and to the extent possible any other organization or interested party specifically identified by any of the aforementioned. All other persons would be free to inspect these reports in the Offices of MTB, or may acquire copies of them.

§ 177.825(d) Driver training

DOT has added one provision to the route plan requirement that requires the carrier to submit a supplement to an original route plan when the carrier is forced to deviate from the route plan for emergency or other reasons. The supplement must be submitted to the shipper within 30 days following the deviation and must document the reason for the deviation and the route actually used. This supplement is required when the carrier must leave the preferred route temporarily even in cases to access rest, fuel or vehicle repair stops unless the facility used is actually located along the preferred route.

Requirements pertaining to driver training and certification are incorporated in these final rules with only minor changes from that proposed. These requirements are redesignated as § 177.825(d) (see § 177.825(b)(3) and § 177.825(c) in the MPRM). The large majority of commenters favored some type of driver training requirements for operators of vehicles carrying large quantity radioactive materials. Most of the criticism of the driving training requirements involves the extent of training to be required and the method of ensuring that adequate training is provided.

Many commenters maintain that training should not be left to the discretion of the carrier and that the carrier training program should be inspected and certified by DOT. Others commented that the proposed training was not specific enough. Some commenters also expressed their belief that DOT should be responsible for establishing the entire training program, addressing the minimum number of hours required and details on the actual content of training materials.

On the other hand, some shippers and carriers criticized the proposed training requirements as unnecessary and, in some cases, duplicative of existing training requirements. Also, it was maintained that truck drivers should not be expected to become experts on hazardous materials regulations or on the properties and hazards of radioactive materials. There was a feeling that the additional cost of providing driver training just for the transportation of one particular type of hazardous material could result in the loss of some transportation service for these materials.

In response to these criticisms it should first be mentioned that the driver training requirements are based on similar proposed requirements for drivers transporting another hazardous material. Docket HM-115 (44 FR 12826, March 8, 1979) proposed training for drivers of certain tank trucks carrying flammable cryogenic liquids. The Department's intention in Docket HM-164 has been to develop an effective driver training program that is consistent with that for cryogenic liquids and possibly for other types of hazardous materials in the future.

The current DOT stance on hazardous materials driver training, as established by HM-115, is to require that training be provided for the material involved and that the training program be implemented within the general guidelines provided by the Department. Any driver training requirement must be able to accommodate the many variables involved in hazardous materials transportation such as: the different materials and different associated hazards; the varying level of knowledge and experience of truck drivers; and the wide difference in the effectiveness of various methods of training. For this reason, it is believed that the driver training requirement must be of a general nature and that it is the Department's role to set out the major requirements which allow the flexibility to develop an individualized training program that will accomplish the safety objectives desired. It is not believed that DOT certification of the individual driver training program is needed at this

time. Compliance with the driver training requirement for large quantity radioactive materials, just as for any other hazardous materials requirement under the HMTA, will be the subject of safety inspections conducted by MTB, BMCS and various State enforcement personnel. The enforcement of the driver training program will also be aided by the requirement that the driver be furnished with a certificate stating that such training has been provided.

In response to comments from carriers and shippers, DOT believes that driver training for radioactive materials is necessary as a reasonable precaution for large quantity shipments and that truck drivers would not have to become regulation specialists in order to comply with the training objectives. Further, costs necessary to establish a training program should not be high or result in scarcity of service. To some extent, DOT agrees with the contention that some of the proposed requirements duplicate existing training requirements in the Hazardous Materials Regulations. This is true of the requirements proposed in the NPRM (§ 177.825(c)(1) (ii) and (iv)) relating to the motor carrier safety regulations and the operating and handling characteristics of the vehicle. Existing §§ 177.804 and 397.1 now require that drivers be familiar with motor carrier safety regulations, including those in Part 397 for hazardous materials. Minimum requirements for all truck drivers, including provisions relating to the operation of the motor vehicle, are addressed in Part 391 "Qualifications of Drivers". Consequently, the proposed training requirements relating to these areas have not been included in the final amendments.

§ 177.825(e) Physical security requirements for spent fuel

Paragraph (e) is added to this new section to incorporate the requirements proposed in § 177.825(b)(4). The effect of this paragraph is to require motor carriers to transport shipments of irradiated reactor fuel in compliance with a physical protection plan established by the shipper. These plans, approved by DOT or NRC, may sometimes involve transportation requirements different from those specified in § 177.825 but designed to assure at least an equal measure of protection to public safety, and take precedence over the other rules published in § 177.825. Shipments affected by this paragraph include those made by any NRC licensee, and consignments from the DOD and DOE transported by for-hire carriers (except defense-related shipments accompanied by personnel specifically designated by or under the authority of those agencies to preserve national security). A number of commenters expressed their disapproval with the provisions of this regulation which effectively designates NRC as the lead agency for matters involving transportation security for spent fuel.

While the responsibility for prescribing physical protection requirements applicable to special nuclear materials and highly irradiated spent fuel offered for transportation by NRC licensees has been relegated to the NRC, through the memorandum of understanding (MOU) currently in effect between DOT and NRC (44 FR 38690, July 2, 1979), DOT believes that the Hazardous Materials Regulations should contain a specific rule which requires those shippers not otherwise licensed by NRC to comply with safeguards designed to ensure physical security of spent fuel.

DOT recognizes that a considerable amount of "for hire" transportation of spent fuel is performed under security arrangements in support of operations conducted by the DOD and DOE. In the case of shipments escorted by personnel specifically designated by or under the authority of those agencies, for the purpose of national security, a broad exception is granted in §§ 173.7(b) and 177.806(b) which frees common and contract carriers from compliance with the Hazardous Materials Regulations.

This exception was issued with the understanding that it could be revised at some subsequent date if time and experience demonstrated the need. In the more than 30 years that this exception has been in force the DOT is not aware of any instance where the public health and safety have been jeopardized because of shipper or carrier noncompliance with the specific requirements of the Hazardous Materials Regulations. The DOT, therefore, is not inclined to remove the exception at this time since the original conditions of issuance still remain.

The proposal that DOT more closely regulate packages of large quantity radioactive materials shipped by or under the direction of the DOD and DOE attracted a great deal of interest and comment. Some commenters were surprised to learn that, in addition to the exceptions for national security in §§ 173.7(b) and 177.806(b), shipments transported by the military and other government agencies, using their own personnel and transport vehicles, are not subject to the Hazardous Materials Regulations and urged the inclusion of such agencies as regulated carriers. Others followed this topic by indicating that military shipments can and do have accidents, and could pose a grave threat to the communities through which they travel.

The question of DOT jurisdiction and authority over such governmental transportation activities was most recently discussed by MTB in its Docket HM–145A, Notice No. 78–6 (43 FR 22626, May 25, 1978), Transportation of Hazardous Waste Materials. In that document DOT restated its determination not to exercise its authority over Federal, State or local government agencies that carry hazardous materials as a part of a governmental function, using government employees and vehicles. The Department believes that such transportation continues to be conducted in a responsible manner. Also, no new information has come to the attention of DOT regarding the actual occurrence of serious incidents involving hazardous materials transported by this class of carriers. Therefore, it is the opinion of DOT that an extension of its regulations to the degree sought by these commenters is unnecessary at this time.

A matter closely related to the above involves shipments made by governmental agencies through common or contract carriers without escorts provided by such agencies. Essentially, these shipments must be in general compliance with DOT's requirements for safe transportation. Certain exceptions, however, do permit DOD and the Bureau of Alcohol, Tobacco and Firearms (ATF) to make shipments of hazardous materials in packagings not otherwise prescribed by the regulations. Of particular concern to the matter at hand is the treatment of physical security controls applicable to unescorted shipments of spent fuel made by or on behalf of the DOD or DOE. Highly irradiated spent fuel elements pose identical biological and radiological risks regardless of their origins; be it the reactor vessel of an electrical power plant, nuclear submarine or research facility. Other factors also remain relatively constant. For instance, highways retain their same characteristics regardless of who uses them, spent fuel casks are of the same basic designs, and in many cases it is quite conceivable that the carrier, vehicle and driver used to transport shipments for an NRC licensee one week would subsequently be employed by a DOD or DOE contractor to perform a similar service. The same conclusions that justify requiring a licensee to provide physical protection in compliance with a plan established

under regulations prescribed by the NRC apply to others who ship spent fuel.

Consequently, the final rule is adopted in the same form as proposed, thereby requiring the respective departments (unless they perform the transportation with their own vehicles) to either submit copies of their physical protection plans to MTB for approval, or, when necessary to preserve the national security, provide an escort of personnel specifically designated by or under their authority. Shipments of irradiated reactor fuel by DOE in support of its research and development activities are not generally considered by DOT to be carried out to preserve national security (as opposed to defense-related shipments made by both DOD and DOE) and are therefore subject to this Department's regulations.

A number of commenters criticized the exception for physical security of spent fuel shipments and some even expressed their belief that it merely allows spent fuel to be shipped under the cloak of secrecy and security thereby avoiding DOT safety rules. It is difficult for DOT to follow the logic of this contention when one considers that the NRC security rules are much more stringent than the DOT safety rules proposed for large quantity radioactive materials. (The NRC physical security program is discussed on page 7144 of the HM-164 NPRM). Nevertheless, this may be a moot point in the near future. DOT has been notified by NRC that NRC licensees shipping spent fuel may be required to follow DOT's preferred routing system, including the use of State-designated routes. The licensees would be relieved of the requirement to obtain prior route approval from the NRC as long as they use preferred routes. In addition, the licensees would have to continue to adhere to all other requirements in the NRC security program including continuous monitoring of shipment, communication with local law enforcement agencies, vehicle immobilization features, escorts, and prenotification to both the NRC and possibly to State governors.

Part 177 Appendix

A new appendix is added to Part 177. It sets out DOT policy and advice on how State and local governments can exercise their own authority over motor carriers in a manner that will be consistent with rules in Part 177 concerning radioactive materials. Sections I and II are introductory. Sections III, IV and V discuss the three categories of radioactive materials shipments, previously addressed in the preamble, which depend on whether or not the motor vehicle transporting the material is required by Part 172 to be placarded, and if so, whether the material is a large quantity radioactive material. Section VI concerns radioactive materials generally.

Sections I and II—Section I states the purpose of the appendix. Section II defines "routing rule" for purposes of the appendix. Emergency action by State or local authorities to deal with immediate threats to public health and safety, as where a highway is impassable, is not a routing rule. Also, the definition excludes rules of the road that apply to vehicles without regard to the hazardous nature of their cargo. "Routing rule" does refer to governmental action that so affects or burdens commerce as to selectively redirect hazardous materials traffic.

Section III—discusses State and local rules that affect motor vehicles transporting large quantity radioactive materials.

State rules. A State cannot make transportation between two points impossible by highway. The radiological risks in transporting large quantity radioactive materials by highway are small and total preclusion of shipments cannot be justified on that basis. A prohibition on use of Interstate System highways is justified only where an equivalent alternate route is specified that offers risk minimization at least equal to the forbidden Interstate segment. Because of their average accident rate and usual design features, Part 177 requires use of Interstate System highways unless a safer route is designated by an appropriate State routing agency after consulting with local jurisdictions and evaluating the actual routes involved.

The fact that a route may be designated for use on a temporary basis for a limited time does not invalidate a demonstrated safety benefit and is encouraged. For example, if justified by safety analysis, a State agency can designate alternate routes in support of time-of-day restrictions in congested areas. A State agency might specify a safer route to be used instead of an Interstate System highway segment or instead of a State-designated route during periods of peak local traffic.

Criteria in Section III.A.2. of the appendix describe necessary features of preferred highways designated by States. One criterion is that preferred routes are designated by a State agency with authority under State law to impose its routing rules anywhere in the State. The rules must be similarly enforceable by State authority anywhere in the State although not necessarily by the same agency. One State agency, for example, could impose routing rules that are enforced by the State police. The State agency must be able to exercise this authority on all public roads in the State regardless of the boundaries of local jurisdictions such as cities and counties, or special authorities such as operate toll roads. This broad authority is necessary for two reasons. First, neither the appendix nor Part 177 delegates regulatory authority over motor carriers. State law must provide that basic regulatory authority. Second, the State agency must be able to consider *any* public highway in its route selection process with knowledge that the lowest risk route may be selected and its use enforced.

A local jurisdiction is not likely to consider all the routing options that affect it and is not normally responsible for considering the impacts of its own rules on other jurisdictions. Similar problems can occur at the State level. The total number of State agencies concerned with transportation of radioactive materials, however, is considerably more limited than the number of local jurisdictions that conceivably might exercise routing authority, a factor which reduces the potential for confusion and enhances compliance.

A closely related criterion in Section III.A.2. specifies that route selection by a State agency be preceded by consultation with affected jurisdictions. Impacts of routing decisions must be considered regardless of the jurisdiction in which they may occur. Affected jurisdictions will include such entities as cities and counties, and may also include neighboring States. Where neighboring States are affected, the impacted local jurisdictions there must be consulted, preferably through a similar State-wide agency. Local jurisdictions know local conditions that affect, or may be affected by traffic in hazardous materials. Without consideration of local views on such matters as accident rates, risk minimization efforts are hampered.

The criterion does not specify the consultation process, although some local governments in commenting asked that the process be spelled out. DOT believes that the rulemaking process used, like the basic rulemaking authority of a State agency, is largely a matter of State law. To ensure reliable results, however, it would be appropriate to provide public notice, opportunity to comment, and a hearing if justified (as in informal Federal rulemaking) and to individually notify and request comments from those local jurisdictions which can be identified as likely to be

affected by the routing decisions under consideration.

DOT also believes that each State should establish an advisory group composed largely of city and county officials. The purpose of the group would be to meet periodically, recommend to the State appropriate methods for consulting with local jurisdictions, and review the effectiveness of those measures in actual practice. Such State advisory groups would provide a valuable oversight function that should help to continually improve the State routing program. DOT views adequate, substantive local consultation as essential to State route designations. State routing rules that are not preceded by adequate local consultation are unreliable and inconsistent with the Part 177 amendments established in this docket. A failure in local consultation will jeopardize the enforceability of State route designations for large quantity carriers.

Another criterion in Section III.A.2. specifies that the State designation is preceded by a comparative risk analysis of possible routes. A comparative analysis is essential to ensure that risk is indeed being minimized. The "DOT Guidelines" provide a basic analytical technique that may be used to minimize radiological risk. A more sensitive analysis based on that technique also is acceptable.

Local rules. Local governments may regulate the routes of carriers of large quantity radioactive materials, but only in support of State and Federally designated preferred highways. Local prohibition of motor vehicles transporting large quantity radioactive materials is consistent with Part 177 only so far as the vehicles' presence is forbidden by Part 177 (or by State route designations consistent with Part 177). On the other hand, Part 177 presumes that no local routing rules will apply to motor vehicles on preferred highways where Federal and State route designation is exclusive, or to vehicles at locations off the preferred highways under circumstances permitted by Part 177 (*e.g.* a fuel or repair stop).

Sections IV and V—Section IV concerns rules that apply to placarded motor vehicles which do not contain a large quantity of radioactive material. Section V concerns rules that apply to unplacarded vehicles.

A State or local routing rule that attempts to regulate placarded vehicles not transporting large quantity radioactive materials is consistent with Part 177 only if the rule is identical to § 177.825(a). The language of that section is by necessity general. Since uniform application is intended (in part to aid compliance), § 177.825(a) should not be subject to interpretations that vary between jurisdictions. Local variations in the language of § 177.825(a) would invite varying interpretation and application of the rule. Section 177.825(a) is intended to be nationally uniform. More stringent regulation of placarded motor vehicles is not necessary given the hazard level involved, and will impose unnecessary burdens on commerce that do not provide a reasonable safety benefit.

A State or local routing rule that attempts to regulate radioactive materials that are permitted by Part 177 to be carried in an unplacarded vehicle is not consistent with that part. Such rules are unnecessary, given the very limited hazard involved.

Section VI—Section VI concerns a variety of other State and local rules that are associated with routing rules.

State and local rules cannot conflict with physical security requirements imposed by the NRC. Part 177 permits a carrier to vary from its requirements if necessary to comply with the NRC physical security program. By making NRC physical security rules enforceable under the HMTA, DOT intends that State and local rules also permit necessary variances.

State or local rules that require special personnel, equipment or escort are not consistent with Part 177. Precautions of this nature are taken under NRC rules to ensure the physical security of spent fuel shipments, with which local or State rules may conflict. Their imposition for transportation safety alone serves little purpose and poses serious difficulties for carriers. The existence of State and local requirements for special equipment may effectively dictate the continuous use of the equipment in all jurisdictions. Varying requirements between jurisdictions pose additional problems that may necessitate equipment changes and delays *en route*, or avoidance of an otherwise desirable route. Containment and packaging equipment are themselves exclusively set by Federal regulations. Special personnel and escort requirements pose similar problems. State and local escort requirements in particular are a source of delay in transportation if the escort is not required for the entire journey. Whether an escort vehicle is provided by the carrier or by a local jurisdiction, if presence of an escort vehicle is a condition of entering the jurisdiction, the transport vehicle is likely to have to stop at jurisdictional boundaries to establish communication with the escort vehicle. It also is likely that delay will result from the early arrival of a transport vehicle or the late arrival of an escort vehicle.

Earlier in this document, DOT stated its intention to further consider requirements for prenotification to State governments of large quantity shipments, following completion of an NRC rulemaking on prenotification for shipments of nuclear waste. Because the voluntary provision of escort vehicles by local governments is closely related to prenotification issues, such voluntary escort servcies will also be reconsidered at that time.

Shipping paper entries and other hazard warning devices bear little special relationship to local safety problems. In fact, the utility of such measures heavily depends on their universal recognition. Variations in hazard warning devices dilute the effectiveness of those required by Parts 172 and 177, which are understood nationally and internationally, and may hamper emergency response.

State and local requirements for filing route plans or other documents containing shipment specific information pose a potential for unnecessarily delaying motor vehicles. In many cases such requirements are redundant with Federal requirements concerning safety and security. They are not likely to measurably enhance local emergency response capabilities. When applied at a State or local level, they are likely to result in an inefficient use of emergency preparedness resources.

Accident reports imposed by State or local governments that are necessary to ensure immediate emergency assistance are consistent with Part 177. Accident reports required at a later time are duplicative of requirements of Part 177 (which references §§ 171.15 and 171.16). Reports submitted to DOT are publicly available, and States may make prior arrangements for DOT to provide them with copies of incident reports as they become available. The appendix does not concern general accident report requirements, such as a State requirement that any motor vehicle accident involving injury or substantial property damage be reported to the State police during a stated period following the accident.

Prenotification was discussed previously in the preamble. Prenotification requirements by State and local governments, if found necessary, will be established in a nationally uniform manner. Unless DOT reaches and acts on a conclusion that prenotification rules are necessary, beyond those Congress has directed NRC to impose on certain radioactive wastes, independent State and local

prenotification requirements are not consistent with Part 177.

Lastly, because of the importance of expediting radioactive materials shipments, due to the risk and added normal dose attendant to delay, other forms of State and local regulation that affect motor carriers of radioactive materials should not result in unnecessary delay (see § 177.853(a)). A delay is unnecessary unless it is required by an exercise of State or local regulatory authority over a motor vehicle that so clearly supports public health and safety as to justify the safety detriment and burden on commerce caused by the delay (such as in an emergency).

§ 397.9 Routing for hazardous materials

The Bureau of Motor Carrier Safety is revising 49 CFR 397.9 of the Federal Motor Carrier Safety Regulations in amendments published elsewhere in this **Federal Register** issue. This will direct the motor carrier's attention to the new routing requirements for radioactive materials in § 177.825. The amendment is needed to prevent an inconsistency between routing provisions required for radioactive materials in § 177.825 and those required for other hazardous materials in § 397.9(a).

VIII. Environmental and Economic Impact

DOT has prepared a Final Regulatory Evaluation and Environmental Assessment (DOT Assessment) in support of these final rules (copies may be obtained from the Dockets Branch previously cited). It is clear from the available technical information referenced in the Assessment that radiological risks in transporting radioactive materials resulting from both normal exposure and accidents are very low. Even if one allows that the risk estimates developed by these technical risk studies are underestimated by an order-of-magnitude, the projected overall risks from the transportation of radioactive materials would still be extremely low. Furthermore, one cannot ignore historical accident experience which is shown to be quite good for radioactive material transportation when compared to other hazard classes by MTB's incident reporting system (1971–1980). Although historical experience by itself may not necessarily be the best method of projecting future events, the low historical accident rates do tend to support the research conclusions that the risks in transporting nuclear material by highway are low.

The primary operational effect of these rules is to require or encourage use of the Interstate System by carriers of radioactive materials. Although carriers transporting packages containing a large quantity of radioactive materials are generally required to use either the Interstate System or State-designated preferred highways, carriers transporting packages containing lesser quantities are likely also to tend to use the Interstate and preferred highways especially in areas of heavy population.

Adoption of the preferred routing system which utilizes Interstate System highways and State-designated highways for large quantity radioactive materials is determined to be the appropriate course of action for routing. This alternative has the potential for the greatest safety impact and is feasible and cost effective considering the marginal safety benefits involved.

DOT agrees that "high consequence" accidents in densely populated urban areas should be of great concern, but not to the extent that public policy on hazardous material routing should be formulated solely on the basis of avoiding such "worst case" accidents. For example, the high consequence estimates of the 1980 Urban Environs Study referenced earlier may be reduced substantially by avoiding the city but overall public risk may actually increase if the carrier is forced to use poor, secondary and circuitous rural roads. Nevertheless, it is clearly a reasonable precaution to minimize the possibility of "worst case" accidents by requiring use of a circumferential Interstate highway if it is available. If one is not available, a State may conduct a routing analysis to examine availability of other routes for comparison with the Interstate through route.

Overall radiological effects of this rule include a reduction in total latent cancer fatalities attributable to normal dose and a lesser reduction in the annual latent cancer fatality accident risk (based on NUREG 0170 projections). Some additional reduction in radiological consequences should result from State designation of preferred highways. A slight increase in nonradiological consequences may result from routing on preferred urban bypasses or circumferentials. Overall, environmental impacts should be negligible.

Economic costs are expected not to exceed $330,000 annually under 1985 levels of shipping activity and mostly would consist of costs for driver training and route plan preparation and filing. Some additional cost may result from the new placard background and shipping paper requirements for large quantity shipments. Also, this estimate does not include possible additional insurance costs to State and local bridge and tunnel authorities. MTB requested, but did not receive, any quantitative data on this subject.

Because of the level of costs anticipated and the limited potential for environmental impact, MTB does not consider the preparation of an environmental impact statement or a regulatory analysis necessary for these amendments. As mentioned, a more detailed examination of costs and environmental impact is available in the Final Regulatory Evaluation and Environmental Assesment.

DOT intends to conduct an evaluation of the final rule a year following its effective date. This evaluation will consider the rule's efficacy as regards public health and safety, and its actual effects on carriers, and State and local jurisdictions, with particular attention to any difficulties that have appeared during the rule's implementation. As part of that evaluation, notice will be published to solicit public comment, and a direct solicitation of comments will be made to the States and to interested groups such as the National Governors Association and the National League of Cities. As previously indicated, DOT also will be reexamining prenotification as well as its relation to escort vehicles voluntarily provided by State or local governments sometime following publication (in early 1981) of final NRC prenotification rules for nuclear waste shipments. An advance schedule for both proceedings will appear in a future **Federal Register** publication of the DOT Regulations Agenda.

Work on the DOT Guidelines, referenced herein, will be continued and the document is expected to be released in the first half of 1981, following pilot tests early in the year.

In consideration with the foregoing, 49 CFR Parts 171, 172, 173, and 177 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. In § 171.7 paragraph (d)(23) is added to read as follows:

§ 171.7 Matter incorporated by reference.

* * * * *

(d) * * *

(23) USDOT, "Guidelines for Selecting Preferred Highway Routes for Large Quantity Shipments of Radioactive Materials"

2. In § 171.8 the following definitions are added in the appropriate alphabetical sequence:

§ 171.8 Definitions and abbreviations.

* * * * *

"Preferred route" or "Preferred highway" is a highway for shipment of large quantity radioactive materials so designated by a State routing agency, and any Interstate System highway for which an alternate highway has not been designated by such State agency as provided by § 177.825(b) of this subchapter.

* * * * *

"State-designated route" means a preferred route selected in accordance with U.S. DOT "Guidelines for Selecting Preferred Highway Routes for Large Quantity Shipments of Radioactive Materials" or an equivalent routing analysis which adequately considers overall risk to the public. Designation must have been preceded by substantive consultation with affected local jurisdictions and with any other affected States to ensure consideration of all impacts and continuity of designated routes.

* * * * *

"State routing agency" means an entity (including a common agency of more than one State such as one established by Interstate compact) which is authorized to use State legal process pursuant to § 177.825 of this subchapter to impose routing requirements, enforceable by State agencies, on carriers of radioactive materials without regard to intrastate jurisdictional boundaries. This term also includes Indian tribal authorities which have police powers to regulate and enforce highway routing requirements within their lands.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

3. In § 172.203 paragraph (d)(1)(iii) is amended by adding the following sentence at the end of the paragraph:

§ 172.203 Additional description requirements.

* * * * *

(d) * * *

(1) * * *

(iii) * * * For the shipment of packages containing large quantity radioactive materials (see § 173.389(b) of this subchapter), the words "Large quantity" must be entered in association with the basic description.

* * * * *

4. Section 172.507 is added to read as follows:

§ 172.507 Special placarding provisions: Highway.

Each motor vehicle used to transport a package of large quantity radioactive materials (see § 173.389(b) of this subchapter) must have the required RADIOACTIVE warning placard placed on a square background as described in § 172.527.

5. In § 172.527 the section heading and paragraph (a) are revised to read as follows:

§ 172.527 Background requirements for certain placards.

(a) Except for size and color, the square background required by § 172.510(a) for certain placards on rail cars, and § 172.507 for placards on motor vehicles containing a package of large quantity radioactive materials, must be as follows:

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

6. In § 173.22 paragraph (b) is revised and paragraph (c) is added to read as follows:

§ 173.22 Shipper's responsibility.

* * * * *

(b) Prior to each shipment of fissile radioactive materials, and Type B or large quantity packages of radioactive material (see § 173.389 of this subchapter), the shipper shall notify the consignee of the dates of shipment and expected arrival. The shipper shall also notify each consignee of any special loading/unloading instructions prior to his first shipment. For any shipment of irradiated reactor fuel, the shipper shall provide physical protection in compliance with a plan established under—

(1) Requirements prescribed by the U.S. Nuclear Regulatory Commission, or

(2) Equivalent requirements approved by the Associate Director for Hazardous Materials Regulation, MTB.

(c) Within 90 days following acceptance by a carrier of any package containing a large quantity radioactive material (see § 173.389(b)) for transportation by public highway, the shipper shall file the following information with the Associate Director for Hazardous Materials Regulation, MTB (this paragraph does not apply to packages shipped in compliance with physical security requirements of the U.S. Nuclear Regulatory Commission in 10 CFR Part 73):

(1) The route plan required under § 177.825(c) of this subchapter (any supplement to the route plan prepared in accordance with § 177.825(c) of this subchapter shall be filed within 90 days of receipt from the carrier);

(2) A statement identifying the name and address of the shipper, carrier and consignee; and

(3) A copy of the shipping paper or the description of the radioactive material required by §§ 172.202 and 172.203 of this subchapter.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

7. Section 177.810 is revised as follows:

§ 177.810 Vehicular tunnels.

Except as regards radioactive materials, nothing contained in Parts 170–189 of this subchapter shall be so construed as to nullify or supersede regulations established and published under authority of State statute or municipal ordinance regarding the kind, character, or quantity of any hazardous material permitted by such regulations to be transported through any urban vehicular tunnel used for mass transportation. For radioactive materials, see § 177.825 of this part.

8. Section 177.825 is added in Subpart A, to read as follows:

§ 177.825 Routing and training requirements for radioactive materials.

(a) The carrier shall ensure that any motor vehicle which contains a radioactive material for which placarding is required is operated on routes that minimize radiological risk. The carrier shall consider available information on accident rates, transit time, population density and activities, time of day and day of week during which transportation will occur. In performance of this requirement the carrier shall tell the driver that the motor vehicle contains radioactive materials and shall indicate the general route to be taken. This requirement does not apply when—

(1) There is only one practicable highway route available, considering operating necessity and safety, or

(2) The motor vehicle is operated on a preferred highway under conditions described in paragraph (b) of this section.

(b) Unless otherwise permitted by this section, a carrier and any person who operates a motor vehicle containing a package of large quantity radioactive material as defined in § 173.389(b) of this subchapter shall ensure that the vehicle operates over preferred routes selected to reduce time in transit, except that an Interstate System bypass or beltway around a city shall be used when available.

(1) A preferred route consists of—

(i) An Interstate System highway for which an alternative route is not designated by a State routing agency as provided in this section, and

(ii) A State-designated route selected by a State routing agency (see § 171.8 of this subchapter) in accordance with the DOT "Guidelines for Selecting Preferred Highway Routes for Shipments of Large Quantity Radioactive Materials".

(2) When a deviation from a preferred route is necessary (including emergency deviation, to the extent time permits), routes shall be selected in accordance with paragraph (a) of this section. A motor vehicle may deviate from a preferred route under any of the following circumstances:

(i) Emergency conditions that would make continued use of the preferred route unsafe.

(ii) To make necessary rest, fuel and vehicle repair stops.

(iii) To the extent necessary to pick up, deliver or transfer a large quantity package of radioactive materials.

(c) A carrier (or his agent) who operates a motor vehicle which contains a package of large quantity radioactive material as defined in § 173.389(b) of this subchapter shall prepare a written route plan and supply a copy before departure to the motor vehicle driver and a copy to the shipper (before departure for exclusive use shipments, or otherwise within fifteen working days following departure). Any variation between the route plan and routes actually used, and the reason for it, shall be reported in an amendment to the route plan delivered to the shippper as soon as practicable but within 30 days following the deviation. The route plan shall contain—

(1) A statement of the origin and destination points, a route selected in compliance with this section, all planned stops, and estimated departure and arrival times; and

(2) Telephone numbers which will access emergency assistance in each State to be entered.

(d) No person may transport a package of large quantity radioactive material, as defined in § 173.389(b) of this subchapter, on a public highway unless—

(1) The driver has received within the two preceding years, written training on—

(i) Requirements in Parts 172, 173, and 177 of this subchapter pertaining to the radioactive materials transported;

(ii) The properties and hazards of the radioactive materials being transported; and

(iii) Procedures to be followed in case of an accident or other emergency.

(2) The driver has in his immediate possession a certificate of training as evidence of training required by this section, and a copy is placed in his qualification file (see § 391.51 of this title), showing—

(i) The driver's name and operator's license number;

(ii) The dates training was provided;

(iii) The name and address of the person providing the training;

(iv) That the driver has been trained in the hazards and characteristics of large quantity radioactive materials; and

(v) A statement by the person providing the training that information on the certificate is accurate.

(3) The driver has in his immediate possession the route plan required by paragraph (c) of this section and operates the motor vehicle in accordance with the route plan.

(e) A person may transport irradiated reactor fuel only in compliance with a plan if required under § 173.22(b) of this subchapter that will ensure the physical security of the material. Variation for security purposes from the requirements of this section is permitted so far as necessary to meet the requirements imposed under such a plan, or otherwise imposed by the U.S. Nuclear Regulatory Commission in 10 CFR Part 73.

9. In Part 177 Appendix A is added after § 177.870 to read as follows:

Appendix A to Part 177—Relationship Between Routing Requirements In Part 177 with State and Local Requirements.

I. *Purpose.* This appendix is a statement of the Department of Transportation policy regarding the relationship of State and local rules with Federal rules in Part 177 of this subchapter for routing motor carriers transporting radioactive materials. The purpose of this appendix is to advise a State or local government how it can exercise authority over motor carriers under its own laws in a manner that the Department of Transportation considers to be consistent with rules in Part 177 (see 49 U.S.C. 1811(a)). This appendix and Part 177 do not delegate Federal authority to regulate motor carriers.

II. *Definition.* "Routing rule" means any action which effectively redirects or otherwise significantly restricts or delays the movement by public highway of motor vehicles containing hazardous materials, and which applies because of the hazardous nature of the cargo. Permits, fees and similar requirements are included if they have such effects. Traffic controls are not included if they are not based on the nature of the cargo, such as truck routes based on vehicles weight or size, nor are emergency measures.

III. *Large quantity radioactive materials.* A. *State routing rules.* A State routing rule which applies to large quantity radioactive materials is inconsistent with Part 177 if—

1. It prohibits transportation of large quantity radioactive materials by highway between any two points without providing an alternate route for the duration of the prohibition; or

2. It does not meet all of the following criteria:

(a) The rule is established by a State routing agency as defined in § 171.8 of this subchapter;

(b) The rule is based on a comparative radiological risk assessment process at least as sensitive as that outlined in the "DOT Guidelines";

(c) The rule is based on evaluation of radiological risk wherever it may occur, and on a solicitation and substantive consideration of views from each affected jurisdiction, including local jurisdictions and other States; and

(d) The rule ensures reasonable continuity of routes between jurisdictions.

B. *Local routing rules.* A local routing rule that applies to large quantity radioactive materials is inconsistent with this Part if it prohibits or otherwise affects transportation on routes or at locations either—

1. Authorized by Part 177, or

2. Authorized by a State routing agency in a manner consistent with Part 177.

IV. *Quantities of radioactive materials required to be placarded.* A State or local routing rule that applies to a radioactive material (other than a large quantity radioactive material), for which Part 177 requires placarding, is inconsistent with Part 177 unless it is identical to § 177.825(a) of this part.

V. *Radioactive materials for which placarding is not required.* A State or local routing rule that applies to a radioactive material for which Part 172 does not require placarding is inconsistent with this part.

VI. *Other related State and local rules.* A State or local transportation rule is inconsistent with Part 177 if it—

A. Conflicts with physical security requirements which the Nuclear Regulatory Commission has established in 10 CFR Part 73 or requirements approved by the Department of Transportation under § 173.22(b) of this subchapter;

B. Requires additional or special personnel, equipment, or escort;

C. Requires additional or different shipping paper entries, placards, or other hazard warning devices;

D. Requires filing route plans or other documents containing information that is specific to individual shipments;

E. Requires prenotification;

F. Requires accident or incident reporting other than as immediately necessary for emergency assistance; or

G. Unnecessarily delays transportation.

(49 U.S.C. 1803, 1804, 1808, 49 CFR 1.53 and App. A to Part 1)

Note.—The Materials Transportation Bureau has determined that this document will not result in a major economic impact under the terms of Executive Order 12221 and DOT implementing procedures (44 FR 11034), nor require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). A regulatory evaluation and environmental assessment is available for review in the docket. Review of recordkeeping requirements under the Federal Reports Act

is required by the Office of Management and Budget prior to the effective date of this document.

Issued in Washington, D.C. on January 13, 1981.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 81-1651 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-60-M

Federal Highway Administration

49 CFR Part 397

[BMCS Amdt. No. 80-1]

Radioactive Materials; Routing Exemption

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending the Federal Motor Carrier Safety Regulations to exempt radioactive materials from the routing provisions contained in 49 CFR 397.9. This action is necessary in order to remove the possibility of duplicative rules. The authority to establish routing requirements under the Hazardous Materials Transportation Act is delegated to the Director, Materials Transportation Bureau, Research and Special Programs Administration, DOT. A final rule contained in Docket HM-164 published elsewhere in this issue is issued by MTB which addresses this routing. Removal of any implied reference to radioactive materials routing from § 397.9 will avoid duplicative Departmental regulations on the same subject.

EFFECTIVE DATE: This rule becomes effective February 1, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph J. Fulnecky, Bureau of Motor Carrier Safety, (202) 426-1700; or Mr. Gerald M. Tierney, Office of Chief Counsel (202) 426-0346; Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

§ 397.9 [Amended]

For the reasons set out in the summary, 49 CFR 397.9 Routes, is amended by adding at the end of paragraph (a) the following sentence:

(a) * * * This paragraph does not apply to radioactive materials (See § 177.825 of this title).

* * * * *

Note.—The FHWA has determined that this document does not contain a significant regulation according to the criteria established by the Department of Transportation pursuant to Executive Order 12044. Due to the fact that this amendment is of nonsubstantive nature and intended to simply clarify existing provisions, a full regulatory evaluation is not considered necessary. For the same reasons, publication of this amendment for notice and comment could not reasonably be anticipated to result in the receipt of useful information.

(49 U.S.C. 304; 49 CFR 1.48(b) and 301.60)

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: January 13, 1981.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety.

[FR Doc. 81-1650 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-22-M

federal register

Monday
January 19, 1981

Part V

Department of Education

Pell Grant Program; Family Contribution Schedules

DEPARTMENT OF EDUCATION

34 CFR Part 690

Pell Grant Program, Family Contribution Schedules

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: These final regulations establish the 1981–82 award year Family Contribution Schedules—the formulas used in determining student eligibility on the basis of financial need for the Pell Grant (formerly Basic Educational Opportunity Grant) Program. They include a number of revisions to the 1980–81 award year Family Contribution Schedules. These revisions are intended to accomplish a number of objectives. First, some changes were needed to update requirements of these regulations since—as annual regulations—they are written with respect to a given award period. Second, some changes were necessary to address concerns and possible inequities that have been identified by members of the financial aid community and Congress regarding the treatment of the income of dependent students. Additionally, these regulatios also revise the definition of an "independent student" for the Pell Grant Program. An identical change in this definition for the three campus-based programs (the National Direct Student Loan, Supplemental Educational Opportunity Grant, and College Work-Study) has been recently published in the **Federal Register** as part of the new regulations for those programs.

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the **Federal Register.** The effective date is changed by statute if the Congress disapproves the regulations or takes certain adjournments. It should be noted, however, that these regulations apply only to Pell Grants made for the period of July 1, 1981 through June 30, 1982. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: William L. Moran, Chief, Basic Grant Policy Section, or David Morgan, Basic Grant Program Specialist, Division of Policy and Program Development, ROB–3, Room 4318, 400 Maryland Avenue, S.W., Washington, D.C. 20202. (202) 472–4300.

SUPPLEMENTARY INFORMATION:

General Background

The proposed Family Contribution Schedules for award year 1981–82 were published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 1, 1980. Copies of the NPRM were mailed to participating postsecondary institutions and to various educational organizations, and public comment was solicited.

The public comments that were received on the NPRM and the Department of Education's responses to those comments are summarized in the appendix to this **Federal Register** document.

The Education Amendments of 1980 do not apply to the 1981–82 Family Contribution Schedules.

The provisions in the Education Amendments of 1980 which affect the Family Contribution Schedules for the Pell Grant and campus-based student assistance programs, National Direct Student Loan, College Work-Study and Supplemental Educational Opportunity Grant are effective starting with the 1982–83 award year. Thus they do not apply to the 1981–82 award year.

I. *Summary of Major Changes.*

1. The family size offsets included in the Family Contribution Schedules represent amounts needed to provide for basic family expenses which must be met before any contribution toward a student's educational costs can be expected. In order to establish a standard for determining the amount of these expenses, the Pell Grant program adopted during its initial year of operation the "Weighted Average Thresholds of Low Income Level" developed by the Social Security Administration and published by the Bureau of the Census. These expenses are based on the food costs of families of given sizes, and on certain assumptions about additional expenses for shelter and other family needs. These baseline data have been updated annually to accommodate the increases in the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor.

In applying for Pell Grants for the 1981–82 award year, applicants will report actual financial data for the calendar year 1980, i.e., the "base year" for the 1981–82 award year. To derive the family size offsets for the 1980 base year, those used for 1979 have been adjusted to correspond to the 12.6 percent increase in the Consumer Price Index published by the Bureau of Labor Statistics at the end of the year.

2. The dependent student offset is (a) an offset from the effective income of a dependent student and his or her spouse to meet the basic needs of the student and spouse, plus (b) the portion of negative parental discretionary income that will not be used to offset the contribution from parental assets. For a single dependent student, the part of the offset described in clause (a) is derived by subtracting from the family size offset for a single independent student the average parental share for maintenance expenses for the student which is already a part of the parent's family size offset. The average parental share is the average increase in the family size offset for each family member above one. For a married dependent student, the part of the offset described in clause (a) equals the family size offset for a single independent student.

The part of the dependent student offset described in clause (a) has also been increased to reflect the rise in the Consumer Price Index in the same fashion that the family size offsets were increased.

3. One other figure that has been updated is the dollar support figure that is used in one of the criteria for determining the independent status of the student. For the 1980–81 award year, the determination of the student's independent status was based on negative answers to all of the following questions:

	In 1979		In 1980	
	Yes	No	Yes	No
Did or will the student live with the parents for more than six weeks				
Did or will the parents claim the student as an income tax exemption				
Did or will the student receive more than $750 worth of support from the parents				

For 1981–82, of course, the years in question are 1980 and 1981.

Of these three criteria for the determination of a student's independent status, the criterion that has been changed is the question of whether or not the student's parents have provided him or her with more than a certain amount of support. The amount in the question has been raised from $750 to $1,000. The reason for this change is that the support amount has generally been tied to the Internal Revenue Service's personal exemption amount which has been increased to $1,000. In other words—with respect to this criterion—where previously a student would be dependent if his or her parents contributed more than $750 in

support to him or her, for the 1981–82 award year, the student would be dependent only if the parents provided more than $1,000 in support.

II. *Changes Related to the Assessment of Dependent Student Income.*

1. Expansion of the definition of "Dependent of the student's parents."

For the 1980–81 award year, a person met the criteria of that definition if he or she was—

(a) The student,

(b) Any of the student's siblings who qualified as dependent students (with respect to the same parent(s) as the student was dependent on) and was attending an institution of higher education on at least a half-time basis, and

(c) Any of the following persons for whom the parents provided more than one-half support during the 1980–81 award year:

(1) Other children of the student's parents, or

(2) Other persons (except the student's spouse) living with the parents.

For 1981–82 another category of persons has been added. If a dependent student has any dependent children, they will also be considered to be dependents of the student's parents.

This expansion is being made in response to concerns expressed about the treatment of the earnings of dependent students who have their own incomes, but who also have dependents of their own. For the 1980–81 award year, the income of the dependent student was assessed. However, while there was an offset against that income for both the student and his or her spouse, there were no additional offsets for additional dependents. Thus, in some cases, for those dependent students with dependents of their own, the 1980–81 formula produced an inequitable determination of their need.

Although we were aware that the occurrence of this inequity was a possibility when the 1980–81 rule was drafted, we anticipated that it would occur only rarely. Thus, since the program is formula based, and not expected to accommodate all possible situations, the decision was made not to provide additional offsets for dependents of the dependent student.

However, based upon correspondence that we have received since the publication of the original 1980–81 final Family Contribution Schedules on April 30, 1980, we have become aware that dependent students with dependents exist in somewhat greater numbers than we expected.

The Pell (Basic) Grant application form does not collect data on the number of dependents that a dependent student has. While the number of dependent students having dependents of their own appears to be large enough to warrant action on the part of the Department of Education to help alleviate potential inequities in the determination of need, that number is not large enough to warrant a change in the Pell (Basic) Grant application. The major thrust in the design and development of the application is to shorten and simplify it as much as possible. Thus, because of the relatively few dependent students who have dependent children, the Secretary has decided not to add an additional question on the application requesting that information. Rather, dependents of the dependent student will automatically be included in the family size of the parents of the dependent student. By including these extra dependents in the category of the student's parent's dependents, additional offsets will be allowed against the parental income.

In addition, the definition of the dependent of the student's parents was clarified in the final regulations to indicate that the spouse of the dependent student should not be included in the family size of the parents. An additional offset for a spouse is already provided against the resources of the student and spouse.

2. Increase in the dependent student offset for those students whose parents have a negative income.

Actually, this does not represent a change from the 1980–81 schedule, since the same concept was published as a revision to the 1980–81 schedule. However, since it is a change from what was originally published as the 1980–81 formula, the following information is provided. For the 1981–82 award year, the dependent student's offset is $3,000 for a single student and $4,350 for a married student.

The appropriate dependent student offsets will be increased in those instances where parental income is so low that it produces negative discretionary income. "Negative discretionary income," under the Pell Grant Family Contribution Schedule, is produced when the sum of the offsets against income provided in § 690.34 plus the Federal taxes paid by the parents exceeds the parents' income. In the current regulation the parents' negative discretionary income is used as an offset against any contribution from parental assets. (See § 690.35(d).) Under this revision the amount of negative discretionary income that will not be used as an offset against assets will be added to the normal dependent student offset.

For example, if the parental effective family income is $10,000 (adjusted gross income of $11,000 and Federal income tax paid of $1,000) and the sum of the family size offset and other offsets equals $12,000, the parents would have a negative discretionary income of $2,000 ($10,000 of income minus $12,000 of offsets).

If the parents have less than $25,000 in net assets, there would be no contribution from parental assets. Thus, none of the negative $2,000 would be used to offset the normal contribution from parental assets (§ 690.35). Therefore, the entire $2,000 amount of negative discretionary income would be added to the normal dependent student offset (either $3,000 or $4,350). This would make the dependent student offsets for a married dependent student in this example $6,350, ($4,350 + $2,000 = $6,350). That $6,350 figure would be subtracted from the dependent student income figure before the 25 percent assessment step is performed. For a single dependent student in this example, a $5,000 offset would be subtracted from dependent student income before the 75 percent assessment step is performed ($3,000 + $2,000 = $5,000.)

This revision is intended to address the situation where a dependent student with a fairly substantial income of his or her own is a member of an impoverished family and, consequently, uses a portion of his or her own income to help support that family. The additional offset for that dependent student takes into consideration the contribution by the student of a portion of his or her income to help support the family.

3. Assessment of dependent student income when there is a substantial decline in this income for the 1981–82 school year (June 1, 1981–May 31, 1982).

A criterion for the use of estimated income was proposed in the Notice of Proposed Rulemaking (August 1, 1980). This criterion applied to dependent students who were employed full-time for at least 30 weeks in 1980, and were no longer employed full-time in 1981 or 1982.

As a result of many comments we received concerning students employed part-time and students employed for less than 30 weeks, a different procedure has been developed to account for drastic changes in dependent student income. If a student enters on the original 1981 application form an income amount for the 1981–82 school year (June 1, 1981–May 31, 1982) which falls below the income he or she received in 1980 by at least 40 percent, the Secretary will use the estimated 1981–82 school year income rather than base year income to

determine the amount of that student's effective student income.

IV. *Change in the Name of the Program.*

The Pell Grant Program is the new name for the Basic Educational Opportunity Grant Program. The Department of Education plans to implement the change in the name of the program from Basic Grants to Pell Grants as soon as possible. In making the transition, however, we want to make every effort to avoid confusion among the more than five million students who apply for these grants every year, and also to avoid imposing additional costs on postsecondary educational institutions, need analysis services, and other agencies by requiring the reprinting of applications and informational materials. The need analysis services participating in Multiple Data Entry and many postsecondary educational institutions have already printed their materials for the 1981–82 academic year in order to meet deadlines for institutional admissions calendars.

Since many agency and institutional forms and materials for the 1981–82 award year have already printed using the term "Basic Grants," we will continue to use that term for 1981–82 on the Federal materials sent to students. This will avoid the confusion of having the program referred to by two different names in the same year. During 1981–82 we will publish a series of announcements about the name change. These announcements will be directed to current and potential applicants, to members of the financial aid community, and to the general public. The training programs began in November 1980, which are directed toward the 1981–82, award year will emphasize the new name. Beginning with the 1982–83 award year, all materials concerning the program must refer to "Pell Grants.

(Catalog of Federal Domestic Assistance No. 84.063, Pell (Basic) Grant Program.)

Dated: January 13, 1981.

Shirley M. Hufstedler,

Secretary of Education.

PART 690—PELL GRANT PROGRAM

Subparts C and D of Part 690 of Title 34 of the Code of Federal Regulations are revised to read as follows:

Subpart C—Expected Family Contribution for a Dependent Student

Sec.

690.31 Indicators of financial strength.
690.32 Special definitions.
690.33 Effective family income.
690.33a Effective student income.
690.34 Computation of the expected family contribution for a dependent student from the effective family income.
690.34a Computation of the expected family contribution for a dependent student from the effective student income.
690.35 Computation of the expected contribution from parental assets.
690.36 Computation of the expected contribution from effective family income and parental assets, adjusted for the number of family members enrolled in programs of postsecondary education.
690.37 Computation of the expected contribution from the assets of the dependent student (and spouse).
690.38 Computation of the total expected family contribution.
690.39 Extraordinary circumstances affecting the expected family contribution determination for a dependent student.

Subpart D—Expected Family Contribution for an Independent Student

690.41 Indicators of financial strength.
690.42 Special definitions.
690.43 Effective family income.
690.44 Computation of the expected family contribution for an independent student from the effective family income.
690.45 Computation of the expected contribution from the assets of the independent student (and spouse).
690.46 Computation of the total expected contribution from the income and assets of the independent student (and spouse), adjusted for the number of family members enrolled in programs of postsecondary education.
690.47 [Reserved]
690.48 Extraordinary circumstances affecting the expected family contribution determination for an independent student.

Subpart C—Expected Family Contribution for a Dependent Student

§ 690.31 Indicators of financial strength.

"Expected family contribution" for a dependent student means the amount that the student and his or her family may reasonably be expected to contribute toward the cost of his or her education for an award period. Each of the following elements of financial strength will be considered in determining the family contribution for a dependent student;

(a) The effective incomes of (1) the student and his or her spouse, and (2) the student's parent(s).

(b) The number of family members in the household of the student's parent(s).

(c) The number of family members in the household of the student's parent(s) who are enrolled in, on at least a half-time basis, a program of postsecondary education.

(d) The assets of (1) the student and his or her spouse, and (2) the student's parent(s).

(e) The marital status of the student.

(f) The unusual medical expenses of the student's parents.

(g) The additional expenses incurred when both parents of the student are employed or when a family is headed by a single parent who is employed.

(h) The tuition paid by the student's parents for dependent children, other than the student, who are enrolled in an elementary or secondary school.

(20 U.S.C. 1070a(a)(3)(B)(ii))

§ 690.32 Special definitions.

For purposes of this subpart:

"Assets" means cash on hand, including amounts in checking and savings accounts, trusts, stocks, bonds, other securities, real estate, home (if owned), income producing property, business equipment, and business inventory.

However, for Native American students, the following shall not be considered as an asset of the student or his or her family in determining the expected family contribution:

(a) Any property received under the Distribution of Judgment Funds Act (25 U.S.C. 1401, et seq.) or the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.),

(b) Any property that may not be sold or encumbered without the consent of the Secretary of Interior, or

(c) Any other property held in trust for the student or his family by the United States Government.

"Business assets" means property that is used in the operation of a trade or business, including real estate, inventories, buildings, machinery and other equipment, patents, franchise rights, and copyrights.

"Dependent of the student's parents" means:

(a) The student,

(b) Any of the student's dependent children,

(c) Dependent children of the student's parents including those children who have been determined as to be "dependent students" when applying for Title IV student assistance, and

(d) Other persons (except the student's spouse) who live with and receive more than one-half of their support from the parents and will continue to receive more than half of their support from the parents.

"Dependent student" means any student who does not qualify as an independent student as defined in § 690.42(a).

"Dependent student offset" means (a) an offset from the effective income of a dependent student and his or her spouse to meet the basic needs of the student and spouse, plus (b) the portion of

negative parental discretionary income that will not be used to offset the normal contribution from parental assets.

"Effective family income" and "effective income of the student and spouse" are described in §§ 690.33 and 690.33a respectively.

(20 U.S.C. 1070a(a)(3)(B)(iii))

"Employment expense offset" means an allowance to meet expenses relating to employment when both parents are employed or when one parent qualifies as a surviving spouse or as head of a household under section 2 of the Internal Revenue Code.

(20 U.S.C. 1070a(a)(3)(B)(ii)(V))

"Family size offset" means an allowance to meet the subsistence expenses of a family, including food, shelter, clothing, and other basic needs. This offset is derived from the "Weighted Average Thresholds at the Low Income Level," as developed by the Social Security Administration.

"Farm assets" means any property owned and used in the operation of a farm for profit, including real estate, livestock, livestock products, crops, farm machinery, and other equipment inventories. A farm is not considered to be operated for profit if crops or livestock are raised mainly for the use of the family, even if some income is derived from incidental sales.

"Federal income tax" means (a) the tax on income paid to the U.S. Government under chapter 2 of the Internal Revenue Code, or (b) the tax on income paid to the Governments of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands under the laws applicable to those jurisdictions, or (c) the comparable taxes paid to the central government of a foreign country.

"Legal guardian" means an individual who has been appointed by a court to be a legal guardian of a person and who is specifically required by the court to use his or her own financial resources to support that person.

(20 U.S.C. 1070a(a)(3)(B)(iii))

"Medical expenses" means unreimbursed medical and dental expenses, except premiums for medical insurance, that may be deducted under section 213 of the Internal Revenue Code that were paid in 1980, unless the student files an application with the Secretary under the provisions of § 690.39. In that case the expenses reported are those paid in 1981.

"Net assets" means the current market value at the time of application of the assets included in the definition of "assets" minus the outstanding liabilities (indebtedness) against those assets.

"Parent" means the student's mother, father or legal guardian. An adoptive parent is considered to be the student's mother or father.

(20 U.S.C. 1070a(a)(3)(B) unless otherwise noted)

§ 690.33 Effective family income.

(a) Effective family income is the annual adjusted family income minus the Federal income tax paid or payable for the year that adjusted gross income is used in the calculation of the student's Pell Grant.

(b) "Annual adjusted family income" means, except as provided in paragraphs (c), (d), (e), (f), and (g) of this section, and § 690.39—

(1) The sum received in 1980 by the student's parents from—

(i) Adjusted gross income, as defined in section 62 of the Internal Revenue Code;

(ii) Investment income upon which no Federal income tax need be paid. An example of such income is the interest on municipal bonds; and

(iii) Other income upon which no Federal income tax is paid. Examples of such income include child support payments, income from income maintenance programs such as welfare benefits, and Social Security benefits;

(2) Any Social Security benefits paid to the student in 1980; and

(3) One-half of any veteran's benefits to be paid to the student under chapters 34 and 35 of the United States Code for the 1981–82 award period.

(c) For a Native American student, the annual adjusted family income does not include the income received by the student's parents under the Distribution of Judgment Funds Act (25 U.S.C. 1401, et seq.) or the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.).

(d) For a student whose parents are divorced or separated, the following procedures apply for reporting a parent's income to determine the annual adjusted family income—

(1) Report only the income, as described in paragraph (b) of this section, of the parent with whom the student resided for the greater portion of the 12 month period preceding the date of the application.

(2) If the preceding criterion does not apply, report only the income of the parent who provided the greater portion of the student's support for the 12 month period preceding the date of application.

(3) If neither of the preceding criteria apply, report only the income of the parent who provided the greater support for the period commencing January 1, 1980 and ending 12 months prior to the date of application.

(e) If either of the parents have died, the student shall report only the income of the surviving parent. If both parents have died, the student shall not report any parental income.

(f) The following rule applies if either a parent whose income is taken into account under paragraph (d) of this section, or a parent who is a widow or widower and whose income is taken into account under paragraph (e) of this section, has remarried. The income of that parent's spouse shall be included in determining the student's annual adjusted family income if, in either 1980 or 1981, the student—

(1) Has received or will receive financial assistance of more than $1,000 in either of those years from that spouse, or

(2) Has lived or will live for more than six weeks in either of those years in the home of the parent and that spouse.

(g) The annual adjusted family income does not include any student financial assistance except those veteran's benefits cited in paragraph (b)(3) of this section.

(20 U.S.C. 1070a(a)(3)(B))

§ 690.33a Effective student income.

(a) Effective student income is the annual adjusted income of the student (and spouse for a married student) minus the Federal income tax paid or payable for the year that adjusted gross income is used in the calculation of the student's Pell Grant. However, if estimated income is used, as provided by subparagraph (f) of this section, estimated Federal income taxes will not be subtracted in determining the effective student income.

(b) "Annual adjusted income of the student and spouse" means, except as provided in paragraphs (c), (d), (e) and (f) of this section, and § 690.39—

(1) The sum received in 1980 by the student and spouse from—

(i) Adjusted gross income, as defined in section 62 of the Internal Revenue Code;

(ii) Investment income upon which no income tax need be paid. An example of such income is the interest on municipal bonds; and

(iii) With the exception of Social Security benefits for the student, other income upon which no Federal income tax is paid. Examples of such income include child support payments, and income from income maintenance programs such as welfare benefits.

(c) For a Native American student, the annual adjusted income of the student and spouse does not include the income received by the student or spouse under

the Distribution of Judgment Funds Act (25 U.S.C. 1401, et seq.) or the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq).

(d) If a student who is divorced or separated, or if his or her spouse has died, the spouse's income shall not be considered in determining the "annual adjusted income of the student and spouse".

(e) The annual adjusted income of the student and spouse does not include any student financial assistance.

(f) If a student estimates that his or her income plus the income of his or her spouse, in the period of June 1, 1981 through May 31, 1982, will not exceed 60 percent of effective student income for 1980, effective student income will be the income estimated for that period. Estimated income includes only the income categories listed in paragraph (b).

(20 U.S.C. 1070a(a)(3)(B))

§ 690.34 Computation of the expected family contribution for a dependent student from the effective family income.

The expected family contribution for a dependent student from effective family income is calculated as follows:

(a) Determine the parents' discretionary income by deducting the following offsets from the effective family income:

(1) A family size offset in the amount specified in the following table:

Family Size Offsets

	Amount
Family members:	
2	$5,650
3	6,800
4	8,650
5	10,200
6	11,550
7	12,800
8	14,150
9	15,550
10	16,700

Plus $1,300 for each additional family member over 10.

In determining the family size, the following rules apply—

(i) If the parents are not divorced or separated, family members include the student's parents, and the dependents of the student's parents.

(ii) If the parents are divorced or separated and not remarried, family members include the parent whose income is included in computing the effective family income and that parent's dependents.

(iii) If the parents are divorced and the parent whose income is included in computing the effective family income has remarried, or if the parent was a widow or widower who has remarried, family members also include, in addition to those people referenced in paragraph (a)(1)(ii) of this section, the new spouse and any dependents of the new spouse if that spouse's income is included in determining the effective family income.

(2) An unusual expense offset equal to the amount by which the sum of unreimbursed medical and dental expenses exceeds 20 percent of the effective income of the parents. The expenses that may be reported are those expenses paid by the student's parents during 1980, unless the student files an application with the Secretary under the provisions of § 60.39. In that case, the expenses reported will be those paid in 1981. The expenses of both parents are included only if the incomes of both are subject to inclusion in determining the effective family income. Similarly, a stepparent's expenses are included only if his or her income was subject to inclusion.

(3) An employment expense offset in the amount specified as follows—

(i) If both parents were employed in the year for which their income is reported and both have their incomes reported in determining the expected family contribution, use the lesser of $1500 or 50 percent of the earned income (income earned by work) of the parent with the lesser earned income.

(ii) If a parent qualifies as a head of household as defined in section 2 of the Internal Revenue Code, use the lesser of $1500 or 50 percent of his or her earned income. The earned income figure to be used in all cases is that figure for 1980 unless the student files an application with the Secretary under the provisions of § 60.39. In that case, the figure to be used is the one for 1981.

(4) An educational expense offset equal to the tuition paid by the student's parents for dependent children, other than the student, enrolled in elementary or secondary school. The tuition which may be reported is the tuition paid in 1980 unless the student files an application with the Secretary under the provisions of § 60.39. In that case, the tuition reported will be that paid in 1981.

(b) If the parents' discretionary income is a positive amount, multiply it by 10.5 percent to determine the expected contribution from the effective family income. If the parent's discretionary income is negative, there is no expected contribution from the effective family income.

(20 U.S.C. 1070a(a)(3)(B))

§ 690.34a Computation of the expected family contribution for a dependent student from the effective student income.

The expected family contribution for a dependent student from effective student income is calculated as follows:

(a) Determine the student's discretionary income by deducting from the effective student income the relevant dependent student offset.

(1) If the parental discretionary income is positive, the offset is as follows:

Dependent Student Offset

Single student	$3,000
Married student	4,350

(2) If the parental discretionary income is negative, the relevant offset in paragraph (1) is increased by the amount of that negative parental discretionary income minus any amount of the negative parental discretionary income that will be used as an offset against the contribution from parental assets in § 690.35(d).

(b) If the student's discretionary income is a positive amount, multiply it by one of the following figures to determine the expected contribution from effective student income:

(1) 75 percent for the single dependent student, or

(2) 25 percent for the married dependent student.

(c) If the student's discretionary income is negative, there is no expected contribution from the effective student income.

(20 U.S.C. 1070a(a)(3)(B))

§ 690.35 Computation of the expected contribution from parental assets.

The expected contribution from parental assets is determined in the following manner:

(a) If the net assets do not include farm or business assets, deduct an asset reserve of $25,000 from the net assets.

(b) If the net assets include farm or business assets as defined in § 690.32, deduct an asset reserve from the net assets as follows—

(1) If farm or business assets are less than farm or business debts, deduct an asset reserve of $25,000 from the net value of all assets.

(2) If farm or business assets exceed farm or business debts, and the net value of non-farm and non-business assets is *$25,000 or more,* deduct an asset reserve of,

(i) $25,000 from non-farm and non-business assets, and

(ii) $25,000 from farm and business assets.

(3) If farm or business assets exceed farm or business debts and the net value

of non-farm and non-business assets is *less than $25,000,* deduct an asset reserve of $50,000 from the net value of all assets.

(4) If the result obtained in paragraphs (b)(1), (2)(ii), or (3) is a negative amount, it shall be changed to zero.

(c) Normally the expected contribution from parental assets equals five percent of the remainder obtained in paragraph (a) or (b).

(d) However, if the calculation of discretionary income required by § 690.34(a) produces a negative number, the expected contribution from parental assets, calculated under paragraph (c) of this section, shall be reduced by the amount of that negative discretionary income, or by the amount obtained in paragraph (c) of this section, whichever is less.

(e)(1) If the student's parents are separated, or divorced and not remarried, only the assets of the parent whose income is included in computing annual adjusted family income shall be considered.

(2) However, if that parent has remarried, or if the parent was a widow or widower who has remarried, and the parent's spouse's income is also included under § 690.33, the assets of that parent's spouse shall also be included.

(20 U.S.C. 1070a(a)(3)(B))

§ 690.36 Computation of the expected contribution from effective family income and parental assets, adjusted for the number of family members enrolled in programs of postsecondary education.

(a) For each grant, the amount expected from effective family income as determined in § 690.34(b) is added to the amount expected from parental assets as determined in § 690.35.

(b)(1) For each grant, the combined expectation determined in paragraph (a) of this section is adjusted in the following manner for the number of family members who will be attending, on at least a half-time basis, a program of postsecondary education during the award period for which Pell Grant assistance is requested:

Number of family members enrolled in programs of postsecondary education	Expected contribution per student from combined contributions
1	100 percent of the contribution determined in paragraph (a).
2	70 percent of the contribution determined in paragraph (a).
3	50 percent of the contribution determined in paragraph (a).
4	40 percent of the contribution determined in paragraph (a).

(2) Family members are those persons referenced in § 690.34(a)(1).

(20 U.S.C. 1070a(a)(3)(B))

§ 690.37 Computation of the expected contribution from the assets of the dependent student (and spouse).

(a) The expected contribution from the net assets of a single dependent student equals 33 percent of the amount of those assets.

(b) The expected contribution from the net assets of the married dependent student and spouse is determined in the following matter.

(1) Deduct an asset reserve of $25,000 from the net assets. If the result is negative, it shall be changed to zero.

(2) The expected contribution from the net assets of the dependent student and spouse equals five percent of the remainder obtained in paragraph (1) of this section.

(3) If the married dependent student is separated, only his or her assets shall be considered.

(20 U.S.C. 1070a(a)(3)(B))

§ 690.38 Computation of the total expected family contribution.

For each grant the total expected family contribution is the sum of—

(a) The expected contribution from the effective family income and parental assets as determined in § 690.36,

(b) The expected contribution from effective student income as determined in § 690.34a, and

(c) The expected contribution from the student's (and spouse's) assets as determined in § 690.37.

(20 U.S.C. 1070a(a)(3)(B))

§ 690.39 Extraordinary circumstances affecting the expected family contribution determination for a dependent student.

(a) A student may submit an application to the Secretary for determination of his or her expected family contribution using income data from 1981 for effective family income, if—

(1) A parent or stepparent whose 1980 income from work must be reported under § 690.33 has lost his or her job for at least 10 weeks during 1981,

(2) A parent or stepparent whose 1980 income from work must be reported under § 690.33 has been unable to pursue normal income-producing activities for at least 10 weeks during 1981 because of the occurrence—in 1980 or 1981—of (i) a disability, or (ii) a natural disaster,

(3) A parent or stepparent whose income must be reported under § 690.33 received unemployment compensation or nontaxable income in 1980 and had a complete loss for at least 10 weeks in 1981 of one of those benefits. A nontaxable benefit, for purposes of this paragraph, must be paid by a public or private agency, a company, or a person because of a court order. Types of nontaxable benefits would include Social Security benefits, welfare, court ordered child support, etc.

(4) The parent(s) of the student have become separated or divorced after the student submitted his or her application. If such a separation or divorce is between a parent and a stepparent, the stepparent's income must have been reportable on the previous application under § 690.33 for this condition to apply, or

(5) A parent or stepparent whose 1980 income must be reported under § 690.33 has died after the submission of an earlier application for 1981–82. However, if the parent referred to in this paragraph is the last surviving parent with whom the student has or will have a dependency relationship according to § 690.42, the student must file an application under § 690.48(a)(7) if he or she wishes to use income data from 1981.

(b) For an application submitted under paragraph (a) of this section, the student (and parent) shall include the income already received for 1981 and an estimate of the income to be received for the remainder of that year.

(c) A student may submit a revised application to reflect changes in asset amounts reported on the previously submitted application if the student or his or her family has suffered a loss of or damage to assets resulting from a natural disaster in an area that has been declared a national disaster area by the President of the United States.

(20 U.S.C. 1070a(a)(3)(B)(i)(V))

Subpart D—Expected Family Contribution for an Independent Student

§ 690.41 Indicators of financial strength.

"Expected family contribution" for an independent student means the amount that the student and his or her spouse may reasonably be expected to contribute toward the cost of his or her education for an award period. Each of the following elements of financial strength will be considered in determining the family contribution for an independent student;

(a) The effective family income of the independent student and spouse.

(b) The number of family members in the household of the student and spouse.

(c) The number of family members in the household of the student and spouse who are enrolled in, on at least a half-

time basis, a program of postsecondary education.

(d) The assets of the student and spouse.

(e) The unusual medical expenses of the student and spouse.

(f) The additional expenses incurred when both the student and spouse are employed or when the employed student qualifies as a surviving spouse or as head of a household under section 2 of the Internal Revenue Code.

(g) The tuition paid by the student or spouse for dependent children who are enrolled in an elementary or secondary school.

(20 U.S.C. 1070a(a)(3)(C))

§ 69.42 Special definitions.

The definitions of "assets", "business assets", "farm assets", "family size offset", "Federal income tax", "legal guardian", "medical expense", "net assets", and "parent" are set forth in § 690.32.

"Dependent" means (a) the student's spouse (unless separated or divorced from the student), (b) any of the student's or spouse's children who qualify as dependent students (with respect to the student or spouse) and are attending an institution of higher education on at least a half-time basis, (c) other dependent children of the student or spouse, and (d) other persons who live with and receive more than one-half of their support from the student or spouse and will continue to receive more than one-half of their support from the student or spouse during the 1981–82 award period.

"Effective family income" is described in § 690.43.

"Employment expense offset" means an allowance to meet expenses relating to employment when both the independent student and his or her spouse are employed or when the independent student qualifies as a surviving spouse or as head of a household under section 2 of the Internal Revenue Code.

"Independent student" means:

(a) A student who for 1980 and 1981—

(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by the parent(s) for whom income must be reported according to § 690.33;

(2) Has not received and will not receive financial assistance of more than $1,000 in each year from the parent(s) for whom income must be reported according to § 690.33; and

(3) Has not lived and will not live for more than six weeks in each year in the home of the parent(s) for whom income must be reported according to § 690.33.

(20 U.S.C. 1070a(a)(3)(B)(iii))

§ 690.43 Effective family income.

(a) Effective family income is the annual adjusted family income minus the Federal income tax paid or payable for the year that adjusted gross income is used in the calculation of the student's Pell Grant.

(b) "Annual adjusted family income" means, except as provided in paragraphs (c), (d), and (e) of this section and § 690.48—

(1) The sum received in 1980 by the student and spouse from—

(i) Adjusted gross income, as defined in section 62 of the Internal Revenue Code;

(ii) Investment income upon which no Federal income tax is paid. An example of such income is the interest on municipal bonds; and

(iii) Other income upon which no Federal income tax need be paid. Examples of such income include child support payments, and income from income maintenance programs such as welfare benefits and Social Security benefits.

(2) One-half of any veteran's benefits to be paid to a student under Chapters 34 and 35 of the United States code for the 1981–82 award period.

(c) For a Native American student, the annual adjusted family income does not include the income received by the student or spouse under the Distribution of Judgment Funds Act (25 U.S.C. 1401, et seq.) or the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.).

(d) In the case of a student who is divorced or separated, or whose spouse has died, the spouse's income shall not be considered in determining the annual adjusted family income.

(e) The annual adjusted family income does not include any student financial assistance except those veteran's benefits cited in subparagraph (b)(2).

(20 U.S.C. 1070a(a)(3) (B) and (C))

§ 690.44 Computation of the expected family contribution for an independent student from the effective family income.

The expected family contribution for the independent student from effective family income is calculated as follows:

(a) Determine discretionary income by deducting the following offsets from the effective family income.

(1) A family size offset in the amount specified in the following table.

Family Size Offsets

	Amount
Family members:	
1	$4,350
2	5,650
3	6,800
4	8,650
5	10,200
6	11,550
7	12,800
8	14,150
9	15,500
10	16,700

Plus $1,300 for each additional family member over 10.

In determining the family size, the following rules apply—

(i) Family members normally include the student and spouse and their dependents.

(ii) However, if the student is divorced or separated, the spouse (ex-spouse) and his or her dependents are not counted in the family size.

(2) An unusual expense offset equal to the amount by which the sum of unreimbursed medical and dental expenses exceeds 20 percent of effective family income. The expenses that may be reported are those expenses paid by the student and spouse in 1980, unless the student files an application with the Secretary under the provisions of § 690.48. In that case, the expenses reported will be those paid in 1981. The expenses of both the student and spouse are included only if the incomes of both are subject to inclusion in determining the effective family income.

(3) An employment expense offset in the amount specified as follows—

(i) If both the student and spouse were employed in the year for which their income is reported and both have their incomes reported in determining the expected family contribution, use the lesser of $1500 or 50 percent of the earned income (income earned by work) of the person with the lesser earned income.

(ii) If a student qualifies as a head of household as defined in section 2 of the Internal Revenue Code, use the lesser of $1500 or 50 percent of his or her earned income.

The earned income figure to be used in all cases is that figure for 1980, unless the student files an application with the Secretary under the provisions of § 690.48. In that case the figure to be used is the one for 1981.

(4) An educational expense offset equal to the tuition paid by the student and spouse for dependent children enrolled in elementary or secondary school. The tuition that may be reported is the tuition paid in 1980, unless the student files an application with the Secretary under the provisions of § 690.48. In that case the tuition reported will be that paid in 1981.

(20 U.S.C. 1070a(a)(3)(B))

(b) If the discretionary income is a positive amount, multiply it by one of the following figures to determine the expected family contribution from the effective family income of the student and spouse:

(1) 75 percent for the single independent student with no dependents; or

(2) 25 percent for the independent student with one or more dependents (including a spouse).

If the discretionary income is negative, there is no expected family contribution from effective family income.

(20 U.S.C. 1070a(a)(3)(C))

§ 690.45 Computation of the expected contribution from the assets of the independent student (and spouse).

(a)(1) Normally, the expected contribution from the net assets of the single independent student with no dependents equals 33 percent of the amount of those assets.

(2) However, if the calculation of discretionary income required by § 690.44(a) produces a negative number, the expected contribution from the student's assets calculated under paragraph (a)(1) of this section shall be reduced by the amount of that negative discretionary income, or the amount obtained in paragraph (a)(1) of this section, whichever is less.

(b) For an independent student with dependents, the expected contribution from the assets of the student (and spouse) is determined in the following manner:

(1) If the net assets do not include farm or business assets, deduct an asset reserve of $25,000 from the net assets.

(2) If the net assets include farm or business assets as defined in § 690.32, deduct an asset reserve from the net assets as follows—

(i) If farm or business assets are less than farm or business debts, deduct an asset reserve of $25,000 from the net value of all assets.

(ii) If farm or business assets exceed farm or business debts, and the net value of non-farm and non-business assets is *$25,000 or more,* deduct an asset reserve of,

(A) $25,000 from non-farm and non-business assets, and

(B) $25,000 from farm and business assets.

(iii) If farm or business assets exceed farm or business debts and the net value of non-farm and non-business assets is *less than $25,000,* deduct an asset reserve of $50,000 from the net value of all assets.

(iv) If the result obtained in paragraphs (b)(2)(i), (2)(ii)(B), or (2)(iii) of this section is a negative amount, it shall be changed to zero.

(3) Normally, the expected contribution from the net assets of the independent student with dependents equals five percent of the remainder obtained in paragraph (b)(1) or (2) of this section.

(4) However, if the calculation of discretionary income required by § 690.44(a) produces a negative number, the expected contribution from the student's (and spouse's) assets calculated under paragraph (b)(3) of this section shall be reduced by the amount of that negative discretionary income, or the amount obtained in paragraph (b)(3) of this section, whichever is less.

(5) If the married independent student with dependents is separated, only his or her assets shall be considered.

(20 U.S.C. 1070a(a)(3) (B) and (C))

§ 690.46 Computation of the total expected contribution from the income and assets of the independent student (and spouse), adjusted for the number of family members enrolled in programs of postsecondary education.

(a) For each grant, the amount expected from family income as determined in § 690.44 is added to the amount expected from assets as determined in § 690.45.

(b) For each grant, the combined expectation determined in paragraph (a) of this section is adjusted in the following manner for the number of family members who will be attending, on at least a half-time basis, a program of postsecondary education during the award period for which Pell Grant assistance is requested:

Number of family members enrolled in programs of postsecondary education	Expected contribution per student from combined contributions
1	100 percent of the contribution determined in paragraph (a).
2	70 percent of the contribution determined in paragraph (a).
3	50 percent of the contribution determined in paragraph (a).
4 or more	40 percent of the contribution determined in paragraph (a).

Family members are those persons referenced in § 690.44(a)(1).

(20 U.S.C. 1070a(a)(3)(C))

§ 690.47 [Reserved]

§ 690.48 Extraordinary circumstances affecting the expected family contribution determination for an independent student.

(a) A student may submit an application to the Secretary for determination of his or her expected family contribution using income data from 1981 for effective family income if—

(1) The student was employed full-time in 1980 (at least 35 hours per week for a minimum of 30 weeks during 1980) and is no longer employed full-time,

(2) A spouse whose 1980 income from work must be reported under § 690.43 has lost his or her job for at least 10 weeks during 1981,

(3) The student or spouse whose 1980 income from work must be reported under § 690.43 has been unable to pursue normal income-producing activities for at least 10 weeks during 1981 because of the occurrence—in 1980 or 1981—of (i) a disability or (ii) a natural disaster,

(4) The student or spouse whose income must be reported under § 690.43 received unemployment compensation or nontaxable income in 1980 and had a complete loss for at least 10 weeks in 1981 of one of those benefits. A nontaxable benefit, for purposes of this paragraph, must be paid by a public or private agency, a company, or a person because of a court order. Types of nontaxable benefits would include Social Security benefits, welfare, court ordered child support, etc. They would not, however, include veterans educational benefits under chapters 34 and 35 of the United States Code,

(5) The student has become separated or divorced after he or she submitted his or her application,

(6) A spouse whose 1980 income must be reported under § 690.43 has died after the submission of an earlier application for 1981 or 1982, or

(7) The student's last surviving parent with whom the student has or will have a dependency relationship according to § 690.42 has died.

(b) For an application submitted under paragraph (a), the student shall include the effective family income already received for 1981 and an estimate of the effective family income to be received for the remainder of that year.

(c) A student may submit a revised application to reflect changes in asset amounts reported on the previously submitted application if the student or his or her spouse has suffered a loss of or damage to assets resulting from a natural disaster in an area that has been declared a national disaster area by the President of the United States.

(20 U.S.C. 1070a(a)(3)(B)(i)(V) and (a)(3)(C))

Appendix—Summary of Comments and Responses

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

A summary of the public comments on the proposed Family Contribution Schedules (FCS) published on August 1, 1980, and the Department of Education's responses to those comments appear below. Generally, the comments and responses to the specific sections of the regulations appear in the same sequence as the regulations themselves. However, it should be noted that the changes made in §§ 690.33a and 690.34a concerning the treatment of dependent student income were made in response to the comments on the criterion for the use of estimated income for dependent students which appear in § 690.39.

Comment

While two commenters supported the inclusion of the dependent student's children in the family size offset of the student's parents, three commenters expressed a concern that dependent students who did not live with their parents would not be able to include their children in the parent's household size. The commenters suggested that the children of dependent students who maintain a separate household should also be included.

Response

The dependent student's children are automatically considered to be dependents of the student's parents. The language of the final regulation has been modified to make it clear that children of dependent students who maintain a separate household should be included in the household size of the student's parents. Clause (b) of that definition now reads "any of the student's children."

Comment

One commenter recommended that the dependent student's spouse should be included in the parent's household size.

Response

The suggestion was not adopted. An offset is provided for the student's spouse in determining the contribution from the income of the student and spouse. Additional protection is also provided in determining the contribution from assets, i.e., there is a $25,000 asset protection allowance, and an assessment rate of five percent.

Comment

One commenter remarked that married parents of a student who is ineligible to receive a Pell Grant may resent the fact that a student with divorced parents who earn a higher income may be eligible. Frequently the divorced parent with the lower income is the parent who supports the child, while the income of the other parent is not considered. A second commenter expressed a belief that parents have a responsibility to support the higher education of their sons or daughters to the extent they are able, regardless of their current marital status.

Response

Eligibility is based upon the amount of financial support available to the student. If the parents of a dependent student are married, and both parents receive incomes, both incomes must be considered in determining eligibility. However, if the parents of a dependent student are divorced, financial support from both parents cannot always be expected. Since it is not reasonable always to expect a financial contribution from both parents when the parents are divorced, the regulation provides that the income to be reported will be that for the "responsible parent" as set forth in § 690.33.

Comment

Two commenters expressed their approval of the method used to update the family size offset, but one commenter thought the use of the Consumer Price Index artificially increased financial need. This commenter reasoned that the increase in mortgage interest rates, which is included in the Consumer Price Index does not apply to the majority of parents with college-age dependents, because they are normally home owners of some years standing. Another commenter questioned the variances in the amounts for each additional family member. For example, the amount for the difference between six and seven family members is smaller than the amount between seven and eight family members.

Response

The Secretary believes that the Consumer Price Index is a satisfactory means for calculating inflation. While not all components that make up any measurement of inflation are applicable to all families, the use of the Consumer Price Index does serve to provide the average effects of inflation on a family.

In the preamble to the NPRM the Secretary explained that the standard for determining basic family expenses has been the "Weighted Average Thresholds at the Low Income Level" developed by the Social Security Administration and published by the Bureau of the Census. When the average thresholds are weighted by the number of children, there will be variances in the incremented amounts for each additional family member. A more detailed explanation can be found in "Characteristics of the Low Income Population" published by the Bureau of the Census in December 1973. The income figures from this pamphlet have been updated to account for inflation.

Comment

One commenter suggested that tuition for early education programs such as pre-school and kindergarten costs should be included in the educational expense offset, along with elementary and secondary tuition costs.

Response

The legislative provision that lists educational expenses as a criterion in calculating the expected family contributions has been interpreted by the Secretary to mean the tuition costs for elementary and secondary education only. If kindergarten is considered to be elementary education by the State, kindergarten tuition costs may be included.

Comment

One commenter believed that more consideration should be given to individual circumstances in determining the expected family contribution, citing as an example the additional expenses of supporting handicapped children.

Response

In a formula-based program, it is not usually possible to have the formula apply to each individual in such a way that the formula will result in a completely fair determination for all individual situations that will be encountered. In recognizing this, the Department of Education has allowed for more discretionary judgment in the campus-based programs (the National Direct Student Loan, College Work-Study Program, and Supplemental Educational Opportunity Grant). These other sources of financial aid are available for these students whose circumstances are not fully taken into account by the Pell Grant formula, but who nevertheless have need. Concerning the specific example of additional expenses incurred by handicapped students, however, the Education Amendments of 1980 have defined cost of attendance in a way that will increase such costs for handicapped students. Thus, beginning with the 1981-82 award year—the period for which this formula will be used to determine Pell Grant eligibility—the program will consider additional expenses incurred by handicapped students in determining the amount of a Pell Grant that such students are eligible for.

Comment

Numerous comments were received concerning the use of a dependent student's income in the calculation of eligibility for a Pell Grant. Two commenters recommended that dependent student income should be deleted, while twelve other commenters suggested modifications in the method of assessing this income. Two commenters who wanted this section deleted questioned the legality of assessing dependent student income.

Among those suggesting modifications, five commenters felt the 75 percent assessment rate was too high. One commenter suggested an assessment rate of 33 percent, and another preferred a rate of 50 percent. The other three commenters did not suggest an alternative rate.

Two commenters reasoned that a lower assessment rate would counteract what they considered to be double counting a dependent student's income (both the base year income and the currently available cash saved from that income is counted in certain circumstances).

Three commenters suggested that the entire treatment of the dependent student's income should be intertwined with the treatment of the parent's income. That is, the incomes should be added together and assessed at the parental rate. Another commenter suggested that the income above the dependent student offset should be added to discretionary parental income and assessed at the parental rate.

And, while one commenter supported the increase in the dependent student offset, a second commenter thought the offset created a disincentive to work, and a third commenter recommended that the amount of the offset should be increased by an additional $2,000 as an "initiative offset" so that dependent students would have a greater initiative to work.

Finally, two commenters supported the increase in the dependent student offset when parental discretionary income is negative, but another commenter questioned whether a dependent student from an impoverished family with a fairly substantial income of his or her own will contribute that income to the family. This commenter cited a survey of parents whose children receive Social Security which indicated that in only 9.2 percent of the cases surveyed did parents keep the student's share of Social Security. The commenter believed this survey refuted the premise that a student will contribute his or her income to the family to pay for basic living expenses.

Response

Neither the suggested deletion nor the suggested modifications were adopted. Although many commenters offered some viable alternatives to the proposed method of assessing dependent student income, the Secretary does not believe they represent an improvement to the procedure in the NPRM. In many cases there were conflicting suggestions for modifying the same provision.

With regard to the question of the legality of assessing dependent student income, we have been advised by the Office of the General Counsel that the Secretary is authorized to assess a portion of a dependent student's income when calculating that student's effective family contribution.

The Secretary believes the differences between the suggested changes and the current regulations relating to (1) an assessment of the dependent student's income and (2) the size of the offset, are simply the result of a different perception as to the amount of income that a dependent student should have available for education. Similarly, the question of whether to include the dependent student's income with the parent's income or to treat it separately as is currently done, represents another example of a different opinion concerning the contribution that should be made by a dependent student. The Secretary feels that the current approach is the most equitable for the majority of the students involved.

The concept of double counting is based on the assumption that the income a student has earned in the previous year has been saved and will be counted as an asset. Thus, in the proposed rule it appears that the same funds are counted twice—once for income and again for assets. However, the income from the previous year is only used as a basis for determining the income the student will earn during the year that student will be receiving a Pell Grant. The assets (savings) that the student and his or her parents report are those which they have at the time of application. The savings represent an additional resource to the student which should be considered in determining the ability to pay for a student's education, regardless of whether those savings come from the previous year's income, or some other source.

Finally, in the past year, many members of the financial aid community have cited situations where a student from an impoverished family with a fairly substantial income of his or her own has contributed a portion of his or her own income to help support that family. A survey of students who receive Social Security is not an analogous situation. Students who receive Social Security are not necessarily from impoverished families, nor do they necessarily receive a fairly substantial income. Also, the survey cited by the commenter included only the number of students who gave their entire incomes to their families. The purpose of increasing the dependent student offset, when parental discretionary income is negative, is to account for income that is being used to pay for a family's basic living expenses and therefore, not available for educational expenses. The situation of a student who gives a portion of his or her income to a low income family is not the same as a student who gives his or her entire Social Security income to the parents.

Comment

One commenter suggested that all cooperative education earnings should be excluded from the assessment of dependent student income.

Response

The suggestion was not adopted. However, if a student in a cooperative education program has a cooperative education job that is considered to be financial aid, § 690.33a(e) of these regulations provides that the income from that job should not be reported. Under some circumstances taxable income can be considered financial aid. For example, earnings from College Work-Study are taxable, but these earnings should not be reported. Similarly, co-op earnings should not be reported on the application if these earnings are considered by the financial aid office to be part of the student's financial aid package.

Comment

One commenter noted that the family size offset was adjusted to correspond to the increase in the Consumer Price Index but the asset protection allowances have remained the same for three years. Another commenter contended that home values have increased by 10 percent each year during the previous three years.

Response

The asset reserve of $25,000 reflects the Secretary's belief that that figure results in an adequate and fair treatment of the assets that a family might have at this time.

Comment

Two commenters suggested that the adjustment in the parental contribution for the number of family members enrolled in programs of postsecondary education should be consistent with the principles of uniform methodology. That is, the expected parental contribution should be divided by the number of family members enrolled at least half-time in postsecondary education. One of these commenters also stated that the employment expense offset in § 690.34 should also be consistent with the procedures in the Uniform Methodology.

Response

The suggestion to change the multiple student adjustment was not adopted. In determining the appropriate percentages, the contributions expected from different family sizes were compared. These investigations indicated that 140 percent of the contribution for one student would be a reasonable assessment against the family with two students. Thus, each student would receive 70 percent of the contribution which the family would make if there were only one student in the family. Similarly, 150 percent of the single student contribution seemed adequate for the family with three children in postsecondary education. Thus, each student could expect 50 percent of the single student contribution for each child in postsecondary education. The Secretary considers a maximum of $1,500 to be a reasonable employment expense offset for the Family Contribution Schedules.

Comment

One commenter suggested that a dependent student with dependents should have the same asset protection allowance as a married student.

Response

The suggestion was not adopted. The total number of dependent students with dependents represents a small percentage of the Pell Grant applicants. There are two reasons for not adopting this suggestion on the basis of numbers. First, the program is formula based, and therefore not designed to accommodate all possible situations. Second, a major effort is being made to shorten and simplify the application as much as possible, and the number of dependent students with dependents of their own is not large enough to warrant the additional questions that would be needed on the Pell (Basic) Grant application.

Comment

There were many comments on the proposed criterion to be used by the Pell Grant Program to allow the use of estimated income for dependent students in determining eligibility. (Last year, the student's actual income from the previous year was always used.) The proposed criterion for 1981–82 provided that dependent students who were employed full-time for at least 30 weeks in 1980, and were not longer employed full-time in 1981 or 1982 could have their eligibility determined using estimated income for 1981. Five commenters expressed their unqualified support for this proposal. However, ten commenters suggested modifications.

One commenter suggested that the number of weeks of full-time employment should be reduced from 30 to 25. This commenter believed that the 30 week requirement discriminated against students who begin their enrollment in July. Seven commenters recommended that students who worked less than full-time should also be able to estimate current year income. These commenters pointed out that many students earn substantial incomes during the summer and work part-time in the base year.

One commenter recommended that a dependent student who worked part-time during the base year should only be able to file for a grant using estimated income after September 1, 1981, and another commenter suggested that students file after January 1, 1982 if current year income is lower than base year income.

While one commenter believed that the use of a criterion allowing the use of estimated income would be an invitation to fraud and abuse when students discovered what the commenter believed to be a loophole in the base year filing requirements, another commenter suggested that—for dependent student income—only estimates of current year income should be used.

Finally, a commenter suggested that estimated income for a dependent student should be used only when a comparison of that dependent student's income from the previous year and the estimate for the income from the current year indicates that the estimated current year income will be lower than the previous year's income by a certain percentage.

Response

The suggestion to assess the current year income of a dependent student when that income declines by a certain percentage was adopted in a modified form. The Secretary has decided that the dependent student's base year income should not be used when that student estimates an income in the 1981–82 school year (June 1, 1981–May 31, 1982) that falls 40 percent below the income he or she earned in calendar year 1980. Such a significant decline in income should be taken into account in determining the dependent student's contribution. Therefore, appropriate changes have been made in § 690.33a to reflect this change.

This change should resolve many of the problems that were described by most of the commenters who suggested modifications in the proposed rule concerning the use of estimated income for dependent students. For example, many dependent students who will not work full-time for at least 30 weeks in 1980, but who will have significant declines in income during the school year will still have contributions based on the 1981–82 school year income.

Comment

There were two suggestions for additional conditions that would allow the use of estimated income. One commenter suggested that the loss of Social Security benefits to the family (for example, when a child becomes 18 the family loses their entitlement to those Social Security funds) should be included as such a condition. Two other commenters suggested that a condition should be added for the parent who has a significant decrease in income, but is not unemployed. For example, many factory workers and commissioned sales personnel may have their work weeks reduced or have substantial declines in income for other reasons.

Response

Since the use of estimated income is restricted to extraordinary circumstances, the Secretary does not feel that a partial loss of Social Security income should be considered a sufficient reason for estimating income. For the same reason, a loss of earned income that is not a result of unemployment has not been accepted as a sufficient reason. The Secretary has limited the use of estimated income to the most severe circumstances that are likely to significantly affect eligibility.

Comment

One commenter suggested that the expenses incurred for child care should be considered in determining the family contribution for an independent student. The commenter felt this provision would conform to Section 482(d) of the Higher Education Act, as amended by the Education Amendments of 1980.

Response

The suggestion was not adopted. This section of the law refers to the cost of attendence, it does not relate child care costs to the expected family contribution. The Pell Grant regulations will be changed to include a child care allowance in the cost of attendance for students with dependent children beginning with the 1981–82 award year.

Comment

There were several comments on the dollar support figure that is used in one of the critieria for determining the independent status of a student. Two commenters supported the raise from $750 to $1,000. Two commenters felt the support figure should not be raised because it permits some students to qualify for aid without regard to the parents' ability to support these students. Another comment wanted to drop this criterion because the commenter felt that many applicants do not seriously consider this question and it is not as relevant to dependency as the residence or tax exemption criteria.

Response

No change was made in this section of the final regulations. The increase was made because the support amount has generally been tied to the Internal Revenue Service's personal exemption amount which has been increased to $1,000. This corresponds with another criterion of dependency—claiming the student as a tax exemption. The increase also takes into account the effects of inflation. Finally, this criterion was not deleted because the Secretary believes there must be a maximum set on the amount of income a student can receive from his or her parents while still claiming to be independent.

Comment

One commenter suggested the phrase "or guardian," should be included along with the parent in the definition of an independent student, since the law refers to parents or guardians in the provision concerning independent students.

Response

The suggestion was adopted and incorporated in the final regulation. The definition of "legal guardian" is included in Section 690.32.

Comment

A commenter stated that the discretionary income of an independent student with one or more dependents should be assessed at the same rate as the parental discretionary income. This observation was based on a provision in the Education Amendments of 1980.

Response

As explained in the preamble to these regulations, changes in the Family Contribution Schedules made by the Education Amendments of 1980 will not become effective until the 1982–83 academic year, and the Secretary does not plan to implement these changes a year early by regulation.

Comment

A commenter suggested that the employment expense offset should also apply to dependent married couples when one spouse works, and the other is a full-time student. The commenter believed this was analogous to a household in which both student and spouse work.

Response

The Secretary does not agree. The additional expenses of employment (such as clothing and transportation) are usually not comparable to the expenses of a student.

Comment

A commenter stated that the discretionary income of an independent student with one or more dependents should be assessed at the same rate as the parental discretionary income. This observation was based on a provision in the Education Amendments of 1980.

Response

As explained in the preamble to these regulations, changes in the Family Contribution Schedules made by the Education Amendments of 1980 will not become effective until the 1982–83 academic year, and the Secretary does not plan to implement these changes a year early by regulation.

[FR Doc. 81-1678 Filed 1-16-81; 8:45 am]
BILLING CODE 4000-01-M

federal register

Monday
January 19, 1981

Part VI

Environmental Protection Agency

Pesticide Products Containing Dimethoate; Rebuttable Presumption Against Registration and Continued Registration, and Intent to Cancel Registration and Deny Applications for Registration

ENVIRONMENTAL PROTECTION AGENCY

[OPP 30000/16D; PH-FRL 1627-5]

Pesticide Products Containing Dimethoate; Final Notice of Determination Concluding Rebuttable Presumption Against Registration and Continued Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice provides the Dimethoate Position Document 4 supporting the Notice of Intent to Cancel Registration for Pesticide Products Containing Dimethoate, which is published elsewhere in this issue of the **Federal Register**. Position Document 4 represents the final stage of the Agency's review of this chemical under the Rebuttable Presumption Against Registration Process. The Notice of Intent to Cancel Registrations and Deny Applications for Registration of Pesticide Products Containing Dimethoate describes the procedures for challenging the regulatory actions taken by the Agency concering dimethoate.

FOR FURTHER INFORMATION CONTACT: Harvey Warnick, Environmental Protection Agency, Special Pesticide Review Division (TS-791), Office of Pesticide Programs, Room 728D, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202. (703) 557-8195.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 et seq.), the Environmental Protection Agency (EPA or "the Agency") regulates all pesticide products. Section 6(b) of FIFRA authorizes the Administrator of EPA to issue a notice of intent (1) to cancel the registration or (2) to change the classification of a pesticide product, if in his judgment either the pesticide or its labeling "does not comply with the provisions of (FIFRA) or, when used in accordance with widespread and commonly recognized practice, generally causes unreasonable adverse effects on the environment. . . ." FIFRA, section 3(c)(6), authorizes the Administrator to deny any application for pesticide registration which does not meet the statutory standards for registration.

To implement its authorized functions, the Agency has designed the Rebuttable Presumption Against Registration (RPAR) process (described in 40 CFR 162.11), which involves gathering data on the risks and benefits associated with the use of suspect pesticides. By allowing all interested parties to participate by submitting information, the process enables EPA to make balanced decisions concerining problem pesticides.

The Agency published an RPAR notice in the **Federal Register** of September 12, 1977 (42 FR 45086) for all pesticide products containing dimethoate, an organophosphate insecticide and acaricide, thereby initiating the Agency' public review of the risks and benefits of dimethoate. The RPAR notice cited three risk criteria which dimethoate had met or exceeded. These three risk criteria were oncogenic effects in test animals (40 CFR 162.11(a)(3)(ii)(A)), mutagenic effects (multi-test evidence) (40 CFR 162.11(a)(3)(ii)(A)), and reproductive and fetotoxic effects in test animals (40 CFR 162.11(a)(3)(ii)(B)). A detailed Position Document 1 accompanied the September 12, 1977 notice.

The Agency issued a Preliminary Notice of Determination concluding the Rebuttable Presumption Against Registration of Pesticide Products containing Dimethoate and announced the availability of Position Document 2/3 in the **Federal Register** of November 19, 1979 (44 FR 66558). In Position Document 2/3, the Agency analyzed the rebuttals it received in response to the original RPAR notice, presented its analysis of both risks and benefits associated with the uses of dimethoate, and proposed a decision to conclude the RPAR process.

The Agency determined, in PD 2/3, that the information submitted to rebut the risk criteria for oncogenicity, mutagenicity, and reproductive and fetotoxic effects was insufficient to overcome the presumption against dimethoate for these effects. In addition the Agency received new teratogenic data, unavailable when PD 1 was issued, indicating that dimethoate posed a potential teratogenic hazard. This new information was presented and evaluated in PD 2/3 and the Agency concluded in PD 2/3 that teratogenicity was an additional risk of concern for dimethoate.

In the Preliminary Notice of Determination, the Agency determined that the risks arising from certain uses of dimethoate are greater than the benefits of those uses, unless risks are reduced by modifying certain terms and conditions of registration. The Agency determined that these modifications would significantly reduce risk without significantly impacting on the benefits of the uses.

The modifications to the terms and conditions of registration of dimethoate products proposed by the Agency in the Preliminary Notice of Determination included:

(1) Cancellation of dust formulations.

(2) Label changes to require the use of protective clothing and respirators.

(3) Label changes to require automatic flagging for aerial application.

(4) Label changes to prohibit air blast application on citrus, pome fruits, and pecans.

(5) Label changes to include a warning to female workers, using air blast equipment, of the potential teratogenic effects of dimethoate.

In addition, the Agency determined that registrants must submit data in the areas of oncogenicity, mutagenicity, delayed neurotoxicity, and applicator exposure pursuant to FIFRA sections 3(c)(2)(B).

FIFRA requires the Agency to submit notices issued pursuant to section 6 to the Secretary of Agriculture for comment and to provide the Secretary of Agriculture with an analysis of the impact of the proposed action on the agricultural economy under section 6(b). The statute also requires the Administrator to submit notices issued pursuant to section 6 to a Scientific Advisory Panel (SAP) for comment on the impact of the proposed action on health and the environment, at the same time and under the same procedures as those described for review by the Secretary of Agriculture under section 25(d).

Although not required to do so under the statute, the Agency decided that it is consistent with the general theme of the RPAR process and the Agency's overall policy of open decision-making to afford registrants and other interested persons an opportunity to comment on the bases for the proposed action during the time that the proposed action is under review by the Secretary of Agriculture and the SAP. Accordingly, the Preliminary Notice and PD 2/3 were made available to registrants and other interested persons at the time the decision documents were transmitted for formal external review. The Preliminary Notice was published in the **Federal Register**; interested persons were notified that PD 2/3 was available through publication of a Notice of Availability in the **Federal Register**. Registrants and other interested persons were allowed the same period of time to comment, 30 days, that the statute provides for receipt of comments from the Secretary of Agriculture and the SAP.

The Agency received comments from thirteen (13) parties, including the USDA and the SAP, in response to the notice of

November 19, 1979. The comments are addressed and analyzed in Chapter II of this docment. Chapter III summarizes the Agency's final determination concerning pesticide products containing dimethoate. SAP and USDA's responses are reproduced in their entirety at the end of this chapter. All comments are available for review in the public file located in the Document Control Office, Rm. E-447, 401 M St. SW., Washington, D.C. 20460.

FIFRA Scientific Advisory Panel—Review of Preliminary Notice of Determination Concluding the Rebuttable Presumption Against Registration (RPAR) of Products Containing Dimethoate

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel has completed review of plans by the Environmental Protection Agency (EPA) for initiation of regulatory action on dimethoate pesticide products pursuant to section 6(b)(1) of FIFRA, as amended. The review was conducted during open meetings held in Arlington, Virginia, during the periods November 29, 1979, and January 17–18, 1980.

Maximum public participation was encouraged for the review. **Federal Register** notices of Panel meetings concerned with the review of dimethoate were published on November 14, 1979 and November 27, 1979. In addition, telephonic calls and special mailings were sent to members of the general public who had previously expressed an interest in activities of the Panel. Written and oral statements were received from EPA technical staff and from representatives of the American Cyanamid Company. In addition, oral comments were received from Mr. Harold Alfred of the Pesticide Impact Assessment Program, University of California. Informal comments were also received from Mr. Harold M. Collings of the National Agricultural Aviation Association.

The Panel wishes to recognize the excellent support provided by the Agency during review of dimethoate. The superb presentation of the Agency position on dimethoate by Ms. Marcia Williams, Mr. William Waugh, and other EPA technical staff enable the Panel to concentrate on central issues and avoid lost time from problems of communication. Additionally, the Panel wishes to commend the Agency for exhibiting an excellent spirit of cooperation in making available relevant references and background data on dimethoate in advance of the meeting.

In consideration of all matters brought out during the meeting and careful review of all documents submitted by the Agency and other parties, the Panel unanimously submits the following report.

Panel Position on Dimethoate

Question 1. What is the significance of wavy ribs in teratology studies such as those conducted by Khera (unpublished)? It has been noted that these effects (wavy ribs) are often observed when the embroyotoxic or fetotoxic dose is approached. Are wavy ribs a true teratogenic effect?

Answer. The Panel is unable to confirm that wavy ribs are a true teratogenic effect. Additionally, the Panel is unable to assess the significance of wavy ribs in studies conducted by Khera. Appropriate scientific data was not presented to the Panel for proper assessment of the topics outlined in number 1.

Question 2. What is the significance of polydactyly observed by Khera (unpublished)?

Answer. The significance of polydactyly cannot be properly assessed. The Panel is unaware of data which clearly relates the phenomenon of polydactyly as a dose-related toxicological manifestation which is well documented in the literature. In Khera's study it is impossible to determine whether polydactyly was an effect attributable to the agent or whether it was a background effect.

Question 3. In calculating the dietary exposure for the general population, the Agency assumed dimethoate residues to be present at tolerance levels. Tolerance levels were used because actual residue data were not available. The Agency then added this dietary exposure to anticipated occupational exposure to arrive at total applicator exposure. The Agency noted, however, that the oral exposure component, based on residues at tolerance levels, was in many cases greater than the occupational component and that the exposure figures for occupational exposure (without the dietary component) most closely approximated actual exposure. Was the Agency correct in its conclusion that applicator exposure, without oral exposure, most closely approximates actual applicator exposure? Given the available data, can the SAP propose another method of estimating applicator exposure for dimethoate?

Answer. The Panel could not adequately respond to all the facets of this question because of time constraints during the meeting. However, several possible approaches for better definition of human exposure were suggested. In general, the Panel agrees with the approach utilized by the Agency, but wishes to point out that in view of the biodegradability of dimethoate it is unlikely that the dietary level for this compound will approach tolerance levels. Additionally, the Panel recommends that appropriate field human monitoring studies be conduted to determine applicator exposure levels. Such studies are technically feasible and should be considered as the best means to characterize potential hazards in humans.

Question 4. Does the SAP agree with the Agency's conclusion concerning the mutagenic risk from dimethoate?

Answer. Yes! The Panel concurs with the Agency that the mutagenic risk is low and that strong regulatory action is not warranted.

Question 5. Does the SAP agree that an additional oncogenicity study is required to answer the question concerning the oncogenic potential of dimethoate?

Answer. No! The Agency's proposal to require an additional oncogenicity study because of a study done abroad which is not interpretable does not seem to be a valid undertaking. The Panel is of the opinion that the NCI bioassay study was a valid test for the oncogenic potential of dimethoate. This is reinforced by the fact that dimethoate is an organophosphorus compound and that this class of pesticides are not known to be carcinogenic. Although the NCI study had flaws, the problem is that there is no such thing as a completely satisfactory test. Every test is flawed. It is a question of degree. The Panel does not believe that the NCI study was flawed to the point where it is of no value in regulatory action. This position was also taken by the Carcinogen Assessment Group (CAG) of the Agency.

Proposed Regulatory Action

The Panel concurs with the Agency's proposed regulatory action on dimethoate except as specifically noted below.

Exception 1. Prohibition of the conventional use of human flaggers to mark swaths in aerial spraying and associated requirement for use of automatic flagging devices.

Panel comment. The Panel rejects this proposal on the basis that insufficient research has been accomplished to illustrate that the technique would be an effective regulatory procedure to reduce risks to man and the environment. To institute such a requirement across the board without determining the limitations of the procedure in various agricultural situations would appear to be inadvisable. The Panel recognizes the potential usefulness of such devices, but recommends that the Agency not make their use an absolute requirement until appropriate research has been completed to ensure that such devices are practical tools for reducing risks in spray applications. Additionally, the Panel encourages the Agency to promote research on flagging devices to expedite their development and availability to farmers.

Exception 2. Agency proposal to preclude use of air-blast equipment on citrus, pecans, and pome fruits.

Panel comment. The Panel does not support this proposal on the basis that appropriate data is lacking to adequately compare applicator exposure from use of air-blast equipment with exposure resulting from use of oscillating boom type sprayers. Additionally, the Panel is aware that a high number of farmers prefer the use of air-blast equipment and if dimethoate is not available then it is likely that substitute pesticides which may be more hazardous may be selected for use in air-blast equipment. Testimony was given by a representative from the State of California relative to planned research with dimethoate in the near future to assess applicator exposure from air-blast equipment in comparison with oscillating boom type sprayers. The Panel requested that his research plans to be expanded to ensure examination or urine samples to gain insight on possible absorption of pesticides by applicators. This will provide data not only on the agent, but also the mechanism of application.

It is important to emphasize that dimethoate is a valuable pesticide component of integrated pest management (IPM) programs for citrus insect pests and that such programs are almost totally based around the use of air-blast equipment to apply reduced dosages and selective coverage.

Additional Testing Requirements

The Panel concurs with the Agency's position relative to additional testing requirements with the following specific exceptions and comments.

Exception 1. Oncogenicity testing—The panel considers the National Cancer Institute study on dimethoate to be a valid assessment of the oncogenic potential of dimethoate. Additional studies are not considered essential.

Exception 2. Mutagenicity testing—The Panel concurs that additional mutagenicity testing is needed to properly assess the mutagenic potential of dimethoate. However, to ensure appropriate assessment the Panel recommends that mutagenic assays be conducted in accordance with recommendations previously submitted by the Panel to the Agency (May 31, 1978; Review of Proposed Rulemaking on Subpart F, Guidelines for Registering Pesticides in the United States). Additionally, the Panel suggests that the Agency follow the recommendation previously submitted by the Panel on tests to assess the potential for spindle effect (November 30, 1979—Review of FIFRA section 6(b)(1) action on Benomyl and Thiophonate-methyl). The Panel also recommends consideration of the use of bone marrow derived cells in assays for spindle effects.

Exception 3. Delayed Neurotoxicity Studies—The Panel requests the Agency reevaluate the need for additional delayed neurotoxicity studies in view of research reported by T. B. Gaines 1969, entitled "Acute Toxicity of Pesticides" (Toxicology and Applied Pharmacology Vol. 14, 515–534). No paralysis was observed by Dr. Gaines in tests conducted with dimethoate.

Exception 4. Reproductive Tests—The Panel recommends that the Agency require additional reproductive tests on dimethoate. The Panel notes positive effects in two studies on reproduction implying the possibility of effects on males. Therefore, we suggest that the Agency require a reproductive test to determine dose-response effects on females (e.g., prevalence of pregnancy, pre and post implantation loss, survival and growth of young, etc.) and on males (e.g., spermatogenesis, seminal vesicle size, etc.)

Dated: February 7, 1980.

For the chairman:

H. Wade Fowler, Jr., Ph. D.,

Executive Secretary, FIFRA Scientific Advisory Panel.

U.S. Department of Agriculture Comments

U.S. Department of Agriculture, Office of Environmental Quality,
Washington, D.C., December 12, 1979

Mr. Edwin L. Johnson,
Deputy Assistant Administrator for Pesticide Programs, U.S. Environmental Protection Agency, Washington, D.C.

Dear Mr. Johnson: This is in response to your letter of November 8, forwarding the U.S. Environmental Protection Agency's (EPA) preliminary notice of determination concluding the rebuttable presumption against registration (RPAR) and the proposed notice of intent to cancel and/or modify the terms and conditions of registration of pesticide products containing dimethoate.

After interacting with EPA in the development of the biological, economic, and exposure information on dimethoate, we are pleased to review and comment on the preliminary notice of determination and the accompanying position document.

We concur with the decision to continue registration of dimethoate on field crops, grains, grapes, certain minor and/or specialty crops, livestock premises, forest seed orchards, nurseries, ornamentals, vegetables, and for fly control. We also agree with the decision to cancel registrations for use in dust formulations.

The USDA supports the proposed modification of labeling to include statements requiring protective clothing and equipment for application. This action is in concert with the USDA/EPA joint publication, "Apply Pesticides Correctly, a Guide for Commercial Applicators."

With regards to the proposed requirement for automatic flagging when dimethoate is aerially applied, we encourage EPA to maintain the full range of options to minimize exposure. This could continue the registrations and might involve label statements requiring protective clothing and equipment to minimize exposure flaggers may experience. We feel that studies should be done to indicate actual exposure to dimethoate by all workers in the aerial application process.

We also have reservations regarding the cancellation of dimethoate use on citrus, pome fruits and pecans when it is applied by air blast equipment. Growers have indicated that equipment of this nature is essential for adequate application to these commodities. Otherwise, more frequent, less effective applications would be required. The general term, "air blast equipment", needs a more precise definition in fully interpreting this regulatory option. We are prepared to cooperate with EPA to develop directions to provide for minimal exposure in these situations.

Regarding the warning to female workers, we believe that all persons including, and perhaps especially, those who are pregnant should always endeavor to avoid or reduce exposure to all pesticides. If EPA wishes to alert female workers using air blast equipment of possible hazards resulting from exposure to dimethoate during pregnancy, we suggest that a more direct warning such as "Pregnant women should a void exposure" would be more effective.

We are dedicated to the mutual resolution of issues concerning the health of farm workers and the general public as well as issues affecting crop production and the environment.

Sincerely,

Barry R. Flamm,
Director.

II Analysis of Comments

In response to the issuance of the Preliminary Notice of Determination and Position Document 2/3 on November 10, 1979, and the publication in the **Federal Register** of November 19, 1979 (44 FR 66558) of a Notice of Availability for Position Document 2/3, the Agency received comments from the Secretary of Agriculture, the SAP, and 11 other concerned individuals and organizations. These comments are organized by topic and discussed in this section. Except as discussed, the Agency has not changed any other aspect of its analysis presented in Position Document 2/3.

A. Comments Relating to Risk

1. *Summary of the Agency's Risk Position in PD 2/3.* The Agency's qualitative and quantitative risk assessment is based on its evaluation of the hazard of dimethoate in conjunction with a best estimate of the potential for human and environmental exposure.

The potential for human and environmental exposure to dimethoate was derived from available data and assumptions about work place practices, current agricultural practices, dietary habits, body weight, breathing rates, dermal exposure, similarity of application techniques, etc. The exposure figures obrained represent the Agency's best estimate of the exposure potential of dimethoate. Although there are uncertainties in these estimates, they permit a rough calculation of risk to the population at large and population subgroups, such as applicators or flaggers, with specific exposure potential. They also permit comparison of risk from dimethoate with that posed by other pesticides which are used as alternatives to dimethoate.

The dimethoate RPAR was based on information indicating that dimethoate posed the following risks to humans: (1) oncogneicity, (2) mutagenicity, and (3) reproductive and fetotoxic effects.

In Position Document 2/3 the Agency determined that the information submitted to rebut the risk criteria for oncogenicity was insufficient to overcome the presumption against dimethoate for this effect. However, the Agency concluded, based on a re-analysis of the studies involved and the rebuttal comments, that the weight of evidence for dimethoate's carcinogenicity is only suggestive, and that the evidence warrants further studies.

The Agency also determined that the rebuttal submissions were insufficient to remove the Agency's concern that dimethoate poses that risks of reproductive and fetotoxic effects to humans. In addition, new teratogenic data (Khera, undated), unavailable when the RPAR was issued, were submitted. These data indicate the

potential of dimethoate to produce teratogenic effects.

The Agency further determined that the rebuttals and additional information submitted did not invalidate the mutagenicity risk presumption. However, the Agency concluded that the risk appears to be low and that additional test data are necessary to evaluate the quantitative mutagenic risk of this compound.

The Agency received comments concerning delayed neurotoxicity and the synergism of dimethoate with other pesticides, and concluded that there is insufficient evidence to indicate that dimethoate meets or exceeds the risk criteria enumerated in 40 CFR 162.11 for these effects, but that additional information concerning dimethoate's ability to induce delayed neurotoxicity must be generated.

The Agency determined that the principal risks of oncogenicity, mutagenicity, and reproductive and fetotoxic, and teratogenic effects are posed to applicators, who may be exposed to dimethoate before or during application through both inhalation of and dermal contact with the pesticide. The greatest risk to applicators is incurred by (1) the ground application of dust formulations on grapes, and (2) air blast spraying of citrus, pecans, and pome fruits.

TABLE 1 - Incidence of tumors in rats treated with dimethoate

Dose milligrams per kilogram	Route	Average survival (days)	Benign Tumors	Malignant Tumors	p values
0	oral	473	3/36	0/36	-
5	oral	518	7/26	2/26	-
15	oral	511	5/25	3/25	-
30	oral	627	2/25	4/25[a/]	0.0132
0	Intra-muscular	711	4/35	0/35	-
15	Intra-muscular	570	5/30	6/30[b/]	0.0072

a/ 1 liver sarcoma, 1 malignant reticulosis, and 2 sarcomas of the spleen.

b/ 1 sarcoma of the spleen, 1 soft tissue sarcoma, 1 ovarian sarcoma, 1 reticulum cell sarcoma, 1 spleen sarcoma, and 1 liver sarcoma.

2. *Oncogenicity Risk—a. Summary of Laboratory Animal Studies Cited in PH 1–i. Gibel et al., 1973.* Gibel et al. (1973) studied the effects of dimethoate on 10-week-old Wistar rats of both sexes. Forty animals per group were employed in the study. Fresh solutions of dimethoate were made at the time of administration to limit hydrolysis. The compound was given twice weekly by gavage at 5, 15, and 30 mg/kg dose levels. One other group of animals was given 15 mg/kg intra-muscularly.

Animals were weighed at regular intervals. Only the animals that lived 3 months in the study and showed no post mortem changes were examined histologically. Blood and bone marrow were also examined.

Treated animals showed strong hyperplasis of the blood forming parenchyma of the bone marrow involving erythropoesis, granulopesis, and megakaryopoesis. Nonbony myeloid metaplasia was seen primarily in the liver and spleen in 59 percent of the treated animals. In addition, granulocytosis was found in 22 percent of the animals.

There was a significant increase in the incidence of benign and malignant tumors among treated animals at the 30 mg/kg dose level for oral administration and at the 15 mg/kg dose level for intra-muscular administration. In addition, there was a significant linear trend (p0.01) for the oral route. (See Table 1).

Gibel et al. (1973) also studied the effects of dimethoate on mice. Percutaneous application of fresh solutions of dimethoate was given twice a week for six weeks on shaved back skin of AB mice of both sexes; the animals survived for only 270 days. Five animals out of 19 showed malignant tumors, of which there were four leukoses and one breast carcinoma. The spleen showed considerable metaplasia with often complete atrophy of white pulp. The follicles of the white pulp showed a loose narrow lymphocytic mantle around the central arteries. The trabecular framework of the spleen was generally narrowed and reduced. The red pulp showed a partially localized and diffuse myeloid proliferation with numerous immature cell forms which made it difficult to recognize the basic structure. The authors felt that mice also developed the myeloproliferative syndrome similar to that observed in rats.

The benign tumors observed in the control animals were exclusively fibroadenoma of the breast. The authors did not mention the incidence of malignant tumors in controls but implied that they did not find any malignant tumors in the control animals.

ii. *The National Cancer Institute, 1977.* In 1977 the National Cancer Institute (NCI) completed a feeding study with dimethoate (NCI, 1977). Osborne-Mendel rats of both sexes, 35 days old, were administered 250 and 125 parts per million (ppm) dimethoate in the diet. After 19 days the doses were reduced to half and the treatment was continued for an additional 61 weeks. The animals were observed for 115 weeks. The treatment groups consisted of 50 animals of each sex, and the matched controls consisted of 10 animals. Matched controls for aldrin, chlordane, dichlorvos, dieldrin, and heptachlor were used for evaluation because these studies were carried out concurrently with the dimethoate feeding study. Complete histopathology was carried out on all the animals. Statistical analysis of tumor incidence by site and type showed neither an excess incidence of any specific tumor type nor any increase in total tumors. The pathological evaluation of this study was done at Gulf South Research Institute. A summary of the survival data and number of tumor-bearing animals is shown in Table 2.

TABLE 2 - Dimethoate chronic feeding study - number and survival of tumor-bearing rats

Sex	Dosage Group	Effective Number[a/]	Number TBA[b/]	Percent	Percent surviving (weeks)		
					52	78	115[c/]
Male	Pooled Control	58	36	62	92	87	47
Male	Matched Control	10	7	70	100	80	30
Male	Low	50	23	46	98	96	72
Male	High	49	24	49	92	82	58
Female	Pooled Control	60	43	72	97	95	73
Female	Matched Control	10	7	70	100	100	90
Female	Low	47	30	64	98	92	74
Female	High	45	21	47	88	67	51

a/ Total number of rats initially placed on test minus the number missing or autolyzed.

b/ Number of tumor-bearing rats.

c/ Denominator for survival percentages was the original number of animals minus those killed for diagnostic purposes. No animals were accidentally killed, and none were missing. Study terminated at 115 weeks.

NCI (1977) also studied the effects of dimethoate on B6C3F hybrid mice which were 35 days old. The compound was administered in the diet at 250 and 500 ppm dose levels, and the feeding was continued for 69 and 60 weeks, respectively. Animals were observed for an additional 24 and 34 weeks respectively, before sacrifice. All of the animals were necropsied and examined histopathologically. The data were statistically analyzed for each organ and tumor type. No dose-related increase in tumor incidence by site or total in either sex was found. The pathological evaluation of this study was carried out at Gulf South Research Institute. The data for total-tumor bearing animals are summarized in Table 3.

TABLE 3 - Dimethoate chronic feeding study - number and survival of tumor-bearing mice

Sex	Dosage Group	Effective Number[a/]	Number TBA[b/]	Percent	Percent surviving (weeks) 52	78	90[c/]
Male	Pooled Control	96	31	32	94	92	85
Male	Matched Control	7	6	86	100	100	86
Male	Low	50	11	22	98	84	82
Male	High	50	11	22	96	96	92
Female	Pooled Control	80	14	18	96	90	83
Female	Matched Control	10	3	30	90	90	70
Female	Low	50	15	30	96	96	90
Female	High	49	12	24	94	94	90

a/ Total number of mice initially placed on test minus the number missing or autolyzed.

b/ Number of tumor-bearing mice.

c/ Denominator for survival percentages was the original number of animals minus those killed for diagnostic purposes. No animals were accidentally killed, and none were missing. Study terminated at 90 weeks.

iii. *Steiglitz et al., 1974.* Seiglitz et al. (1974) studied the hematotoxic effects of dimethoate in rats. Dimethoate was administered to 10-week-old Wistar rats in doses of 5, 10, and 15 mg/kg body weight by oral intubation. Another group was given an intra-muscular dose of 15 mg/kg. Each test group consisted of 40 animals with two control groups of 40 animals each. The most important hematological results included pronounced hyperplasia of the hematopoietic parenchyma in the bone marrow, and sometimes strong, extraosseous myeloid metaplasia. Hyperplasia in the bone marrow occurred at different levels in all three hematopoietic cell systems with preferential involvement of granulocytopoiesis. Leukocytosis of varying intensity in the peripheral blood was also found but mainly affected granulocytes. The highest value exceeded 50,000/ul. The Agency did not base it RPAR on this third study because the study lacked sufficient detail. However, the Agency requested registrants and other interested parties to submit to the Agency information on these, or similar, effects of dimethoate.

b. *The Agency's Conclusion in PD 2/3 Regarding the Requirement of an Additional Oncogenicity Study.* In Position Document 2/3, the Agency concluded that the rebuttals did not invalidate the oncogenic risk criterion cited in the RPAR notice. However, based on re-analysis of the studies involved and the rebuttal comments as a whole, the Agency concluded in Position Document 2/3 that the weight of evidence for carcinogenicity of dimethoate is only suggestive, warranting futher studies, but not adequate to justify a quantitative assessment of cancer risk.

c. *Comments on Requiring an Additional Oncogenicity Study.* The Scientific Advisory Panel (SAP), in its formal comments, disagreed with the Agency position to require an additional oncogenicity study. The SAP stated that the National Cancer Institute bioassay study (NCI, 1977) was a valid test for the oncogenic potential of dimethoate. Although the test was flawed, the SAP did not believe that the NCI study was flawed to the point where it is of no value in regulatory action. The SAP claimed that this position was also taken by the Agency's Carcinogen Assessment Group (CAG). For a discussion of flaws in the NCI (1977) study, see pages 64–66 of the Agency's Position Document 2/3 for Dimethoate and also pages 40 and 41 of the "Transcript of Proceedings" FIFRA

Scientific Advisory Panel, Arlington, Virginia, November 29, 1979.

American Cyanamid [7(30000/16c)] argued that supportive evidence is lacking for determining that dimethoate is an oncogen. American Cyanamid further argued that conclusions made in the Gibel et al, 1973 study were based on inappropriately grouped data and that the National Cancer Institute study (NCI, 1977) is an adequate assessment of the oncogenic potential of dimethoate. American Cyanamid urged the Agency to accept the position taken by the Scientific Advisory Panel.

d. *The Agency's PD 4 Response.* The Agency's CAG (Albert, R.E., 1980) provided an additional response to the comments from SAP and American Cyanamid on the oncogenicity position in Position Document 2/3, wherein the Agency disagreed with the SAP position that further testing of dimethoate is not needed. The CAG indicated that if there were no other relevant considerations, then the negative NCI bioassay, flawed though it is, in conjunction with a lack of carcinogenicity of organic phosphate pesticides in general, might make further testing of dimethoate unnecessary. However, in the case of dimethoate there is substantial evidence for mutagenicity of dimethoate, coupled with suggestive evidence for carcinogenicity in the Gibel et al. (1973) study which was done on Wistar rats. The NCI bioassay (NCI, 1977) involved a different strain of rats, namely, the Osborne-Mendel rat. Furthermore, in these two studies there was clear evidence of hematopoietic toxicity in the Wistar rat but not in the Osborne-Mendel rat, thus indicating the possibility of a different metabolic handling of dimethoate or a difference in target-organ susceptibility in the two strains. In its response to the SAP recommendations the CAG emphasized (Albert, R.E., 1980), that it is not comfortable with the SAP position that no further oncogenicity testing of dimethoate be required.

Therefore, the Agency rejects the positions of SAP and American Cyanamid that there is sufficient evidence to determine that dimethoate is not an oncogen. Moreover, in order to more fully ascertain whether or not dimethoate poses a risk of oncogenicity, the Agency will require that a limited bioassay be conducted on the Wistar rat at the highest dose level used in the Gibel study (30 mg/kg by stomach gavage twice a week).

3. *Teratogenic, Reproductive and Fetotoxic Effects Risk—a. Summary of Laboratory Animal Studies Cited in PD 1—i. Budreau and Singh, 1973.* Budreau and Singh (1973) studied the effect of dimethoate on the reproduction of Charles River CD–1 mice. The insecticide was added to drinking water at the rate of 60 ppm (1/6 the LD_{50}) for five generations. Reproductive performance was evaluated by mating success and reproduction time. Mating success was calculated as the proportion of the females mated that had litters, expressed in percentages. Reproduction time was the number of elapsed days from the first day when the females were presented to the male to the day of delivery. The authors stated that dimethoate treatment significantly reduced mating success and increased reproduction time.

Second litter mating success ranged from 33 to 61% ($p<0.01$) and treated females required significantly longer periods than controls ($p<0.01$) to produce first litters in all generations. Survival rate of total pups and litters was significantly reduced ($p<0.01$) in generations I, III, IV, and V. Histologic examination of the mammary glands of treated females with high newborn mortality showed the glands were well developed and contained milk. The growth rate of dimethoate-treated pups usually fell behind that of controls, from day 12 after birth. On day 28, average weight was not always significantly different from controls, mainly because low-weight pups died.

ii. *Scheufler, 1975.* Scheufler (1975) administered a single 40 mg/kg dose of dimethoate, intraperitoneally, to female AB Jena/Halle mice on the day of conception. On the ninth day of pregnancy the author observed a significant increase in the number of dead embryos ($p<0.01$). When dimethoate was injected daily, at 40 mg/kg during the first 14 days of pregnancy, four times as many implanted embryos died in comparison to controls. When 40 mg/kg of dimethoate was administered to female C57BL mice, the number of nonpregnant females was increased to 70% as compared to 20 to 30% for controls. When dimethoate was applied to DBA-mice, 50% of the mated females showed no embryos. The author suggested that dimethoate appears to hinder strongly the development of embryos prior to implantation.

iii. *The American Cyanamid Co., 1965.* The American Cyanamid Co. (1965[a]) conducted a three generation feeding study to determine whether dimethoate would interfere with reproduction or lactation. Albino mice of the CF1 strain were fed diets containing 5, 15, 50, and 0 (control) ppm of dimethoate. Animals were approximately one month old at the start of the test. Weaned pups were fed the same diets as their parents.

For mating purposes one male and two females were housed together. Females were housed alone while they cast and weaned their litters, after which parent animals were mated again. There were two mating periods. The report concluded that "reproduction and lactation performance was good for all groups".

b. *Summary of Additional Laboratory Animal Study Cited in PD 2/3: Khera (undated).* New data (Khera undated) showing a dimethoate formulation to be a mild teratogenic agent was received by the Agency after the RPAR was issued.

Khera (undated) administered Cygon 4E containing 47.3% dimethoate to pregnant cats (in gelatin capsules) on days 14 to 22 of gestation. The doses were 0, 3, 6, or 12 mg/kg per day of Cygon 4E which corresponds to 0, 1.4, 2.8, or 5.7 mg/kg per day of dimethoate. On day 43 of gestation, the fetuses were removed, weighed, and examined.

There were no signs of maternal toxicity in any cats treated. Dimethoate, at all doses tested, caused no effect on the number of live fetuses, resorption, dead fetuses, or mean fetal weight. Both the total number of anomalous fetuses and the number of litters having anomalous fetuses were increased at the high dose when compared to controls, but this increase was not statistically significant ($p=0.05$, Student's t Test). When the incidence of one abnormality (polydactyly, or increase in the number of digits on the paws) at the high dose was compared to the controls, the results were statistically significant.

There were no anomalies noted at 3 or 6 mg/kg and hence a no-observed effect level for all parameters can be set at 6 mg/kg per day of Cygon 4E. The author (Khera) indicated that the teratogenic effect observed in this study should be verified through additional testing. This additional testing would determine if the effect were due to dimethoate itself, the pesticidally inert ingredients, or the combination of these.

The same dimethoate formulation, Cygon 4E, was tested at doses of 0, 3, 6, 12, or 24 mg/kg per day (corresponding to 0, 1.4, 2.8, 5.7, or 11.3 mg/kg per day dimethoate) in pregnant Wistar rats by oral intubation. There were 20 female rats started in each group, and the number of pregnant dams was 17, 17, 15, 16, and 16 respectively. One dam at the highest dose died from Cygon-induced cholinergic signs of toxicity, and another seven showed similar signs of toxicity but recovered. Decreased maternal weight gain was seen at the high dose, but no adverse maternal effects were noted at the lower doses.

There were no effects of treatment on the number of live fetuses per dam, number of dead or resorbed fetuses, or fetal weight. At doses of 12 and 24 mg/kg per day Cygon 4E, there were significant increases in number of anomalous fetuses/number fetuses examined and the number of litters having at least one anomalous fetus/number of litters examined, when compared to controls.

When individual variations were examined, the two high doses had a significant ($p = 0.05$) increase in fetuses with wavy ribs. The author (Khera) characterized these anomalies as being "of minor types and of unkown significance". It should be noted that these effects (wavy ribs), which are often considered indicators that the embryotoxic or fetotoxic dose is approached, occurred at either the maternal toxic dose or one-half of that dose.

In both studies by Khera, the no observed effect level was 6 mg/kg per day for Cygon 4E (2.8 mg/kg per day dimethoate). The occurrence of minor teratogenic effects at higher doses indicates that Cygon 4E has the potential to interfere with fetal development. Additional studies are required to fully determine the significance of these findings.

c. *The Agency's Conclusion in PD 2/3 Regarding General Reproduction and Fetotoxic Effects and Teratogenic Effects.* In Position Document 2/3, the Agency reviewed the rebuttals and additional information submitted (Courtney, K. D., 1978; and Khera, undated). Based on that evaluation, the Agency concluded that the rebuttals did not invalidate the Agency's original presumption of risk on general reproductive effects or on fetotoxic effects based on the three studies (Budreau and Singh, 1973; Scheufler, 1975(a); and American Cyanamid Co., 1965a) cited in the RPAR notice. In addition, the new study (Khera, undated) showed Cygon 4E, a dimethoate formulation containing 47.3% dimethoate, to be a mild teratogenic agent.

d. *Comments on No Observed Effect Level (NOEL).* American Cyanamid [7(30000/16c)] commented that the Budreau and Singh (1973) study established an effect level and that for a study to be useful in a risk assessment process a no observable effect level (NOEL) must be established. American Cyanamid then recommended that the NOEL of 50 ppm in the diet obtained in their own study (American Cyanamid, 1965a) be used for risk assessment.

e. *The Agency's PD 4 Response.* The Agency agrees that the Budreau and Singh (1973) study is unacceptable for risk assessment, but rejects the recommendation that the NOEL of 50 ppm obtained in the American Cyanamid Study (1965a) be used for risk assessment of dimethoate. Budreau and Singh (1973) observed effect on reproduction at 60 ppm, the only dose level tested. A no observed effect level was not be established. American Cyanamid (1965a) observed no effects in their reproduction study in which three dose levels (5 ppm, 15 ppm, and 50 ppm) were used. Although this study used more than one dose level, none of the doses produced a significant reproductive effect and thus a no observed effect level could not be established.

In the absence of a no-effect level for reproductive effects per se, the Agency will use the NOEL of 2.8 mg/kg per day from the Khera study for the risk assessment of all reproductive effects, including fetotoxic and teratogenic effects, as well as fertility related reproductive effects.

The Agency believes this approach is justifiable because its concern extends to all adverse reproductive effect (including teratogenicity, fetotoxic, and reproductive effects such as reduced fertility) that may result from exposure to dimethoate. Since the effects in Khera's (undated) teratogenicity study were observed at lower levels than effects in the reproductive studies, the use of the no-effect level from the teratogenicity study will provide ample protection for reproductive as well as teratogenic fetotoxic effects.

f. *Comments on the Need for Additional Reproductive Studies.* The SAP, in its formal comments, indicated that additional reproductive studies are necessary to assess the effect of dimethoate on male reproduction. The Panel noted positive effects in two studies on reproduction, implying the possibility of effects on males.

g. *The Agency's PD 4 Response.* The Agency believes that American Cyanamid's multi-generation reproduction study which showed no adverse effects in males is sufficient to establish that dimethoate does not have a significant potential to adversely effect male reproduction. However, the Agency will require additional teratology studies on the technical dimethoate in 2 species of laboratory animals as specified in the proposed guidelines (FR 43, No. 163, Tuesday, August 22, 1978).

h. *Comments on the Khera (undated) Study.* American Cyanamid [7(30000/16c)] indicated that:

(1) No dose-response effect was noted in either the cat or rat teratology study by Khera.

(2) The only response noted was in the high dose group and consisted of an increase in a common anomaly; i.e., wavy ribs in rats and polydactyly in cats.

(3) Dr. Khera, himself, concluded "from the data available, it cannot be definately ascertained whether treatment with 12 mg Cygon 4E per kg has in any way contributed to the expression of polydactyly."

i. *The Agency's PD 4 Response.* In response to the first point, the Agency noted that, in the rat study, there was a definite dose-response relationship in terms of a statistically significant increase in the number of litters with anomalous fetuses. Looking at each particular anomaly, there was a significant increase in the number of fetuses having wavy ribs and a non-significant increase in fetuses having extra ribs at a dose level of 12 mg/kg Cygon 4E.

In response to American Cyanamid's second point, the Agency has concluded that its concern is not alleviated because the adverse effect noted was merely an increase in the background rate of normally occurring anomalies. The occurence of minor teratogenic effects at higher doses indicates that Cygon 4E has the potential to interfere with fetal development. The increase in minor anomalies indicates that dimethoate may pose a potential to produce adverse fetotoxic or teratogenic effects in humans.

On third point, the Agency notes that, in the Khera study, a statistically significant increase in anomalies occurred at 12 mg/kg Cygon 4E when compared to the controls. Although the data from the Khera study is limited and does not assess the potential for dimethoate to produce fetotoxic/teratogenic effects at a range of dose levels, this data does suggest that dimethoate may have the potential to interfere with normal fetal development.

j. *Comments on Wavy Ribs.* The SAP, in its formal comments, commented on the teratogenic studies and was unable to confirm that wavy ribs are a true teratogenic effect.

k. *The Agency's PD 4 Response.* The Agency has concluded that the difference between a "true" teratogenic effect and an increase in minor anomalies which occur at a normal background rate should not be relevant for regulatory purposes. The increased incidence of minor teratogenic effects indicates that dimethoate may have the potential to interfere with fetal development. Hence, the Agency's

concern about possible adverse effects to the population at risk is not diminished. Until such time as the Agency is able to establish that the adverse effects noted in the Khera study do not indicate a potential risk for humans, the Agency will treat these effects as warranting regulatory concern.

4. *Mutagenicity Riks—a. Summary of Studies Cited in PD 1 on Dimethoate-Induced Mutations in Submammalian Test Systems—i. Fahrig, 1973.* Fahrig (1973) treated cultures of *Saccharomyces cerevisiae* with dimethoate at seven dosage levels (ranging from 40 mM to 100 mM). The author(s) did not indicate whether a metabolic activation system had been included in the test procedures. An induction of mitotic gene conversions, demonstrating a positive mutagenic effect was observed.

ii. *Hanna and Dyer, 1975.* Hanna and Dyer (1975) tested dimethoate in two bacterial systems by adding 5 to 10 ul of dimethoate to a layer of the bacterial strain. Positive results were observed in two strains of *Escherichia coli* (*E., coli* WP2 uvrA and *E., coli* WP 67). Negative results were seen in several *E. coli* and *Salmonella typhimurium* strains.

iii. *Mohn, 1973.* Mohn (1973) studied the effect of dimethoate in *E. coli* K–12/galRs18. Dimethoate was shown to have mutagenic activity. A significant dose-response relationship was obtained using five dosage levels (from 1 to 6×10^{-3}M). The author(s) did not indicate whether a metabolic activation system had been included in the test procedures.

iv. *American Cyanamid Co., 1977.* American Cyanamid Co. (1977) investigated the mutagenic potential of dimethoate using several strains of *S. typhimurium* and one strain of *E. coli.* Rat livermicrosomal enzymes (S–9) were used for metabolic activation. No mutagenic effects were observed. Doses ranging from 20 to 100 ug/plate.

v. *Shirasu et al., 1976.* Shirasu et al. (1976) studied the mutagenic effect of dimethoate in the H17 Rec^+ and $R45^-$ strains of *Bacillus subtilis.* No mutagenic activity was observed under the conditions of the study. The dose of dimethoate used was not given.

vi. *Agarwal et al., 1973.* Agarwal et al. (1973) studied the effect of dimethoate on seed setting and germination in the bean (*Phaseolus vulgaris*). Dimethoate in concentrations of 0.1 and 0.5% by volume were used as foliar sprays on bean plants in four observation plots. The spraying was done at the time of bud initiation. Seeds were then collected and soaked up to 48 hours at room temperature. Dimethoate reduced germination 23 to 28% below controls. Chromosomal abnormalities including fragments, stickness, and anaphase bridge formation were seen in 12.8 to 27.5% of the treated series. No abnormalities were seen in the controls.

vii. *Amer and Farah, 1974.* Amer and Farah (1974) studied the cytological effects of dimethoate on cotton (*Gossypium barbadense*) and beans (*Vicia faba*). Bean seeds were treated at concentrations of 0.25, 0.125, and 0.0625% using both pure and formulated (solution containing 40% active ingredient) dimethoate. Cotton seeds were treated with the formulated product at concentrations of 0.5, 0.25, 0.125, and 0.0625% dimethoate. Both pure and formulated dimethoate greatly inhibited cell division in beans. The mitotic index for bean seeks treated with pure dimethoate ranged from 18.4 (0.5% dimethoate) to 62.6 (0.625% dimethoate) compared with a mitotic index of 94.1 for controls. The mitotic index for beans treated with formulated dimethoate ranged from 8.0 (0.25% dimethoate) to 42.0 (0.0625% dimethoate) compared with 56.4 for controls. Chromosomal abnormalities were also observed for all treated seeds. The percentage of abnormal mitoses in beans induced by formulated dimethoate was much higher than that induced by pure dimethoate.

b. *Summary of Studies Cited in PD 1 on Dimethoate-Induced Mutations in Mammalian Test Systems—i. Gerstengarbe, 1975.* Gerstengarbe (1975) investigated the ability of dimethoate to induce dominant-lethal mutations in the mouse (*Mus mucculus*). Dimethoate was administered intraperitoneally to male mice of an inbred, AB JenaλHalle strain. One set of mice received a one-time dose of 80 mgλkg,while another group received 6.66 mgλkg daily for 30 days. The treated males were then paired with untreated females. The number of implantations, resorptions, and living and dead fetuses on the eighteenth day of gestation was determined. The living fetuses were weighed and separated according to sex. A significant increase in the resorption rate was detected, indicating damage during spermiogenesis. A significant increase was observed in the mutation index indicating that dimethoate, in the case of AB JenaλHalle mice, induces dominant-lethal mutations and is capable of reaching germinal tissue.

ii. *Bhunya and Behera, 1975.* Bhunya and Behere (1975) injected adults of both sexes of the mouse (*Mus musculus*) with 1 ccλ100 g body weight of dimethoate (0.5 and 1.0% solutions). Control animals were injected with distilled water. Standard cytological slides were prepared from bone marrow cells of animals sacrificed at 24, 48, and 72 hours after treatment. The authors stated that in the treated animals, in addition to other aberrations, centromeric fission and stretching were predominant. The number of chromosomes with breakage at the centromere ranged from 1 to 38 per cell. The frequency of aberrations was highest at 24 hours, moderate at 48 hours, and least after 72 hours for both doses tested. Aberration rates in control animals were not reported.

c. *The Agency's Conclusion in PD 2λ3 Regarding Additional Mutagencity Studies.* After reviewing the comments and rebuttals on the mutagenicity risk presumption, the Agency concluded in PD 2λ3 that the risk had not been rebutted. Section II c(2) of Position Document 2λ3 presented an analysis of the mutagenicity studies on dimethoate and attempted to draw conclusions relative to human risk from dimethoate's ability to induce mutagenic effects. The Agency concluded that since insufficient data exist upon which to base a mutagenicity risk assessment, additional studies are required to estimate the magnitude of the risk.

d. *Comment Contending that Dimethoate is not Mutagenic in the Ames System.* In response to the Agency's RPAR Notice (PD 1) for dimethoate, American Cyanamid Co. submitted a bacterial assay as their rebuttal (Rebuttal Comment 30000λ16:#5A). American Cyanamid Co. used *E. coli* WP–2 $uvrA^-$ in their assay and found that "Dimethoate was not mutagenic" even at "extremely high doses". Based on their study, American Cyanamid Co. stated that dimethoate is a non-mutagen because of its "potency" of less than 0.01 revertantsλnanomole.

In its Preliminary Notice of Determination Concluding the PRAR for Dimethoate (PD 2λ3), the Agency rejected the American Cyanamid Co. rebuttal attempt. In their comments [7(30000λ16c)] in response to PD 2λ3, American Cyanamid Co. reaffirmed their contention that dimethoate is not mutagenic in the Ames System and that, based on McCann et al., 1975, Cyanamid made a determination that chemicals having mutagenic potencies of less than 0.01 revertantsλnanomole can be classified as non-mutagens in the bacterial reverse mutation assay.

e. *The Agency's PD 4 Response.* American Cyanamid's statement that dimethoate is a non-mutagen is not correct by the criterion that it has a "potency" of less than 0.01 revertantsλnanomole. The registrant was attempting to use a cut-off point

derived from an Ames test with a *Salmonella* organism (McCann et al., 1975) to describe the potency for an *E. coli* test system in which a clear dose-response was observed. Clearly, the level of revertants viewed as indicating a positive response in one test species has little relevance to the potency determination in a different test system. The usually accepted criteria for a positive in an Ames test is a doubling of the background rate and a dose-response effect. The important aspect of the *E. coli* test in question here is the dose-response observed. The potency level from the *Salmonella* sp. study is irrelevant.

Furthermore, this particular method of defining a cut-off point, cited by American Cyanamid, was arbitrarily chosen by McCann et al. (1975) in order to relate mutagenicity to carcinogenicity and it appears only in the McCann et al. (1975) paper. Other more recent methods of defining a positive mutagenic response do not include any cutoff point (DeSerres et al., 1979). DeSerres et al. (1979) is currently considered to be the most valid protocol recommendation for using the SalmonellaλMicrosome Mutagenicity Assay.

f. *Comments on the Agency's Requirement of a Dominant Lethal Test.* American Cyanamid [7(30000λ16c)] in their comments on PD 2λ3 stated that they have no comment on the requirement for a dominant lethal test except to point out that a recently published negative report using this procedure to evaluate dimethoate in the mouse is available as an abstract (Degraeve et al., 1979).

g. *The Agency's PD 4 Response.* The Agency has been unable to obtain a copy of the Degraeve study and, therefore, cannot evaluate this study solely on the basis of an abstract. The Agency will welcome any additional information on the Degraeve et al. (1979) study, or any other dominant lethal test using dimethoate, and will evaluate such information upon its receipt.

5. *Delayed Neurotoxicity—a. Summary of Laboratory Animal Studies Cited in PD 1: American Cyanamid Co., 1965.* American Cyanamid Co. (1965b) performed demyelination studies for dimethoate and its oxygen analog, dimethoxon, in white leghorn hens estimated to be 1 to 2 years of age. Although the results appear to show that these chemicals did not cause myelin degeneration, a closer examination of these reports indicates that the tests were inconclusive for the following reasons:

(1) An LD_{50} for 24 hours, instead of 7 days, should have been used in the tests.

(2) Since hens were given the chemicals in their feed, the dose received by each hen was not accurately known. Administration of the test substance should have been by intubation or gelatin capsule.

(3) Since maximum doses of only one-eighth LD_{50} were administered, delayed neurotoxic effects may not have developed.

The regimen of the study was such that the study would not detect delayed neurotoxicity for some compounds that have a known potential to cause this effect. Either much higher does, i.e., the maximally tolerated dose using atropine, or sub-acute studies for longer periods of time should have been used.

The Agency did not presume against dimethoate on the basis of this study, but instead requested registrants or other interested parties possessing information relevant to dimethoate associated delayed neurotoxicity effects to submit such data to the Agency.

b. *The Agency's Conclusion in PD 2/3 Regarding Delayed Neurotoxicity Testing.* The Agency concluded in Position Document 2/3, after reviewing comments submitted in response to PD 1, that insufficient evidence exists to determine whether dimethoate can induce delayed neurotoxicity and that the submission of new evidence concerning dimethoate's ability to induce delayed neurotoxic effects is warranted.

c. *Comments on the Agency's Requirement for Another Delayed Neurotoxicity Study.* The SAP, in its formal comments, requested the Agency to reevaluate the need for additional delayed neurotoxicity studies in view of research reported by T. B. Gaines (1969) entitled "Acute Toxicity of Pesticides" in which no paralysis was observed in tests conducted with dimethoate.

d. *The Agency's PD 4 Response.* In response to the SAP comment concerning the requirement for additional delayed neurotoxicity studies, the Agency has reevaluated the American Cyanamid delayed neurotoxicity studies (1965b) and has reviewed the T. B. Gaines study (1969) entitled "Acute Toxicity of Pesticides".

In the American Cyanamid Studies (1965b), the chemical was administered in feed and the dosage received by each hen was not accurately known. Since maximum doses of only one-eighth the LD_{50} were administered, delayed neurotoxicity effects may not have developed. These studies were inconclusive with regard to dimethoate's delayed neurotoxic potential.

The T. B. Gaines (1969) study entitled "Acute Toxicity of Pesticides" is primarily a report on the determination of LD_{50} values for 98 pesticides and 2 metabolites of DDT using adult Sherman strain rats treated with a single dose of the test substance by the oral or dermal route. The author only briefly reports on the screening tests for paralytic effects in chicken hens treated with carbamate and organic phosphorus pesticides.

The author stated that "The method for conducting the screening tests for the paralytic effects of carbamate and organic phosphorus pesticides in chickens was the same as that described by Durham et al. (1956), with the exception that many of the compounds reported in that paper were tested in White Leghorn chickens because of the unavailability of the Rhode Island Red breed". The Gaines study indicates that each test chicken was administered atropine sulfate in water solution orally at a dosage level of 15 mg/kg to protect them against the acute effects of the test substances. 9 carbamate and 30 organic phosphorus compounds, including dimethoate, were tested for paralytic effects. Fifteen minutes after administration of the atropine sulfate the chickens were administered the test substance in peanut oil solution or in suspension by subcutaneous injection under the right wing. The chickens were checked daily for signs of paralysis by placing them on the ground and observing their ability to walk. The author reported that no paralysis was observed in chickens dosed with dimethoate.

Several important details, such as the number of animals used, the dosage level for the test substance, and whether or not histopathology on nervous tissue was carried out, were not given in the study.

After reevaluating both the American Cyanamid studies (1965b) and the

Gaines (1969) study the Agency concludes that not enough data are available in these studies to make a hazard determination. Therefore, the Agency will require additional delayed neurotoxicity studies in order to allow the Agency to make a hazard determination for delayed neurotoxic effects due to exposure to dimethoate.

6. *Exposure Analysis—Dietary Exposure—a. The Agency's Exposure Calculation in PD 2/3.* The Agency, in calculating a worst case estimate of the dietary exposure of the general population to dimethoate in Position Document 2/3, assumed dimethoate residues to be present on food at the tolerance levels. However, not all crops for which dimethoate is registered are actually treated with dimethoate. Therefore, in its calculation of a probable case estimate of oral exposure, the Agency factored in the percentage of crops actually treated with dimethoate.

b. *Comment on the Agency's Calculation of Dietary Exposure.* The SAP, in its formal comments, agreed, in general, with the approach used by the Agency in calculating dietary exposure, but added that in view of the biodegradability of dimethoate it is unlikely that the dietary level for this compound would approach tolerance levels.

c. *The Agency's PD 4 Response.* The Agency agrees with the SAP. In Position Document 2/3 the Agency stated that "it is generally recognized that organophosphate pesticides, such as dimethoate, degrade rather rapidly and that several weeks may elapse between application and consumption of the treated crop. Therefore, it is likely that the Margin of Safety (MOS) for general population risk is several orders of magnitude highjer than the 875 calculated as a probable case. However, a lack of data concerning dimethoate residues at harvest precludes estimates of the actual MOS", Risk from dietary exposure was not viewed by the Agency as a problem in PD 2/3. A calculation of the dietary exposure resulting from a single serving of selected food items confirms that dietary exposure is not a problem. The SAP has confirmed the Agency's belief that risk from dietary exposure is not an issue of concern. See Table 4 below for a comparison of MOS (including dietary exposure) and the MOs (excluding dietary exposure) for various users of dimethoate.)

TABLE 4 - Margins of safety for various users of dimethoate

CROP	TYPE OF SPRAYING	SUBGROUP	COMBINED DERMAL AND INHALATION EXPOSURE	ORAL EXPOSURE	TOTAL EXPOSURE	MOS (INCLUDING ORAL EXPOSURE 1/	MOS (EXCLUDING ORAL EXPOSURE) 1/
Citrus	Ground (air blast)	Applicators 2/ Mixers/loaders	0.39	0.0032	0.39327	7	7
Veg. Fields	Air	Pilots	0.013	0.0032	0.0162	170	225
Veg. Fields	Air	Flaggers	0.013	0.0032	0.0162	170	225
Veg. Fields	Air	Mixers/ loaders	0.0062	0.0032	0.0094	298	454
Pecans	Ground (air blast)	Applicators 2/ Mixers/loaders	0.119	0.0032	0.122	23	24
Pome	Ground (air blast)	Commercial Applicators, Inc. Mixers/loaders	0.242	0.0032	0.245	12	12
Pome	Ground	Hose Sprayers	0.00017	0.0032	0.0034	823	10,471
Corn	Air	Pilots	0.0083	0.0032	0.012	233	337
Corn	Air	Flaggers	0.008	0.0032	0.011	255	350
Corn	Air	Mixers/Loaders	0.0063	0.0032	0.010	280	444
Grape	Ground	Boom highest conc.	0.0012	0.0032	0.0044	636	2,333
Grape	Ground	Highest conc. (custom) Copplestone model	0.0207	0.0032	0.0239	117	135
Grape	Ground	dust	0.130	0.0032	0.1332	21	21

1/ Based on a 2.8 mg/kg NOEL (Khera undated).

2/ Applicator is also mixer/loader.

3/ Exposure via inhalation.

7. *Exposure Analysis—Occupational Exposure—a. The Agency's Occupational Exposure Calculations in PD 2/3.* In Position Document 2/3 the Agency revised and expanded the exposure analysis presented in Position Document 1. The exposure analysis in PD 2/3 was developed for smaller subpopulations engaged in the application of dimethoate, who subpopulations engaged in the application of dimethoate, who would experience greater exposure than that identified for the general population. For example, before application, mixers and loaders may be exposed both dermally and via inhalation as the result of splashing, vaporization, or accidental spills; during application, pilots and flaggers involved in aerial application, as well ground application, may be exposed both dermally and via inhalation. Estimates of exposure to these subpopulations and the MOS for each are presented in Table 5.

TABLE 5 - Estimates of exposure and margins of safety for various users of dimethoate 1/

CROP	TYPE OF SPRAYING	MOS FOR SUBGROUP	Combined Dermal and Inhalation DAILY EXPOSURE (for female mg/kg/day)	ORAL EXPOSURE	TOTAL EXPOSURE	MOS for Teratogenic Effects 2/
corn	air	pilots	0.0083	0.0032	0.012	233
corn	air	flaggers	0.008	0.0032	0.011	255
corn	air	mixers/loaders	0.0063	0.0032	0.010	280
ornamental	ground	commercial high concentration compressed air	0.00012	0.0032	0.0033	843
ornamental	ground	home garden high concentration	0.000152	0.0032	0.00335	836
grape	ground	Boom highest conc.	0.0012	0.0032	0.0044	636
grape	ground	highest conc. (custom) Copplestone model	0.0207	0.0032	0.0239	117
grape	ground	dust	0.130	0.0032	0.1332	21
cotton	air	pilots	0.0017	0.0032	0.005 *	560
cotton	air	mixers/loaders	0.00095	0.0032	0.0042	667
cotton	ground	applicators	0.0078	0.0032	0.0011	255
cotton	ground	mixers/loaders	0.00033	0.0032	0.004	700
citrus	air	pilots, ground crews, mixers/loaders	same as corn			
citrus	ground (air blast)	applicators mixers/loaders	0.39	0.0032	0.3932	7
sorghum	air	same as corn				
veg. fields (tomato, broccoli)	air	pilots flaggers mixers/loaders	0.013 0.013 0.0062	0.0032 0.0032 0.0032	0.0162 0.0162 0.0094	170 170 298
veg. (Fla)	ground	applicators	0.00005	0.0032	0.0033	848
vector control (house fly)	ground	applicators	0.0019	0.0032	0.0051	549
forest pine (seed orchard)	ground	applicators	0.0008	0.0032	0.0040	700
pecan high conc.	ground	applicators mixers/loaders	0.00044 0.00022	0.0032 0.0032	0.0036 0.00342	778 819
pecan	ground (air blast) model	applicators mixers/loaders	0.119	0.0032	0.122	23
safflower	air	same as corn				
pome	ground (air blast)	commercial applicators including mixers/loaders	0.242	0.0032	0.245	12
pome	ground	hose sprayers	0.00017	0.0032	0.0034	

1/ From PD 2/3.

2/ Based on 2.8 NOEL (Khera undated).

The exposure analyses in PD 2/3 considered rebuttal comments received in reponse to the RPAR notice, data from the USDA concerning use and use practices, published studies concerning worker exposure to dimethoate and related pesticides, and certain assumptions made by the Agency in the absence of specific data on dimethoate.

There were no published data available to the Agency showing the amount of dimethoate an applicator would be exposed to during aerial application. However, exposure data were available for another organophoshate, parathion. Therefore, the Agency used exposure values reported for parathion aerial application (Gordon et al., 1978) as a model for estimating human exposure to dimethoate during aerial application. The following rationale was given for using parathion values to estimate dimethoate exposure:

(1) The vapor pressure of parathion and dimethoate are comparable. It is generally recognized that the residues of pesticides with relatively low volatility in the air during or immediately after application are predominantly present in the form of droplets and particles.

(2) The formulation most often used for both parathion and dimethoate is an emulsifiable concentrate (E.C.).

(3) The rates of aerial application of parathion and of dimethoate are similar.

Since exposure during aerial application can occur via the respiratory and/or dermal route, the Agency made calculations of applicator exposure via each of these routes.

In calculating inhalation exposure, the Agency made the following assumptions:

(1) The ambient air concentrations observed for parathion (Gordon et al., 1978) are the same as dimethoate at each of the various sampling sites (e.g., airplane cockpits).

(2) The applicator's breathing rate will be 1.8 m^3 per hour.

(3) 100% of all dimethoate inhaled will be absorbed.

(4) The applicator will weight 60 kg (adult female).

(5) The applicator will wear no special protective devices (e.g., respirator).

The Agency used the following equation in calculating the respiratory exposure for dimethoate:

$$\text{Respiratory Exposure (ug/kg/day)} = \frac{\text{Ambient air concentration of dimethoate (ug/m}^3\text{) at the site in question} \times \text{1.8 m}^3\text{/hr (breathing rate)} \times \text{Number of hours of exposure/day}}{\text{60 kg person}}$$

For the dermal exposure calculations the Agency made the following assumptions:

(1) Dermal exposure observed for parathion skin patch tests (Gordon et al., 1978) are the same for dimethoate.

(2) 15% of the applicator's total skin surface will be exposed.

(3) 10% of the dimethoate coming into contact with the uncovered skin will be absorbed.

(4) The applicator will weigh 60 kg (adult female).

The following equation was used by the Agency in calculating the dermal exposure to dimethoate:

$$\text{Dermal Exposure (mg/kg/day)} = \frac{\text{Concentration of dimethoate on the skin (ug/cm}^2\text{)} \times \text{3000 cm}^2 \times \text{10\% absorbed} \times \text{Number of hours exposed per day}}{\text{60 kg person}}$$

Specific data concerning applicator exposure to dimethoate applied by boom type equipment in large agricultural situations and by compressed air equipment (hand pump sprayers) in home garden application situations in the United States was not available to the Agency. However, information concerning applicator exposure to dimethoate in the Sudan was available (Copplestone et al., 1976). Therefore, in PD 2/3 the Agency used the dermal and respiratory exposure of spraymen to dimethoate reported by Copplestone et al. (1976) as the basis for its calculations of applicator exposure to dimethoate when boom and compressed air equipment is used.

The Agency used the following equations to calculate the respiratory and dermal exposure resulting from the ground application of dimethoate:

$$\text{Respiratory Exposure} = \frac{\text{Respiratory exposure observed in Sudan (mg/hr)} \times \frac{\text{concentratin of dimethoate used in the U.S.}}{\text{concentration of dimethoate used in the Sudan}} \times \text{Number of hours spraying (USDA/states/EPA Assessment Team on Dimethoate)}}{\text{60 kg person}}$$

$$\text{Dermal Exposure} = \frac{\text{dermal exposure observed in the Sudan (mg/cm/hr}^2\text{)} \times \frac{\text{concentration of dimethoate used in the U.S.}}{\text{concentration of dimethoate used in the Sudan}} \times \text{10\% absorption}}{\text{60 kg person}}$$

Specific data concerning applicator exposure to dimethoate applied by high volume air blast equipment (greater than 300 gal./A), such as that commonly used in citrus, pecans, and pome fruit orchards, were not available to the Agency. However, Wolfe et al. (1967) reported the dermal and respiratory exposure of workers to several selected pesticides, one of which was parathion, using air blast equipment. In the absence of specific dimethoate data, the Agency, in Position Document 2/3, assumed the exposure values of workers applying 0.05% parathion emulsifiable concentration (E.C.) with air blast equipment to be the same as that for workers applying dimethoate. The Agency felt this assumption to be reasonable since both dimethoate and parathion are organophosphates and both are emulsifiable concentrates applied at similar concentrations.

The Agency concluded, in Position Document 2/3, that potential occupational exposure was greatest for ground applications of dust formulations on grapes and for ground applications utilizing air blast equipment on citrus, pome fruits, and pecans.

b. *Comments on the Inadequacy of the Data Used to Estimate the Potential Exposure of Air Blast Applicators.* A number of commenters concluded that the data on which the Agency relied in estimating the potential exposure of air blast applicators were inadequate. American Cyanamid [7(30000/16c)] and the University of California [8(30000/16c)] stated that the Copplestone (1976) study referred to in Position Document 2/3 was an inappropriate model for air blast exposure, since in that study dimethoate was applied with a knapsack mist blower. The University of Arizona [5(30000/16c)] commented that they are concerned about the small amount of data on which the Agency relied, i.e. "an old study in Washington State by Dr. Homer Wolfe, and an incident in Sudan" (Wolfe, 1967 and Copplestone, 1976).

c. *The Agency's PD 4 Response.* The Agency responds to these comments regarding the inadequacy of the data relied upon in PD 2/3 for estimating potential exposure of air blast applicators by pointing out, first of all, that the data used in the air blast calculations were that of Wolfe et al. (1967) and not that of Copplestone et al. (1976). Wolfe et al. reported dermal and respiratory exposure of workers to several selected pesticides, one of which was parathion, using air blast equipment. Secondly, the Agency did not have specific data on dimethoate exposure from air blast application for calculating exposure in PD 2/3. Therefore, in the absence of better information, the Agency extrapolated Wolfe's results with parathion to dimethoate. It is the Agency's opinion that the data were adequate for such an extrapolation and that such an extrapolation was reasonable since both dimethoate and parathion are organophosphates and both are emulsifiable concentrates applied at similar concentrations.

d. *Comments on a University of California at Riverside Field Monitoring Study of Applicator Exposure to Organophosphate Pesticides Resulting from Use of Oscillating Boom Sprayers and Air Blast Equipment.* The University of Arizona [5(30000/16c)], in their comments on PD 2/3, stated that a study on air blast sprayer driver exposure is underway at Riverside, California. This commentor recommended that a decision on air blast application be delayed until data from this study are available for scientific review. Additionally, the University of Arizona stated that it was their understanding that the study would be completed by August 1980.

The Scientific Advisory Panel, in its formal comments, mentioned testimony by a representative from the State of California relative to planned research in the near future, with dimethoate, to assess applicator exposure from air blast equipment in comparison with oscillating boom type sprayers.

The Unversity of California at Davis [8(30000/16c)] stated, in their comments on PD 2/3, that "the Western Region Pesticide Impact Assessment Program is funding a study by Professors Gunther and Carman (University of California, Riverside) to quantify the extent of occupational exposure of pesticide applicators during actual spraying of an organic phosphate insecticide on citrus trees. Those studies will involve measurements of pesticide vapors and aerosols in the cab of the spray rig as a result of having the windows opened, opened and closed on operator judgment basis, and closed with and without air-conditioning. This will determine whether operator judgment is sufficient to limit pesticide exposure or whether a static cab or a more sophisticated system involving charcoal filters and air-conditioning units should be required. The principal investigators are willing to expand the experimental design to permit exposure comparisons between air blast and oscillating boom applications, providing adequate funding is available."

The California Citrus Quality Council [9(30000/16c)] stated that "The citrus industry of California is supportive of exposure studies now being undertaken at The Citrus Research Center of the University of California in Riverside to quantify applicator exposures associated with oscillating boom equipment and would fully endorse an extension of these studies to include evaluations with air blast equipped with various provisions for applicator protection and operated under variant field conditions."

e. *The Agency's PD4 Response.* The Agency agrees that actual data on applicator exposure to dimethoate would be more useful than estimates derived from an evaluation of other organophosphate pesticides. The Agency understands that the monitoring phase and the analysis of the data of the current study at the University of California are likely to be completed in early 1981. The Agency welcomes any additional information resulting from the current study at the University of California at Riverside.

8. *Risk of Alternatives to Dimethoate—a. Summary of the Agency's Toxicology Review of Alternatives to Dimethoate.* The Agency's purpose for reviewing alternatives for a particular pesticide is not to make an in-depth review of an alternative but to indicate whether or not suitable alternatives exist at each use site for the pesticide in question. In its toxicology review of the alternatives to dimethoate the Agency reviewed available toxicity data from published and unpublished Substitute Chemical Program reports, proprietary data from pesticide petitions, and published literature. The basic conclusion of the Agency's review was that for the sites in which dimethoate is used, there are many alternatives.

In PD 2/3 the Agency proposed the cancellation of air blast application of dimethoate on citrus, pome fruit, and pecans. When cancellation of a use is considered by the Agency, a review of possible alternatives for the uses in question is conducted. A summary of the Agency's toxicological review of the alternatives for air blast application of dimethoate in citrus, pome fruit, and pecans is given below.

1. *Alternatives to Dimethoate use on Citrus.* The Agency considered malathion, phosphamidon, foremetanate, rotenone, demeton, mevinphos and parathion as the major alternatives to dimethoate use on citrus.

1. *Malathion.* Malathion is low in toxicity and has not been shown to cause adverse reproductive effects when tested in a teratology test. Recent National Cancer Institute studies have indicated no significant carcinogenic

potential from malathion. Malathion was registered many years ago, but adequate multi-generation studies have not been performed.

2. *Phosphamidon.* Phosphamidon is more acutely toxic than dimethoate. A recent National Cancer Institute study indicated that phosphamidon was not carcinogenic in B6C3F1 mice but the data were insufficient to allow interpretation in the rat. Data on reproductive effects are either lacking or carried out at Industrial Bio-Test. Validation of the Industrial Bio-Test studies has not been done. Phosphamidon, like malathion, was registered a number of years ago.

3. *Formetanate.* Formetanate is a much more acutely toxic compound than dimethoate with an oral LD_{50} around 20 mg/kg. Although available data indicate no significant adverse effects, the presence of Industrial Bio-Test data limits the usefulness of these studies.

4. *Rotenone.* Minimal data are available on rotenone's reproductive effects. Preliminary data suggested that rotenone was carcinogenic but evaluation of all of the carcinogenicity data does not indicate an oncogenicity hazard. Although there are some studies that indicate potential teratogenic problems, these studies are seriously flawed and need to be re-done before we can determine if there is a teratogenicity problem.

5. *Demeton.* Demeton is a highly toxic organophosphate (acute oral LC_{50} below 20 mg/kg). There appears to be no multi-generation study and the only teratogenic study seems inadequate to assess teratogenic or fetotoxic hazard. No chronic or carcinogenic studies have been reported.

6. *Mevinphos.* Mevinphos, like demeton, is a highly toxic organophosphate. Available teratogenic, reproduction, and chronic studies indicate no adverse effects.

7. *Parathion.* Parathion is a highly toxic organophosphate by all routes of exposure. A recent oncogenic study by NCI indicated positive findings. A preliminary risk assessment on the oncogenic effects is being carried out.

ii. *Alternatives to Dimethoate Use on Pome Fruit (apples).* The Agency considered cyhexatin (plictran), guthion (azinphosmethyl), propargite, and demeton as alternatives to dimethoate use on pome fruits.

1. *Cyhexatin.* This compound has not demonstrated any advese effects in laboratory animals in chronic feeding studies and reproduction and teratology studies.

2. *Azinphosmethyl (Guthion).* Both guthion and demeton are highly toxic organophosphates with acute oral LD_{50} below 20 mg/kg. Guthion was not teratogenic or fetotoxic in doses up to 5 mg/kg/day (the maternal toxic dose) in rats or mice. A recent National Cancer Institute study concluded that "under the conditions of this bioassay, neoplasms of the thyroid and pancreatic islets suggest but do not provide sufficient evidence for the carcinogenicity of azinphosmethyl in male Osborne-Mendel rats. Azinphosmethyl was not shown to be carcinogenic in female Osborne-Mendel rats or in B6C3F1 mice of either sex". The Agency is reviewing this study and a risk assessment may be carried out based on the positive oncogenic response.

3. *Propargite.* This compound has not demonstrated any adverse effects in laboratory animals in chronic feeding studies and reproduction and teratology studies.

4. *Demeton.* See write up under *Citrus* above.

iii. *Alternatives to Dimethoate Use on Pecans.* The Agency considered phosalone and dialifor as alternatives to dimethoate use on pecans.

1. *Phosalone.* Phosalone is slightly more acutely toxic than dimethoate. The available data do not indicate that this compound produces adverse reproduction or teratogenic effects.

2. *Dialifor.* Dialifor caused no malformations in a teratology test, but the systemic NOEL was 1.0 mg/kg. The vast majority of toxicity data supporting dialifor was carried out at Industrial Bio-Test and is still unvalidated. Conclusions about the reliability of these data cannot be made at this time.

b. *Comments on the Risks of Alternatives to Dimethoate.* The SAP, in their formal comments, stated that it is likely that substitute pesticides which may be more hazardous than dimethoate may be selected for use in air blast equipment if dimethoate is not available.

The Cooperative Extension Service of the University of Georgia [1A(30000/16c)], in their comments on PD 2/3, stated that "while there are alternative materials (FR, P. 66560), most effective alternatives have a much higher acute toxicity than dimethoate. This particularly will effect small pecan growers and homeowners who have trees in areas where materials of high acute toxicity should not be used".

The Extension Service of Oregon State University [4(3000/16c)] and the Hood River Grower-Shipper Association, Hood River, Oregon [6(30000/16c)] stated, in their comments on PD 2/3, "Dimethoate is one of only three systemic insecticides registered for use on bearing apple trees. Of the three, dimethoate has the lowest mammalian LD_{50} toxicity at 215 mg/kg, compared to 6.2 mg/kg for demeton (Systox) and 24 mg/kg for phosphamidon. This makes dimethoate the least toxic systemic presently registered for use on apples".

American Cyanamid Co., [7(30000/16c)] commented that "should the Agency cancel air blast application of dimethoate, applications would most probably be made using parathion. This alternative would be an unacceptably high risk situaton".

The Cooperative Extension of the University of California at Davis [8(30000/16c)] commented that Calfornia's treatment guide for citrus crops lists six alternatives to dimethoate for thrips control. The listed alternative materials are sabadilla, parathion, dioxathion, azinphosmethyl, phosphamidon, and ryania. This commentor stated that dimethoate, with its 4-day reentry interval, is the material of choice because a relatively safe, short-lived material is necessary for thrips control since the chemical is applied over ripe fruit.

c. *The Agency's PD 4 Response.* The Agency agrees that cancellation of the air blast use of dimethoate on citrus, pome fruits, and pecans may result in the air blast application of alternative pesticides registered for these same uses. The Agency is also aware that cancellation of this application method will probably not lead to the use of dimethoate on these crops by another method of application, e.g., oscillating boom sprayer. In addition, the Agency is aware that there is a high probability that, at least in some cases, the alternative pesticide may be an organophosphate of higher acute toxicity. The following key lists definitions of abbreviations used in Tables 6 and 7:

CAR—Carcinogenic effects.

CNS—Central nervous system effects—includes effects such as headaches, tremor, drowsiness, convulsions, hypnosis, anesthesia.

IHL (Inhalation)—Inhalation in chamber, by cannulation, or through mask.

IMS (Intramuscular)—Administration into the muscle by hypodermic needle.

INV (Intravenous)—Administration directly into the vein by hypodermic needle.

IRP (Intraperitoneal)—Administration into the peritoneal cavity.

LCLo (Lethal Concentration Low)—the lowest concentration of a substance in air, other than LC50, which has been reported to have caused death in humans or animals.

LC50 (Lethal Concentration Fifty)—a calculated concentration of a substance

in air, exposure to which for a specified length of time is expected to cause the death of 50% of an entire defined experimental animal population.

LDLo (Lethal Dose Low)—the lowest dose (other than LD50) of a substance introduced by any route, other than inhalation, over any given period of time in one or more divided portions and reported to have caused death in humans or animals.

LD50 (Lethal Dose Fifty)—a calculated dose of a substance which is expected to cause the death of 50% of entire defined experimental animal population. It is determined from the exposure to the substance by any route other than inhalation of a significant number from that population.

NEO—Neoplastic effects.

ORAL—Per os; intragastric, feeding, or introduction with drinking water.

PNS—Peripheral nervous system effects.

SCU (Subcutaneous)—Administration under the skin.

SKIN—Application directly onto the skin, either intact or abraded. Used both for systemic and primary irritant effects.

TCLo (Toxic Concentration Low)—the lowest concentration of a substance in air to which humans or animals have been exposed for any given period of time that has produced any toxic effect in humans or produced a carcinogenic, neoplastic, teratogenic, or mutagenic toxic effect in animals or humans.

TDLo (Toxic Dose Low)—the lowest dose of a substance introduced by any route, other than inhalation, over any given period of time and reported to produce any toxic effect in humans or to produce carcinogenic, neoplastigenic, teratogenic, or mutagenic, or mutagenic effects in humans or animals.

TER—Teratogenic effects—nontransmissible changes produced in the offspring.

TFX—Toxic effects—used to introduce the pathology or the principal organ system affected.

UNK (Unreported)—Dose, but not route, is specified in the reference.

Table 6 summarizes the toxicological information for dimethoate and chemical alternatives to dimethoate. The information in Table 6 was derived from the "NIOSH 1978 Registry of Toxic Effects of Chemical Substances".

TABLE 6 - Summarization of toxicological information for dimethoate and chemical alternatives to dimethoate

CHEMICAL	Irritant Effects (Eye)	TOXIC DOSE																
		ORAL			SKIN		IRP		SCU		INV			IMS		IHL		UNK
		LD50	TDLo	LDLo	LD50	LD50	TDLo	LD50	LDLo	LD50	LDLo	LD50	LDLo	TDLo	LC50	LCLo	LD50
DIMETHOATE		Human 30 mg/kg																
		Rat 152 mg/kg	Rat 50 mg/kg TFX-CAR		Rat 353 mg/kg	Rat 100 mg/kg		Rat 350 mg/kg		Rat 450 mg/kg				Rat 176 mg/kg TFX-CAR				Rat 250 mg/kg
Aquatic Toxicity Rating TLm 96:10-Under 1ppm		Mouse 60 mg/kg				Mouse 45 mg/kg		Mouse 60 mg/kg										
		Dog 400 mg/kg																
		Rabbit 300 mg/kg																
		Guinea Pig 350 mg/kg			Guinea Pig 650 mg/kg													
NCI Bioassay Results Negative		Hamster 200 mg/kg						Hamster 60 mg/kg										
		Chicken 37 mg/kg																
		Mammal 15 mg/kg																
		Bird 22 mg/kg																
		Wild Bird 7 mg/kg																
				Cat 300 mg/kg														
MALATHION		Rat 885 mg/kg			Rat 4444 mg/kg	Rat 340 mg/kg		Rat 1000 mg/kg		Rat 50 mg/kg								
		Mouse 775 mg/kg				Mouse 193 mg/kg				Mouse 184 mg/kg								
		Guinea Pig 570 mg/kg				Guinea Pig 550 mg/kg												
Aquatic Toxicity Rating TLm 96:10-under 1ppm		Domestic Animal 500 mg/kg																
				Human 50 mg/kg														
NCI Bioassay Results Negative				Man 857 mg/kg														
				Rabbit 120 mg/kg	Rabbit 4100 mg/kg													
																		Mammal 500 mg/kg
PHOSPHAMIDON		Rat 17 mg/kg			Rat 125 mg/kg			Rat 26 mg/kg										

TABLE 6 - Summarization of toxicological information for dimethoate and chemical alternatives to dimethoate (cont.)

CHEMICAL	Irritant Effects (Eye)	TOXIC DOSE																
		ORAL			SKIN		IRP		SCU		INV			IMS		IHL		UNK
		LD50	TDLo	LDLo	LD50	LD50	TDLo	LD50	LDLo	LD50	LDLo	LD50	LDLo	TDLo	LC50	LCLo	LD50
PHOSPHAMIDON (cont.)																		
NCI Bioassay Completed 9/78		Mouse 6 mg/kg								Mouse 6 mg/kg								
		Chicken 9040 ug/kg																
		Wild Bird 2 mg/kg																
				Human 5 mg/kg														
					Rabbit 267 mg/kg													
FORMETANATE		Rat 20 mg/kg													Rat 160 mg/m3/ 1H			
		Mouse 18 mg/kg																
		Dog 19 mg/kg																
		Chicken 21500 ug/kg																
		Bird 13 mg/kg																
					Rabbit 10200 ug/kg													
ROTENONE		Rat 132 mg/kg					Rat 2800 ug/kg	Rat 91 mg/kg TFX-NEO										
Selected by NCI for Carcinogenisis Bioassay 9/78		Mouse 350 mg/kg					Mouse 2800 ug/kg											
		Mammal 50 mg/kg																
				Human 50 mg/kg														
DEMETON		Rat 1700 ug/kg			Rat 8100 ug/kg		Rat 3 mg/kg			Rat 1750 ug/kg		Rat 3 mg/kg						
		Mouse 7800 ug/kg					Mouse 4 mg/kg	Mouse 10 mg/kg TFX-TER		Mouse 3900 ug/kg								
		Guinea Pig 9 mg/kg																
		Quail 9 mg/kg																
		Duck 7 mg/kg																
		Wild Bird 7 mg/kg			Wild Bird 1800 ug/kg													
				Human 240 ug/kg														

TABLE 6 - Summarization of toxicological information for dimethoate and chemical alternatives to dimethoate (cont.)

CHEMICAL	Irritant Effects (Eye)	TOXIC DOSE															
		ORAL			SKIN	IRP		SCU		INV		IMS			IHL		UNK
		LD50	TDLo	LDLo	LD50	LD50	TDLo	LD50	LDLo	LD50	LDLo	LD50	LDLo	TDLo	LC50	LCLo	LD50
DEMETON (cont.)					Rabbit 24 mg/kg	Rabbit 3250 ug/kg											
												Dog 3650 ug/kg					
												Cat 3900 ug/kg					
MEVINPHOS		Rat 4 mg/kg			Rat 4200 ug/kg	Rat 890 ug/kg		Rat 1211 ug/kg							Rat 14 PPM/1H		
		Mouse 4 mg/kg			Mouse 4000 ug/kg	Mouse 3 mg/kg		Mouse 1180 ug/kg		Mouse 680 ug/kg							
		Chicken 7520 ug/kg															
		Wild Bird 3 mg/kg															
			Mammal 690 ug/kg TFX-PN5														
				Human 5 mg/kg													
					Rabbit 4700 ug/kg												
						Gerbil 450 ug/kg											
CYHEXATIN (Plictran)		Rat 190 mg/kg				Rat 13 mg/kg											
		Rabbit 500 mg/kg															
		Guinea Pig 780 mg/kg															
		Chicken 654 mg/kg															
				Domestic Animal 150 mg/kg													
AZINPHOSMETHYL (Guthion)		Rat 16 mg/kg			Rat 220 mg/kg					Rat 7500 ug/kg					Rat 69 mg/m^3/ 1H		Rat 15 mg/kg
		Guinea Pig 80 mg/kg															
Aquatic Toxicity Rating Tlm 96:under 1ppm		Chicken 277 mg/kg															
		Wild Bird 8 mg/kg															
				Human 5 mg/kg													
NCI Bioassay Results Indefinite				Mouse 5 mg/kg	Mouse 65000 ug/kg	Mouse 5 mg/kg					Mouse 8 mg/kg						

TABLE 6 - Summarization of toxicological information for dimethoate and chemical alternatives to dimethoate (cont.)

CHEMICAL	Irritant Effects (Eye)	TOXIC DOSE															
		ORAL			SKIN		IRP		SCU		INV		IMS			IHL	UNK
		LD50	TDLo	LDLo	LD50	LD50	TDLo	LD50	LDLo	LD50	LDLo	LD50	LDLo	TDLo	LC50	LCLo	LD50
PROPARGITE		Rat 1480 mg/kg			Rat 250 mg/kg												
PHOSALONE [mixed with Kelthane (1:2)]		Rat 600 mg/kg															
		Mouse 175 mg/kg															
DIALIFOR		Rat 5 mg/kg															
		Mouse 39 mg/kg															
		Dog 94 mg/kg															
		Rabbit 35 mg/kg			Rabbit 145 mg/kg												
				Hamster 100 mg/kg TFX-TER													
PARATHION		Rat 2 mg/kg			Rat 6800 ug/kg	Rat 1500 ug/kg						Rat 3 mg/kg		Rat 6 mg/kg		Rat 10 mg/m^3/ 2H	
		Mouse 6 mg/kg				Rat 3550 ug/kg	Mouse 3500 mg/kg TFX-TER	Mouse 30 mg/kg	Mouse 17400 ug/kg					Mouse 7200 ug/kg			
		Dog 2 mg/kg							Dog 12 mg/kg								
PARATHION (cont.)																	
		Rabbit 10 mg/kg			Rabbit 40 mg/kg											Rabbit 50 mg/m^3/ 2H	
		Guinea Pig 8 mg/kg			Guinea Pig 600 mg/kg	Guinea Pig 12 mg/kg										Guinea Pig 14 mg/m^3/ 2H	
		Pigeon 3 mg/kg															
		Quail 6 mg/kg															
		Duck 2340 ug/kg															
		Domestic Animal 6 mg/kg								Cat 3 mg/kg							Mammal 6 mg/kg
		Wild Bird 2 mg/kg			Wild Bird 1800 ug/kg												
				Human 290 ug/kg													
			Woman 5670 ug/kg TFX-CNS														

TABLE 6 - Summarization of toxicological information for dimethoate and chemical alternatives to dimethoate (cont.)

CHEMICAL	Irritant Effects (Eye)	TOXIC DOSE																
		ORAL			SKIN		IRP		SCU		INV		IMS			IHL		UNK
		LD50	TDLo	LDLo	LD50	LD50	TDLo	LD50	LDLo	LD50	LDLo	LD50	LDLo	TDLo	LC50	LCLo	LD50
SABADILLA		Rat 4000 mg/kg																
				Human 50 mg/kg														
						Mouse 7500 ug/kg												
DIOXATHION		Rat 20 mg/kg			Rat 63 mg/kg	Rat 30 mg/kg									Rat 1398 mg/m^3/1H			
		Mouse 50 mg/kg				Mouse 33 mg/kg									Mouse 340 mg/m^3/1H			
		Dog 10 mg/kg																
NCI Bioassay Results Negative		Guinea Pig 40 mg/kg																
		Chicken 170 mg/kg																
				Human 50 mg/kg														
	Rabbit 25 mg mild				Rabbit 85 mg/kg													
RYANIA		Rat 750 mg/kg			Rat 750 mg/kg													
		Mouse 650 mg/kg																
		Dog 150 mg/kg																
		Rabbit 650 mg/kg																
		Guinea Pig 25000 mg/kg																
				Human 143 mg/kg														

TABLE 7 - Summarization of the ranges of the toxic doses of dimethoate and chemical alternatives to dimethoate (cont.)

CHEMICAL	Irritant Effects (Eye)	TOXIC DOSE															
		ORAL			SKIN	IRP		SCU		INV		IMS		IHL			UNK
		LD50	TDLo	LDLo	LD50	LD50	TDLo	LD50	LDLo	LD50	LDLo	LD50	LDLo	TDLo	LC50	LCLo	LD50
Propargite		1480 mg/kg			250 mg/kg												
Phosalone		175-600 mg/kg															
Dialifor		5-94 mg/kg		100 mgkg TER	145 mg/kg												
Parathion		2-10 mg/kg	5.6 mg/kg CNS	.24 mg/kg	1.8-600 mg/kg	1.5-12 mg/kg	3500 mg/kg TER		30 mg/kg	3-17.4 mg/kg	3 mg/kg			6-7.2 mg/kg		10-14 mg/m^3/2H	6 mg/kg
Subadilla		4000 mg/kg		50 mg/kg		7.5 mg/kg											
Dioxathion	25 mg mild	10-170 mg/kg		50 mg/kg	63-85 mg/kg	30-33 mg/kg									340-1398 mg/m^3/1H		
Ryania		150-2500 mg/kg		143 mg/kg	750 mg/kg												
Dimethoate		7-400 mg/kg	50 mg/kg CAR	300 mg/kg	353-650 mg/kg	45-100 mg/kg		60-350 mg/kg		450 mg/kg				176 mg/kg CAR			250 mg/kg
Malathion		500-885 mg/kg		50-857 mg/kg	4100-4444 mg/kg	193-550 mg/kg		1000 mg/kg		50-184 mg/kg							500 mg/kg
Phosphamidon		9-17 mg/kg		5 mg/kg	125-267 mg/kg			26 mg/kg		6 mg/kg							
Formetanate		13-21.5 mg/kg			10.2 mg/kg												
Rotenone		50-350 mg/kg		50 mg/kg		2.8 mg/kg	91 mg/kg NEO										
Demeton		1.7-9 mg/kg		.24 mg/kg	1.8-24 mg/kg	3-4 mg/kg	10 mg/kg TER			1.7-3.9 mg/kg		3.6-3.9 mg/kg	3 mg/kg				
Mevinphos		3-7.5 mg/kg	.69 mg/kg PNS	5 mg/kg	4-4.7 mg/kg	.45-3 mg/kg		1.18-1.28		.68 mg/kg					14 PPM/1H		
Cyhexatin		190-780 mg/kg		150 mg/kg		13 mg//kg											
Azinphosmethyl		8-277 mg/kg		5 mg/kg	65-220 mg/kg	4 mg/kg				7.5 mg/kg	8 mg/kg				69 mg/m^3/1N		15 mg/kg

The potential for exposure to the alternatives to dimethoate is an important factor in evaluating the risk from the alternatives relative to the risk from dimethoate. The Agency concludes, in a similar fashion to the conclusion in Appendix C of the Chlorobenzilate Position Document 2/3 on alternatives to chlorobenzilate's air blast use on critus, that: (1) regardless of the pesticide used in the citrus air blast equipment, the dermal and inhalation exposure would be assumed to be similar and (2) unless the Agency had dermal penetration data to indicate otherwise, the dermal dose of these alternatives would be assumed to be similar.

The major alternatives to dimethoate use on citrus, pome fruits, and pecans are:

(1) *Citrus.* formetanate, malathion, phosphamidon, demeton, and mevinphos. None of these pesticides have identifiable adverse chronic or delayed toxic effects, although a complete data base is lacking for many of these compounds.

(2) *Pome fruit.* azinphosmethyl, cyhexatin, propargite, and demeton. Available data indicates that, with the exception of azinphosmethyl which is under review, these pesticides do not appear more hazardous than dimethoate.

Azinphosmethyl is more acutely toxic than dimethoate and, based on a recent National Cancer Institute study, may pose a carcinogenic risk. Moreover, azinphosmethyl is a restricted use pesticide and can only be used by trained pesticide applicators.

(3) *Pecans.* Phosalone and dialifor. Phosalone is slightly more acutely toxic than dimethoate. Agency records indicate that phosalone has been tested for oncogenicity, delayed neurotoxicity, reproductive and teratogenic effects with negative results.

Dialifor is more acutely toxic than dimethoate and has under gone the same tests as phosalone with negative results. The vast majority of toxicity data supporting dialifor, however, was carried out at Industrial Bio-Test and these data have not been validated. Therefore, conclusions concerning the reliability of these data cannot be made at this time.

Although the validity of the data concerning dialifor is in question, available data indicate that these major alternatives to dimethoate for use on citrus, pome fruit, and pecans pose at least as great a hazard as dimethoate.

Since a complete data base is lacking for many of the alternative compounds and test data for others has not been validated, the Agency cannot determine whether the risk posed by alternative chemicals will be greater than that posed by dimethoate. However, one of the factors which has led the Agency to reconsider its PD 2/3 decision to cancel the air blast use is the possibility that farmers who own air blast equipment may switch to alternative compounds which are at least as hazardous as dimethoate.

B. Comments Relating to Benefits

1. *Summary of the Agency's Benefit Analysis in PD 2/3.* In assessing the benefits of the continued use of dimethoate, the Agency evaluated the economic, social, and environmental effects which would result should any or all uses of the pesticide be cancelled. The benefits of continued use were weighed against the attendant risks.

The PD 2/3 benefit analysis included a quantitative assessment of the impact of a variety of possible EPA regulatory actions on the cost of production, and the potential loss in farm income. Consumer impacts were evaluated qualitatively. The data which provided the basis for the benefit analysis were derived from information supplied by American Cyanamid, the U.S. Department of Agriculture, and other interested parties.

In Position Document 2/3, the Agency estimated annual dimethoate use at 2.8 million pounds A.I. (active ingredient) applied to about 4.7 million agricultural acres. The benefit analysis provided estimates of annual use and economic impacts of a potential cancellation action for the following classes of use sites: grains, field crops, fruits and nuts, vegetables, and other use sites.

Since comments received on the benefit analysis in Position Document 2/3 only addressed the use and benefits of dimethoate on fruits and nuts, this document will only summarize the Agency's benefit analysis for those use sites.

Dimethoate use on fruit and nut crops (apples, pears, citrus, grapes, and pecans) accounted for about 839,000 pounds AI applied to about 533,000 acres. The percent of total U.S. acreages treated with dimethoate were 2.6 percent for apples, <1.0 percent for pears, 12.0 percent for citrus, and 17.0 percent for pecans. About 58 percent of the California grape acreage was treated with dimethoate.

For apples, pears, and pecans several effective alternatives for dimethoate are available; the efficacy and performance of alternatives for grapes and citrus are limited. If dimethoate were cancelled total estimated production cost increases for these crops are $89,700 for apples, at least $551,000 for citrus, $3.9–$10.7 million for grapes, and $745,800 for pecans. Since only minor amounts of dimethoate are used on pears, the cancellation of dimethoate for this use would have negligible effects upon total production costs.

Changes in the value of production would either be negligible or not expected for apples, pears, and pecans. Annual grape production losses in California, of $40,800 are expected from vine losses due to insects commonly referred to as sharp shooters. Significant adverse effects on the quantity and quality of citrus production are possible; however, data were not available to evaluate the economic magnitude of such effects.

Estimated decreased from incomes for apples and pecans are, respectively, about $90,000 and $745,800 (or $7.00 and $14.34 per impacted acre). For citrus, the farm loss could exceed $551,000, or at least $3.58 per impacted acre (significantly quality losses due to thrips damage could not be assessed with available data). The decreased farm income for impacted grape producers would be $3.94–$10.74 million, or $12.55–$34.22 per acre; total insecticide use would increase. Farm income effects for all pear producers would be negligible; income effects on an impacted acre basis could not be estimated.

Even though significant economic impacts would be experienced by some U.S. fruit and nut producers (e.g., $3.94–$10.74 million for grape growers, $745,800 for pecan growers, etc.), consumer impacts are not expected for pears and apples due to the small proportion of the total U.S. production affected. Price increases may occur for pecan, citrus and grape products; but these increases are qualitatively not expected to be of major significance. Consumer impacts could not be quantitatively estimated due to the lack of data.

2. *Summary and Analysis of Comments Received in PD 2/3—a. Air Blast Application of Dimethoate for Citrus, Pome Fruit, and Pecans—i. Comments on the Need for and Extent of Air Blast Application for Citrus, Pome Fruit, and Pecans.* Several commenters addressed the use and benefits of air blast application of dimethoate on citrus, pome fruit, and pecans as follows:

The College of Agriculture of the University of Arizona [5(30000/16c)] commented that most (90%) of the applications of dimethoate on citrus are by air blast ground spraying and many new sprayers were purchased in 1978 and 1979. Aerial application, continued the commenter, does not provide

adequate canopy penetration, requiring a second aerial application a few days later, thus doubling costs and the amount of insecticide used as well as increasing exposure.

The California Citrus Quality Council [9(30000/16c)] indicated that air blast application of dimethoate is the predominant application method in California for control of aphids and citrus thrips.

The University of California Extension Service at Davis [8(30000/16c)] submitted extensive comments on the need for and extent of use of dimethoate and of air blast equipment for citrus. They estimated that in the San Joaquin Valley, 70% of first applications for trip control on citrus are dimethoate applied with air blast equipment. This commentor further stated that air blast equipment is used almost exclusively in the treatment of apples, pears, and other fruit and nut crops in California. Note was made that the pear and apple crops use much less dimethoate than the citrus crops.

The University of California at Davis also stated that air blast equipment in many cases is preferred over aerial application and is steadily replacing fixed and even oscillating boom sprayers for fruit and nut tree crops. The reasons for preferring air blast equipment include speedier application times which enables better timing of applications, lower volumes while maintaining efficacy, lesser amounts of active ingredient, lower application costs, and better coverage.

The Cooperative Extension Service of the University of Georgia [1(30000/16c)] indicated that "virtually all pesticide applications to [pome fruit in Georgia] are made with air blast sprayers." The Georgia Extension Service in Tifton, Georgia [1A(30000/16c)], also emphasized that the prohibition of dimethoate air blast applications would be the same as cancellation of the chemical for pome fruits and pecans in Georgia.

William R. Gale [3(30000/16c)] indicated that 98% of the commercial use of dimethoate on pome fruits is by air blast equipment.

Oregon State University Extension Service [4(30000/16c)] commented that "practically all commercial applications of pesticides in apple orchards, including dimethoate, are made by air blast sprayer." Prohibiting the use of dimethoate by air blast equipment would virtually eliminate its commercial use in this area.

The Hood River Grower-Shipper Association [6(30000/16c)] repeated the concerns of the Oregon State Extension Service.

The College of Agriculture of the University of Idaho [10(30000/16c)] indicated that "a relatively small percentage of Idaho apple and pear acreage is treated with dimethoate, since insecticides which do not reduce predator mite populations are usually preferred." However, they stated that virtually all pesticide application in Idaho commercial orchards is by air blast equipment. They also discussed alternate application methods, including aerial, hand gun spraying, oscillating boom sprayers, and overhead sprinklers, and concluded that "air blast application has definite advantages in efficacy, economy, and, in some instances, safety."

The Cooperative Extension Service of Washington State University [11(30000/16c)] commented that virtually all applications of dimethoate on apples in central Washington is by air blast equipment. Prohibiting the use of dimethoate in air blast equipment would virtually eliminate the use of the chemical on apples in central Washington.

ii. *The Agency's PD 4 Response.* None of the comments provided specific new information that causes the Agency to revise its original estimates on the economic benefits of dimethoate or the economic impact of cancelling dimethoate use on citrus, pome fruit, and pecans. The Agency was unable to estimate the quality or yield losses due to a lack of necessary data. The $551,000 economic impact on citrus growers, estimated in PD 2/3, is an increase in costs. Output effects could not be measured. Therefore the Agency's original estimate of the economic benefits of dimethoate use on citrus, pome fruit, and pecans remains unchanged. The comments do emphasize, however, the extensive use of air blast application on these crops, and the Agency agrees with the commenters that air blast appears to be the predominant mode of application of dimethoate for the control of certain insect pests on these crops.

The University of Arizona argued that aerial application to citrus requires a second application compared to air blast. From this argument one would presume that air blast only requires a single application. The University of California however, estimated "that in the San Joaquin Valley, 70% of the first applications of dimethoate for thrips control on citrus are applied with air blast equipment." This statement would lead one to believe that a second application is required, at least in the San Joaquin Valley. The Agency re-reviewed the information in the USDA/EPA Assessment Team Report on Dimethoate. A summary of the number of applications of dimethoate to citrus by aerial and ground application indicates that on an average 1 to 2 applications of the pesticide, whether applied by ground equipment or by aerial application, are made to citrus crops.

b. *Citrus—i. Comments on Air Blast Application of Dimethoate for Control of Aphids and Citrus Thrips.* The College of Agriculture of the University of Arizona [5(3000/16c)] commented that dimethoate use in Arizona is almost exclusively confined to citrus, some for the control of aphids, but most for citrus thrips. The commenter stated that 90% of the applications of dimethoate are by air blast ground spraying. Aerial application, continued the commenter, does not provide adequate canopy penetration, requiring a second aerial application a few days later, thus doubling cost and the amount of insecticide used as well as increasing exposure.

ii. *The Agency's PD 4 Response.* The Agency agrees with the commenter that ground application of dimethoate, whether it be boom sprayer or air blast sprayer, does tend to give better pentration of the canopy of citrus trees than does aerial application. The Agency also agrees that for stem feeding pests, such as mites and scale insects, applications that penetrate the canopy are more effective. However, where the pest is a peripheral feeder, such as terminal feeding aphids or thrips, aerial applications can be used and are used when conditions do not permit utilizing air blast equipment.

Thus, this comment provides no specific new information that causes the Agency to revise its original estimates on the economic benefits of dimethoate use on citrus.

c. *Pome Fruits—i. Comments on the Use of Dimethoate for Control of Rosy Apple Aphids.* William R. Gale [3(30000/16c)] commnted that the states of Oregon and Washington need dimethoate for control of rosy apple aphids for occasions when other insecticides will not work.

Oregon State University Extension Service [4(30000/16c)] commented that:

> Insecticides for rosy apple aphid control in the spring are often mixed with fungicides for disease control. Tank mixing of water-dispersible powders with emulsifiable concentrates containing petroleum solvents often causes phytotoxicity to fruit and foliage. Dimethoate is the only systemic aphicide in a water-dispersible formulation which may be more safely applied as a tank mix with water-dispersible fungicides. Control of rosy apple aphid and woolly apple

aphid is often difficult due to the difficulty of contacting the insects. Rosy apple aphids distort and roll leaves and are protected from wetting in the rolled leaves, while woolly aphid aerial colonies secrete a cottony wax over their bodies which repels water sprays. In controlling these species, is is often necessary to use a systemic insecticide such as dimethoate applied thoroughly to the foliage by ground dispersal equipment. Dimethoate is needed as a necessary alternative in control of these pests in commercial apple orchards.

ii. *The Agency's PD 4 Response.* The Agency agrees with these commenters on the usefulness of dimethoate in controlling the rose apple aphids. The Agency is not proposing to cancel the use of dimethoate on apples. Moreover, the Agency has decided not to pursue cancellation of air blast application at this time. The Agency will re-assess its decision on the air blast use when the results of exposure studies are received and evaluated.

iii. *Comments Regarding the Registration of Phosphamidon Having Been Withdrawn.* The Cooperative Extension Service of Washington State University [11(30000/16c)] forwarded comments from its Tree Fruit Research Center indicating the increased need for dimethoate on apples, since the registration of phosphamidon, a widely-used insecticide for aphids and white apple leafhopper, has been withdrawn.

iv. *The Agency's PD 4 Response.* The Agency does not have any information indicating that the registration of phosphamidon has been withdrawn. A check of the records indicates that phosphamidon is still registered with the Agency and would therefore be allowed for use.

d. *Pecans—i. Comments on the Impact of A Motor Increase in the Cost of Pecan Production.* The Cooperative Research Service of the University of Georgia at Athens [1(30000/16c)] and at Tifton [1A(30000/16c)] commented that "While the effects of cancellation might be negligible or slight on a nationwide basis (FR, p. 66560), a minor increase in the cost of production might mean the differences in whether or not some small pecan growers can economically manage their arthropod pests".

ii. *The Agency's PD 4 Response.* In PD 2/3 the Agency had estimated decreased farm income for pecans would be $14.34 per impacted acre if dimethoate were cancelled for use on pecans. However, the Agency's proposal was not to cancel the use of dimethoate but rather to prohibit one particular application method. Dimethoate would have still been available for use on pecans but by a mode of application other than air blast. In addition, phosalone and dialifor are available as alternatives to dimethoate. The use of dimethoate with an alternative mode of application or the substitution of the alternative compound would only result in a minor increase in the cost of production. Although this slight cost increase might have an impact on some small pecan growers, the Agency does not believe in general such an impact would be substantial at the user level.

C. Comments Relating to Regulatory Options

1. *Summary of the Agency's Regulatory Options in PD 2/3.* The development of the regulatory options designed to reduce the risks accompanying the use of dimethoate focused on means to reduce the level of human exposure to dimethoate. In addition to dietary exposure, individuals may be exposed to dimethoate before or during application. Before application, mixers and loaders may be exposed both dermally and via inhalation as the result of splashing, vaporization, or accidental spills; during application, pilots and flaggers involved in aerial application as well as ground applicators, may all be exposed both dermally and via inhalation.

The Agency considered each of these exposure situations, and identified several categories of regulatory options which include various methods of risk reduction. Those regulatory options considered were as follows:

(1) Continue registration of all uses without restriction.

(2) Continue registration of all uses without restriction but require additional oncogenicity, mutagenicity, and delayed neurotoxicity studies.

(3) Continue registration of all uses but (a) require additional oncogenicity, mutagenicity, and delayed neurotoxicity studies, and (b) amend the terms and conditions of certain registrations.

(4) Continue registration of all uses but (a) require additional oncogenicity, mutagenicity, and delayed neurotoxicity studies, (b) amend the terms and conditions of certain registrations, and (c) require comprehensive studies to determine the amount of exposure incurred during all air blast application situations.

(5) Continue the registration of most uses but (a) require additional oncogenicity, mutagenicity, and delayed neurotoxicity studies, (b) amend the terms and conditions of certain registrations, (c) require comprehensive studies to determine the amount of exposure incurred during all air blast situations, and (d) cancel the use of all dust formulations.

(6) Continue registration of most uses by (a) require additional oncogenicity, mutagenicity, and delayed neurotoxicity studies, (b) amend the terms and conditions of certain registrations, (c) specifically prohibit the use of air blast equipment when treating citrus, pecans, and pome fruit, (d) require comprehensive studies to determine the amount of exposure incurred during all air blast situations not covered in (c) above, (e) specifically warn female workers involved in air blast application practices of the potential teratogenic effects of dimethoate, and (f) cancel the use of all dust formulations.

(7) Cancel all uses.

In PD 2/3 the Agency propose adoption and implementation of regulatory option number 6 above. This option was selected because it represented the best available course of action for reducing or eliminating applicator exposure and concurrent risk while maintaining a generally high level of benefits and for gathering additional toxicological data needed to better evaluate risk. In adopting this option the Agency proposed to take regulatory action in three general areas: 1) generation of additional data; 2) modifying the terms and conditions of registration for the uses of dimethoate; and 3) cancellation of selected high risk application practices and high risk formulations.

2. *Summary and Analysis of Comments Received in PD 2/3— a. Cancel Dust Formulations—i. Summary of the Agency's Conclusions in PD 2/3.* In Position Document 2/3 of the Agency concluded that the risk resulting from the use of dust formulations of dimethoate outweighed the benefits derived from the use of the dust formulations. Dimethoate in the form of a wettable powder is the choice alternative to the dust formulation. Because the wettable powder formulation results in lower applicator exposure, the total risk for the wettable powder formulation would be less than that of the dust formulation. The Agency, therefore, proposed eliminating the use of all dust formulations of dimethoate. The dust formulations are intra-state labels for which applications for Federal Registration are pending. Intra-state applicants who have previously submitted a Notice of Application for Federal Registration are permitted to sell and distribute affected pesticide products solely in intra-state commerce, pending a final decision concerning Federal Registration.

ii. *Comments on the Elimination of Dust Formulations.* The U.S. Department of Agriculture and the Scientific Advisory Panel agreed, in their comments, with the Agency's decision to eliminate the registration for dust

formulations of dimethoate in order to reduce applicator risk.

iii. *The Agency's PD 4 Response.* The Agency will proceed with its proposed elimination of the use of all dust formulations of dimethoate.

b. *Require Protective Clothing and Equipment—i. Summary of the Agency's Conclusion in PD 2/3.* In Position Document 2/3, the Agency concluded that potential mutagenic and reproductive/teratogenic risks are too high relative to the benefits associated with the use of dimethoate. However, the Agency also concluded that the benefits of dimethoate use would outweigh the risks, if specific changes in application practices were implemented to reduce dermal and respiratory exposure. The Agency, therefore, proposed the requirement of protective clothing for applicators of all dimethoate products and for all uses of dimethoate, and the requirement of respirators for pilots and mixer/loaders.

ii. *Comments on Requiring Protective Clothing for Applicators of All Dimethoate Products and All Uses.* The Agency received several comments relating to the recommendation to require protective clothing for all products and all uses.

The Department of Agriculture, in their comments supports the modification of labeling to include protective clothing and equipment for applicators.

American Cyanamid [7(30000/16c)] commented that a significant benefit in reducing exposure can be achieved through the use of protective clothing and for certain uses is preferred. For certain uses, however, American Cyanamid contended that this requirement is an extra precaution that will not significantly increase the margin of safety. The commenter cites CYGON® 2E systemic insecticide formulations for fly vector control and insect control on ornamental plants as an example. American Cyanamid stated that the margin of safety as calculated by the EPA, for the fly vector control use is 1,474 and that this is achieved without discomforting the applicator with rubber gloves, boots, etc. Protective clothing for this use raises the margin of safety to 3,111. American Cyanamid stated that although protective clothing is advisable, its requirement in this case is arbitrary.

American Cyanamid also stated that for other uses simple devices such as a canvas covering for the applicator area on the rig may be preferable to protective clothing and that in excessively hot temperatures applicators would more likely exercise this safety precaution than they would the use of protective clothing.

The Nebraska Aviation Trades Association [2(30000/16c)] stated that the required protective clothing would hinder the pilots in flying the aircraft, and that the use of closed mixing and loading equipment would make this requirement unnecessary for applicators.

The California Citrus Quality Council [9(30000/16c)] also stated that the use of closed mixing and loading equipment would obviate the need for protective clothing, and that drivers are exposed only to the diluted spray material and are, in addition, protected by cab enclosures or other protective provisions.

iii. *The Agency's PD 4 Response.* In Position Document 2/3 the Agency calculated the MOS for the various uses of dimethoate from the estimated exposure for those uses. The assumptions which were made in order to arrive at the exposure estimates, and thus, to calculate the MOS are stated in Position Document 2/3. Table 8 shows the Agency's calculations of applicator exposure and margins of safety for various uses of dimethoate under current practices (no protective clothing and equipment) and with protective clothing and equipment.

TABLE 8 - Applicator exposure and margins of safety for various users of dimethoate excluding dietary (oral) exposure[1/]

CROP	TYPE OF SPRAYING	SUBGROUP	COMBINED DERMAL AND INHALATION EXPOSURE	MOS UNDER CURRENT PRACTICES[2/]	EXPOSURE (DERMAL AND INHALATION WHEN PROTECTIVE CLOTHING IS REQUIRED)	MOS WHEN PROTECTIVE CLOTHING IS REQUIRED	TOTAL EXPOSURE WHEN PROTECTIVE CLOTHING AND RESPIRATORS ARE REQUIRED	MOS WHEN PROTECTIVE CLOTHING AND RESPIRATORS ARE REQUIRED
corn	air	pilots	0.0083	337	0.00806	347	0.00086	3,256
corn	air	flaggers	0.008	350				
corn	air	mixers/loaders	0.0063	444	0.0043	651	0.00088	3,182
ornamental	ground	commerical high concentraction compressed air	0.00012	23,333	0.000037	75,676	0.00002	140,000
ornamental	ground	home garden high concentration	0.000152	18,421	0.000045	62,222	0.00003	93,330
grape	ground	Boom highest conc.	0.0012	2,333	0.0004	7,000	0.00023	12,174
grape	ground	highest conc. (custom) Copplestone model	0.0207	135	0.006	467	0.0038	737
grape	ground	dust	0.130	22[3/]	0.130	22	0.013	215
cotton	air	pilots	0.0017	1,647	0.0016	1,759	0.00017	16,471
cotton	air	mixers/loaders	0.0095	295	0.00065	4,308	0.00014	20,000
cotton	ground	applicators	0.0078	359	0.0024	1,167	0.00145	1,931
cotton	ground	mixers/loaders	0.00033	8,485	0.00011	25,454	0.00007	40,000
citrus	air	pilots, ground crews, mixers/loaders	same as corn					
citrus	ground (air blast model)	applicators[4/] mixers/loaders	0.39	7	0.078	36	0.071	39
sorghum	air	same as corn						
veg. fields (tomato, broccoli)	air	pilots	0.013	215	0.0128	219	0.014	2,000
		flaggers	0.013	215				
		mixers/loaders	0.0062	452	0.0043	651	0.00088	3,182
veg. (Fla)	ground	applicators	0.00005	56,000	0.00001	280,000	0.000007	400,000
vector control (house fly)	ground	applicators	0.0019	1,474	0.0009	3,111	0.00032	8,750
forest pine (seed orchard)	ground	applicators	0.0008	3,500	0.00025	11,200	0.00014	20,000
pecan	ground (air blast)	applicators mixers/loaders	0.119	24	0.0252	111	0.0232	121
safflower	air	same as corn						
pome	ground (air blast model	commercial applicators including mixers/ loaders	0.242	12	0.0527	53	0.0485	58
pome	ground	hose sprayers	0.00017	16,471	0.00005	56,000	0.000032	87,500
soybean	air	same as corn						
wheat	air	same as corn						
tobacco high conc.	ground	applicators including mixers/ loaders	0.00042	6,667	0.00013	21,538	0.00008	35,000
alfalfa High conc.	ground	applicators including mixers/loaders	0.00052	538	0.00163	1,718	0.00097	2,887
veg. fields (lettuce)	ground	applicators	0.0002	14,000	0.00007	40,000	0.000043	65,116
		mixers/loaders	0.00026	10,769	0.00009	31,111	0.000054	51,852

1/ This table was Table VII in Position Document 2/3.

2/ Based on a 2.8 mg/kg NOEL (Khera unpublished).

3/ Exposure is via inhalation .

4/ Applicator is also mixer/loader.

From Table 8 we can see that there are certain use situations where, based on these exposure estimates, protective clothing would not significantly increase the estimated margin of safety. The Agency would therefore tend to agree, to a certain extent, with American Cyanamid's comments that for certain uses the MOS would not substantially increase with protective clothing. However, it would not only be impractical but nearly impossible to develop labeling to show all the various use areas and/or conditions where protective clothing would and would not significantly increase the margin of safety for the applicator.

With regard to American Cyanamid's contention that simple devices such as canvas coverings for the applicator area on the rig are preferred by applicators in excessively hot weather, the Agency would also tend to agree with American Cyanamid. However, in the absence of field data measuring the efficacy of such devices in reducing exposure to applicators, the Agency will proceed with requiring protective clothing, but encourages the development of field data for such devices. The Agency would be receptive to modifying labeling if data showing the risk reducing potential of this method are provided.

Therefore, while it agrees to some extent with American Cyanamid, the Agency will require the use of protective clothing for all uses. However, pilots will not be required to wear protective clothing while engaging in flying the aircraft. The Agency has re-evaluated the requirements for protective equipment and clothing for aircraft pilots and has decided that protective clothing and equipment would in itself be a hazard to pilots engaged in flying the aircraft. Pilots will not therefore be required to wear protective clothing and equipment while flying the aircraft, however the Agency encourages the use of aircraft equipped with positive ventilation equipment. Pilots involved in the mixing-loading operation will be required to wear protective clothing and equipment during that operation.

With regard to the comments of the California Citrus Quality Council on mixer/loader exposure and protective clothing, the Agency does not feel that the efficacy of closed mixing and loading systems have thus far demonstrated that they would obviate the need for protective clothing. Recent industry submissions on closed systems suggest that protective clothing may not be necessary, however, field monitoring studies need to be carried out to determine the level of exposure to applicators using this type of equipment. In the meantime the Agency will require protective clothing even for closed mixed and loading systems.

c. *Require Automatic Flagging—i. Summary of the Agency's Conclusion in PD 2/3.* In Position Document 2/3,, the Agency determined that the potential risks to human flaggers are too high relative to the benefits associated with the use of dimethoate. Therefore, the Agency proposed to eliminate the risk by requiring the use of automatic flagging equipment for all aerial applications situations.

ii. *Comments Opposing the Use of Automatic Flagging Devices.* The Scientific Advisory Panel (SAP), in their comments, objected to the proposed prohibition of the conventional use of human flaggers to mark swaths in aerial spraying and the associated requirements for use of automatic flagging devices. The Panel stated that insufficient research has been accomplished to indicate that the technique would be effective regulatory procedure to reduce risks to man and the environment. The Panel recommended that the Agency determine the limitations of automatic flagging in various agricultural situations before making the use of these devices an absolute requirement. The Panel also encouraged the Agency to promote research on flagging devices to expedite their development and availability to farmers.

The Department of Agriculture suggested, in their formal comments, that the Agency not prohibit the use of human flaggers, but require protective clothing and equipment to minimize any exposure the flaggers may experience. The Department of Agriculture also recommended additional studies of actual exposure of all workers during the aerial application.

American Cyanamid [7(30000/16c)] suggested alternative labeling requiring human flaggers to use "proper flagging techniques to avoid exposure from drift." Cyanamid added that the use of automatic flag paper dispensers must be discontinued after the plants reached a height that makes it difficult to see the paper. They further urged the Agency to accept the analysis and comments presented by the National Agricultural Aviation Association at the SAP meeting regarding automatic flagging.

Mr. Harold Collins, Director of the National Agricultural Aviation Association made a presentation before the Scientific Advisory Panel on November 29, 1979, in which he addressed the recommendation that automatic flagging equipment be used to the exclusion of ground flaggers.

Mr. Collins stated that automatic flagging equipment is expensive, and that some types can cost as much as $50,000 per aircraft. There are less expensive flagging devices than the $50,000 device, but many of these become impractical or unusable later in a spray season. Mr. Collins further commented that the "ag" aircraft industry would find it inappropriate to even continue spraying dimethoate in some situations if they were required to go to equipment that is as expensive as $50,000.

Mr. Collins questioned the necessity to eliminate the possibility of flagging since there are methods of human flagging which are acceptable which should minimize the potential exposure.

Mr. Collins stated that there are circumstances that make automatic flagging systems impractical. For example, a system which uses paper is designed to mark the last or the edge of the last spray run (or the end of a spray run midfield) becomes impractical as the crop matures and obscures the paper from view. Automatic flagging is not necessarily adequate until you get into equipment like the electronic equipment which is accurate to about five meters at the current time. However, these electronic devices are a new and innovative aid, and they are very expensive.

Mr. Collins commented that if it was found that protective clothing was required with dimethoate use, he did not believe that the National Agricultural Aviation Association would object to it.

The University of California (8(30000/16c)) commented that the technology for efficient mechanical flagging or marking is not well-advanced. They stated that proper protective clothing and equipment might reduce the exposure to persons serving as flaggers for aerial application.

The California Citrus Quality Council (9(30000/16c)) commented that "practical procedures for automatic flagging have not been adequately developed and have not been generally adopted by licensed pilots and their organizations. . . . (P)rovision should be made for the continued use of workers as flaggers, since, properly positioned and protected, they are not at untenable risk in this occupational exposure."

iii. *The Agency's PD 4 Response.* The Agency has decided not to prohibit the use of human flaggers during aerial application of dimethoate, but to encourage the use of automatic devices, when feasible. When human flaggers are used, precautions, such as the wearing of protective clothing, will be required to minimize the exposure of applicators to dimethoate.

d. *Prohibit Air Blast Application on Citrus, Pome Fruits, and Pecans—i. Summary of the Agency's Conclusions in PD 2/3.* In Position Document 2/3, the Agency concluded, in the case of the citrus, pome fruits, and pecan uses of dimethoate, that the use of available protective clothing and equipment will not reduce the risk experienced by applicators using air blast equipment to an acceptable level. The Agency, therefore, proposed the prohibition of air blast application equipment when treating citrus, pome fruits, and pecans with dimethoate.

In Position Document 2/3, the Agency projected that if air blast application of dimethoate on citrus were cancelled, some dimethoate users would use aerial application, a few might switch to other ground application techniques, and some would use alternate pesticide. Because of a lack of data it was not possible to determine the relative adoption ratios of these three strategies and their associated economic impacts. Thus, the impact of restricting air blast application was estimated to range from zero impact to the same impact as cancellation (more than $551,000/year). Yield and quality losses were not considered in the $551,000 impact.

ii. *Comments on Exposure with of Air Blast Application for Citus, Pome Fruit, and Pecans Compared to Alternative Application Techniques Compared to Alternative Application Techniques.* The Agency received comments on this proposed regulatory action from the Scientific Advisory Panel, U.S. Department of Agriculture, University of Georgia [1(30000/16c)], William R. Gale of Oregon [3(30000/16c)], Oregon State University [4(30000/16c)], University of Arizona [5(30000/16c)], Hood River Grower-Shipper Association [6(30000/16c)], American Cyanamid [7(30000/16c)], University of California [8(30000/16c)], California Citrus Quality Council [9(30000/16c)], University of Idaho [10(30000/16c)], and Washington State University [11(30000/16c)].

The California Citrus Quality Council [9(30000/16c)] commented that the definition of air blast equipment, provided in the **Federal Register**, is not adequate or useful, since the exposure of the applicator is central to the issue, not the operating pressure and spray volume. A functional definition proposed by the Council characterizes air blast equipment for tree crops as that application method which uses a directionalized air stream with velocities of 50 miles per hour (m.p.h.) or greater to move entrained spray droplets towards a target area.

The University of California at Davis [8(30000/16c)] also proposed a definition of air blast equipment based on velocity of the air stream, not on pressure or volume.

The California Citrus Quality Council [9(30000/16c)] further commented that air blast applicators with a variety of conditions of pressure, velocity, and volume do not invariably provide greater applicator exposure than application with manual equipment or with stationary or oscillating booms. Variations in exposure relate more to ground speeds, the direction, magnitude, and constancy of natural air movement of the equipment, humidity/temperature factors, etc., than to the type of equipment. The Council predicted, in fact, that the greatest potential for exposure was in manual ground spraying and that oscillating booms with their recurrent forward sweep of the spray pattern, slower ground speeds, and broader range of droplet size have greater potential for exposure than air blast units which involve faster ground speeds and more forcibly project the spray into the target area at a set angle of 90 degrees in relation to the movement of the equipment. Applicator exposure could be minimized, according to the Council, by using simple canopies or cab enclosures.

Finally, the California Citrus Quality Council supported applicator exposure studies underway in California and indicated that, unless such exposure studies show the exposure to be substantial and not reducible by simple canopies or cab enclosures, that the citrus growers would protest the prohibition of air blast application of dimethoate.

iii. *The Agency's PD 4 Response.* All of the comments received by the Agency on this issue disagreed with the recommended option to cancel the air blast use of dimethoate for citrus, pome fruits, and pecans. However, none of these comments contained any new information regarding application exposure resulting from this use of dimethoate. Many of the comments recommended that field monitoring studies be carried out in order to refine the Agency's exposure estimates.

The Agency agrees that additional data is necessary to refine the Agency's exposure estimates for the air blast uses of dimethoate. In the absence of appropriate data to adequately compare applicator exposure from the use of air blast equipment with the exposure resulting from other application methods, such as the oscillating boom sprayers, the Agency believes that the cancellation of the air blast use is premature. Hence, the Agency has reconsidered its position and will not cancel the airblast use of dimethoate at this time.

This conclusion is supported by information indicating that a large number of farmers prefer the use of air blast equipment, and own such equipment. Hence, they are likely to use substitute pesticides which may be at least as hazardous as dimethoate with this air blast equipment if dimethoate is not available. The Agency also recognized that dimethoate is a valuable pesticide component of integrated pest management (IPM) programs for citrus insect pests and that such programs are almost totally based around the use of air blast equipment to apply reduced dosages and selective coverage. In view of these considerations, the Agency will retain the air blast use at this time. The Agency will, however, require the submission of exposure information in accordance with the protocols and timetables set forth in Chapter III of this document, and will use this data, in conjunction with any other available information, to re-assess the exposure potential of the air blast method and the attendant risks posed to humans.

e. *Warning Statement for Female Applicators—i. Summary of the Agency's Conclusion in PD 2/3.* In Position Document 2/3, the Agency stated its concern for women applicators applying dimethoate via air blast equipment during pregnancy. The Agency proposed to require that all products containing dimethoate which can be or are intended to be used with air blast equipment must bear a statement on the label warning female workers that dimethoate causes birth defects in laboratory animals. The label warning proposed by the Agency reads as follows:

Warning to Female Workers (in 16 pt. Red lettering)

The United States Environmental Protection Agency has determined that dimethoate, an active chemical ingredient in this product, causes birth defects in laboratory animals. Exposure to this product during pregnancy should be avoided.

ii. *Comments on Requiring a More Direct Warning.* The Department of Agriculture suggested that a more direct warning such as "Pregnant women should avoid exposure", be used to alert female workers using air blast equipment of possible hazards resulting from exposure to dimethoate during pregnancy.

iii. *The Agency's PD 4 Response.* The label warning statement proposed by the Agency in PD 2/3 concludes with the statement: "Exposure to this product during pregnancy should be avoided". The Agency believes this statement is a

sufficiently direct warning, however the Agency has decided not to require this label modification.

iv. *Comments Urging the Agency to Withdraw the Requirement for a Warning Statement to Female Applicators.* American Cyanamid [7(30000/16c)] recommended that the Agency withdraw the requirement for a warning statement to female applicators. In the opinion of American Cyanamid, the requirement is not supported by the facts in Dr. Khera's paper and a warning statement describing other than acute hazards would represent a change in the Agency's policy. American Cyanamid also stated that the Science Advisory Panel rejected the teratology warning statements on labels.

v. *The Agency's PD 4 Response.* The Agency has decided to drop the requirement for a warning statement to female applicators. This decision was based on the Agency's conclusion that the available data on teratogenicity does not indicate that dimethoate poses a significant teratogenic risk. Therefore, because of the limited extent of our data at this time the Agency will not require a warning to female applicators.

D. *Comments Relating to Testing Requirements*

1. *Summary of the Agency's PD 2/3 Position.* In Position Document 2/3 the Agency identified several areas requiring additional testing and directed registrants to submit the data discussed below.

a. *Oncogenicity.* The Agency determined that available evidence for oncogenicity is suggestive and warrants further study. Therefore, the Agency directed registrants to conduct an oncogenicity bioassay using dimethoate in the same strain of mice and rats as that of the Gibel study. The Agency stated that this study shall be completed and submitted within three years of the Agency's final determination (Position Document 4) for dimethoate. The Agency further stated that protocols for this oncogenicity bioassay shall be submitted to the Agency within 90 days of receipt of the Agency's final Notice of Determination (PD 4) for dimethoate.

b. *Mutagenicity.* The Agency also determined that insufficient data exists upon which to base a mutagenicity risk assessment. The Agency concluded that additional testing is required. Therefore, the Agency directed registrants to provide adequate test data concerning dimethoate's ability to cause gene mutation in animal cells. The Agency stated that registrants shall also conduct a dominant lethal study in mice as well as studies designed to detect spindle effects which may result in numerical chromsomal aberrations. Protocols for these studies shall be submitted to the Agency within 90 days of receipt of the Agency's final Notice of Determination for dimethoate. Tests shall be completed and submitted within eighteen (18) months of receipt of the Agency's final Notice of Determination for dimethoate. The Agency also stated that further testing may be required based on the results of the studies discussed above in order to properly evaluate mutagenic potential and/or risk.

c. *Delayed Neurotoxicity.* The Agency determined that insufficient data are available to determine whether dimethoate can induce delayed neurotoxic effects. Therefore, the Agency directed registrants to conduct appropriate neurotoxicity testing in accordance with the final registration guidelines. Protocols for these studies shall be submitted to the Agency within 90 days of receipt of the Agency's final Notice of Deermination for dimethoate. These tests shall be completed and submitted within eighteen (18) months of receipt of the Agency's final Notice of Determination for dimethoate.

d. *Applicator Exposure Data.* The Agency determined that there is insufficient applicator exposure data concerning air blast application situations to determine whether there are sufficient margins of safety for reproductive/teratogenic effects. The Agency directed registrants to conduct appropriate field studies to determine worker exposure (dermal and inhalation) during application of dimethoate using air blast type application equipment. Registrants shall gather such data for each crop where air blast equipment is used or on crops deemed representative of such applicator exposure situations. Registrants shall submit proposed test protocols for gathering applicator exposure data to the Agency within 90 days of receipt of the Agency's final Notice of Determination for dimethoate and shall complete all such tests and submit all exposure data to the Agency within 18 months of receipt of the Agency's final Notice of Determination for dimethoate.

2. *Summary and Analysis of Comments Received on PD 2/3—a. Oncogenicity Testing—i. The Agency's Position on PD 2/3.* In Position Document 2/3, the Agency concluded that additional data were required concerning the oncogenic potential of dimethoate.

ii. *Comments Objecting to Additional Oncogenicity Testing.* The Scientific Advisory Panel (SAP), in its formal comments, objected to this additional testing requirement, stating that the negative NCI bioassay, flawed though it is, in conjunction with a lack of carcinogenicity of organic phosphate pesticides in general, makes further testing of dimethoate unnecessary.

American Cyanamid [7(30000/16c)] supported the SAP position against further oncogenicity testing.

iii. *The Agency's PD 4 Response.* The Agency's Cancer Assessment Group (CAG), in a recent review (Albert, R.E., 1980) of the SAP position, concluded that there is substantial evidence for the mutagenicity of dimethoate, coupled with suggestive evidence for carcinogenicity in the 1973 Gibel study done on Wistar rats. The NCI bioassay involved a different strain of rats, namely, the Osborne-Mendel rat. In addition, the evidence of hematopietic toxicity in the Wistar rat but not in the Osbourne-Mendel rat indicates the possibility of a different metabolic handling of dimethoate or target organ susceptability in the two strains.

Therefore, the Agency has decided to retain the requirement for an oncogenic study on the Wistar rat at the highest dose level used in the Gibel study of 30 mg/kg given by stomach gavage twice a week.

b. *Reproduction Testing—i. The Agency's Position of PD 2/3.* The Agency did not propose any additional testing for reproductive effects in Position Document 2/3.

ii. *Comments Indicating the Need for Additional Reproductive Studies.* The Scientific Advisory Panel, in its formal comments, indicated that additional reproduction studies are necessary to assess the effect of dimethoate on male reproduction. The Panel stated that it noted positive effects in two studies on reproduction implying the possibility of effects on males. Therefore, the SAP suggested that the Agency require a reproductive test to determine dose-response effects on females (e.g. prevalence of pregnancy, pre and post implantation loss, survival and growth of young, etc.) and on males (e.g. spermatogenesis, seminal vesicle size, etc.).

iii. *The Agency's PD 4 Response.* The Agency rejects the Scientific Advisory Panel's recommendation since American Cyanamid's multigeneration reproduction study has shown no adverse effects in males. The Agency will not require additional reproduction testing but will require an additional teratogenicity study on technical dimethoate using 2 species of laboratory animals in accordance with proposed guidelines (FR 43, No. 163, Tuesday, August 22, 1978).

c. *Mutagenicity Testing—i. The Agency's Position in PD 2/3.* In Position

Document 2/3, the Agency concluded that additional data were required concerning the mutagenic potenitial of dimethoate. The data required included data concerning dimethoate's ability to cause gene mutation in animal cells; a dominant lethal study in mice; and spindle effects studies.

ii. *Comments Requesting that the Spindle Effects Testing Requirement be Delected.* American Cyanamid [7(30000/16c)] requested that the spindle effects testing requirment be deleted in the absence of guidelines.

iii. *The Agecny's PD 4 Response.* The Agency rejects American Cyanamid's request to delete the requirement for spindle effects testing and will require these tests. The Agency is currently developing a policy for spindle effects and until that policy is available will provide device and evaluate testing procedures for spindle effects.

iv. *Comments Urging the Use of Mutagenicity Tests Presently Proposed in the Pesticide Registration Guidelines.* American Cyanamid suggested that dimethoate be evaluated using mutagenicity tests presently proposed in the pesticide registration guidelines.

v. *The Agency's PD 4 Response.* The following studies represent only the minimum requirements for data on the potential heritable effects of Dimethoate. This is a subset of the studies proposed in the pesticide registration guidelines.

(1) A mammalian *in vitro* point mutation test.

(2) A sensitive sub-mammalian point mutation test. (Bacteria, fungi, insect).

(3) A primary DNA damage test (i.e., sister chromatid exchange or unscheduled DNA synthesis).

(4) A mammalian *in vitro* cytogenics test. If this suggests a positive result, a dominant lethal or heritable translocation test may be required.

After results from these test systems and other toxicology disciplines have been considered, additional testing may be required to further characterize or quantify the potential genetic risks.

Although the Agency's mutagenic testing requirements are not final, the standards for these tests should be based on the principles set forth therein (FR 43, NO. 163, Tuesday, August 22, 1978). Protocols and choices of test systems should be accompanied by a scientific rationale. Substitutions of test systems for those listed above will be considered after discussion with the Agency.

The requirements should be considered an interim guide and not final Agency policy. However, the Agency does considered the above testing scheme to be a reasonable minimum requirement.

The Agency has established the mutagenic potential of dimethoate by means of the screening studies listed above and is now requiring additional testing to quantify risk to humans. The studies being required at this time are: 1) gene mutation study in mammalian system; 2) a dominant lethal study in mice; and 3) studies designed to detect spinde effects, i.e., an *in vivo* bone marrow cytogenetic study.

vi. *Comments Recommending that Mutagenic Assays be Conducted in Accordance with the SAP Recommendation on the Gudielines.* The Scientific Advisory Panel (SAP), in its formal comments, recommended that mutagenic assays be conducted in accordance with their recommendations on the guidelines, previously submitted to the Agency (May 31, 1978; Review of proposed Rule Making on Subpart F, Guidelines for Registering Pesticides in the United States).

vii. *The Agency's PD 4 Response.* The Agency recognizes the fact that the final form of the guidelines has not been established yet. The Agency feels that, since the published reports on dimethoate, while not completely validated, have pointed up areas in which dimethoate could be a more potent mutagen than now indicated, the testing can be directed at specific aspects of mutagenicity.

The Agency is currently reviewing the SAP's recommendations on the Guidelines. Until the completion of this review, the mutagenic assays should be conducted in accordance with the Agency's proposed testing Guidelines where appropriate or by procedures recommended by consultation with the Agency.

viii. *Comments Suggesting that the SAP Recommendations on Spindle Effects be Followed.* The SAP suggested that the Agency follow their previously submitted recommendations on spindle effects (November 30, 1979; Review of FIFRA Section 6(6)(7) action on Benomyl and Thiophanate-methyl).

ix. *The Agency's PD 4 Response.* The Agency has recently completed guidelines on mutagenicity risk assessment. Those guidelines were published in the **Federal Register** on November 13, 1980 (45 FR 74984). This document has considered earlier SAP comments in reaching a position on mutagenicity risk assessment (including spindle effects).

x. *Comments on Using Bone Marrow Derived Cells in Spindle Effect Assays.* The SAP recommended using bone marrow derived cells in spindle effect assays.

xi. *The Agency's PD 4 Response.* The Agency agrees that an *in vivo* bone marrow cytogenetic analysis may be of assistance, particularly since one of the unvalidated papers (Bhunya and Behera, 1975) indicated that dimethoate may affect chromosomes in bone marrow cells.

d. *Delayed-Neurotoxicity Testing—i. The Agency's Position in PD 2/3.* In Position Document 2/3, the Agency concluded that additional data were required concerning the potential of dimethoate to produce delayed neurotoxic effects.

ii. *Comments Urging Re-evalutation of the Requirement for Another Delayed Neurotoxicity Study.* The Scientific Advisory Panel (SAP), in its formal comments, recommended that the Agency re-evaluate the requirement for another delayed neurotoxicity study in light of a study by T.B. Gaines (1969).

iii. *The Agency's PD 4 Response.* The Agency has re-evaluated the American Cyanamid acute neurotoxicity study and the Gaines study. Since the dose in the American Cyanamid study was administered in feed instead of by gavage, the dose may not have been sufficiently large to determine dimethoate's neurotoxic potential.

The Gaines study, while indicating no neurotoxic effects of dimethoate, did not give important details, such as dosage used, number of animals used, and whether or not histopathology on the nerves was carried out. After reevaluating both the American Cyanamid (1965b) studies and the Gaines (1969) study the Agency concludes that not enough data is available in these studies to make a hazard determination.

Therefore, the Agency has decided to retain the requirement that a delayed neurotoxicity study be performed in accordance with EPA's proposed pesticide registration guidelines (FR 43, No. 163, Tuesday, August 22, 1978).

e. *Applicator Exposure Studies—i. The Agency's Position in PD 2/3.* In Position Document 2/3, the Agency concluded that additional exposure studies were needed to determine worker dermal and inhalation exposure during the application of dimethoate with air blast equipment.

ii. *Comments on Additional Applicator Exposure Studies.* No comments were received which objected to additional exposure studies of air blast applications. In fact several commenters, including SAP, Arizona [5(30000/16c)], California [8(30000/16c)], California Citrus Quality Council [9(30000/16c)], and Idaho [10(30000/16c)], recommended that the Agency support and consider research planned

by the University of California on applicator exposure during air blast use on citrus.

iii. *The Agency PD 4 Response.* Additional field monitoring studies will be required to determine the exposure to applicators during application of dimethoate with air blast equipment and to determine the exposure to flaggers wearing protective clothing during aerial application.

Registrants are directed to conduct appropriate field studies to determine worker exposure (dermal and inhalation) during application of dimethoate using air blast type application equipment and flagger exposure (dermal and inhalation) during aerial application. Registrants shall gather such data for each crop where air blast equipment is used or on crops deemed representative of such applicator exposure situations, and also for aerial application. Registrants shall submit proposed test protocols for gathering applicator exposure data to the Agency within 90 days of receipt of the Agency 3(c)(2)(B) letter concerning dimethoate and shall complete all such tests and submit all exposure data to the Agency within eighteen (18) months of receipt of the Agency's 3(c)(2)(B) letter for dimethoate. The Agency's 3(c)(2)(B) letter setting forth additional testing requirements for dimethoate will be issued shortly after publication of the Agency's final Notice of Determination for dimethoate.

The exposure study currently underway at the University of California (Riverside) may satisfy part of this requirement for air blast equipment. Therefore, data from that study should be submitted to the Agency as soon as possible following the conclusions of the study.

III. Conclusions

After reviewing comments from the Secretary of Agriculture, the Scientific Advisory Panel, and others who commented on EPA's findings and recommendations concerning dimethoate as set forth in PD 2/3, the Agency has decided to implement the Proposed Regulatory Option as put forward in PD 2/3 and restated in Chapter I of this document with the following modifications:

(1) The Agency will not cancel the air blast application of dimethoate on citrus, pome fruits, and pecans. However, the Agency will require an exposure study of dimethoate applicators using contemporary air blast equipment to allow a better assessment, than is currently available, of the applicators' potential risk for dimethoate in air blast use situations. After the results from the exposure studies become available, the Agency will reevaluate air blast application of dimethoate.

(2) The Agency will not require a label change to require automatic flagging. Instead the following label statement will be required on all products intended for aerial application:

Automatic flagging devices should be used whenever feasible.

If Human Flaggers are employed they must wear the protective clothing and respirator specified on this label.

In addition, the Agency will review an exposure study of flaggers wearing protective clothing during the aerial application of dimethoate to allow a better asessment of the flaggers' potential risk from dimethoate in the aerial use situation.

(3) The Agency will exempt pilots from the protective clothing and equipment requirement when flying the aircraft.

(4) The Agency will not require the label warning statement for female applicators. However, the Agency will require an additional teratology study on technical dimethoate.

The Agency's final determination for dimethoate is as follows.

A. Regulatory Actions

1. Unconditional denial of all applications for registration of dimethoate products for use in dust formulations.

2. Cancellation and denial of registrations of dimethoate products for all uses, unless the registrants or applicants for registration modify the labeling of dimethoate products to include the following:

Required Clothing and Equipment for Application. All applicators, including homeowners and flaggers, and personnel involved with the mixing, loading, and transferring operations, must wear the protective clothing and equipment enumerated below. Pilots are exempt from this requirement. The protective clothing and equipment to be worn is as follows:

a. Impermeable gloves (for example, rubber or plastic covered gloves).

b. Rubber or synthetic rubber boots or boot covers.

c. Long-sleeved shirt and long pants made of closely woven fabric.

d. Wide-brimmed hat.

e. Respirators must be worn by flaggers and mixer/loaders.

3. Cancellation and denial of registration of dimethoate products labeled for aerial application unless the registrants or applicants for registration modify the terms and conditions of registration to include the following statements:

AUTOMATIC FLAGGING DEVICES SHOULD BE USED WHENEVER FEASIBLE

IF HUMAN FLAGGERS ARE EMPLOYED THEY MUST WEAR THE PROTECTIVE CLOTHING AND RESPIRATOR SPECIFIED ON THIS LABEL

In addition to these actions, the Agency has determined, under the authority of section 3(c)(2)(B), that additional data are required to maintain the registrations of dimethoate products in effect. The request for this data is independent of the Agency's determinations regarding the termination of this RPAR. Hence, the 3(c)(2)(B) data requirements cannot be contested in an administrative hearing challenging the terms of a cancellation notice. The additional studies which the Agency is requiring are summarized below.

B. Testing Requirements

1. A dimethoate oncogenicity study using the same strains of mice and rats used by Gibel et al. (1973). The proposed protocol for this study must be submitted within 90 days of receipt of the Agency's 3(c)(2)(B) letter concerning dimethoate. This study must be completed within three years of receipt of the Agency's 3(c)(2)(B) letter concerning dimethoate (PD4).

2. Mutagenicity tests, including gene mutation studies in mammalian systems, a dominant lethal sutdy in mice, and studies designed to detect spindle effects i.e., an *in vivo* bone Narrow cytogenetic study. The protocol for these studies must be submitted within 90 days of receipt of the Agency's 33(c)(2)(B) letter concerning dimethoate. These tests must be completed and submitted within eighteen months of receipt of the Agency's 3(c)(2)(B) letter concerning dimethoate.

3. Delayed neurotoxicity tests which must be conducted, in accordance with EPA's proposed pesticide registration guidelines. The protocol for these tests must be submitted within 90 days of receipt of the Agency's 3(c)(2)(B) letter concerning dimethoate. These tests must be completed within eighteen months of receipt of the Agency's 3(c)(2)(B) letter concerning dimethoate.

4. Teratology tests on the technical dimethoate using 2 species of laboratory animals in accordance with the proposed registration guideline published in the **Federal Register** of August 22, 1978 (43 FR 37336). The protocol for these tests must be submitted within 90 days of receipt of the Agency's 3(c)(2)(B) letter concerning dimethoate. These tests must be completed within eighteen months of receipt of the Agency's 3(c)(2)(B) letter concerning dimethoate.

5. Exposure studies to determine worker dermal and inhalation exposure during the application of dimethoate with air blast equipment and dermal and inhalation exposure for flaggers during aerial application of dimethoate. Exposure data must be gathered for each crop where air blast equipment is used or on crops deemed representative of such applicator exposure situations. Registrants and applicants must submit proposed test protocols for gathering applicator exposure data within 90 days of receipt of the Agency's 3(c)(2)(B) letter and must complete all such tests and submit all exposure data within eighteen months of receipt of the Agency's 3(c)(2)(B) letter concerning dimethoate. The Agency will reevaluate air blast application of dimethoate after the results of the exposure studies become available.

The Agency's 3(c)(2)(B) letter for dimethoate will be issued shortly after publication of the Agency's final Notice of Determination for dimethoate.

Bibliography

(1) Agarwal, K. B., H. N. Mehrotra, and B. K. Paul. 1973. Effect of organic insecticides on cytology of bean *(Phaseolus vulgaris* L.). Labdev J. Sci. Tech. 11–B(3–4): 67–69.

(2) Albert, R. E. 1980. Memo; CAG response to the SAP recommenation on further oncogenicity testing on dimethoate, dated April 8, 1980. From Roy E. Albert, M.D., Chairman, Carcinogen Assessment Group (RDI–589), to Peter McGrath, Director, Hazard Evaluation Division.

(3) Amer, S. M., and O. R. Farah. 1974. Cytological effects of pesticides. VI. Effect of the insecticide "Rogor" on the mitosis of *Vicia faba* and *Gossypium barbadense*. Cytologia 39:507–514.

(4) American Cyanamid Co. 1965a. Successive generation studies in mice. American Cyanamid Co., Princeton, N.J. (unpublished).

(5) American Cyanamid Co. 1965b. Dimethoate: Demyelination studies in white leghorn hens. American Cyanamid Co., Princeton, N. J. (unpublished).

(6) American Cyanamid Co. 1977. Mutagenicity testing of CL 12,880 (dimethoate). American Cyanamid Co., Princeton, N.J. (unpublished).

(7) Bhunya, S. P., and J. Behera, 1975. Centromeric sensitivity of mouse chromosomes to the systemic insecticide dimethoate (Rogor). Cur. Sci. 44(23):859–860.

(8) Budreau, C. H., and R. P. Singh. 1973. Effect of fenthion and dimethoate or reproduction in the mouse. Toxicol. App. Pharm. 26:29–38.

(9) Copplestone, J. F., Z. T. Fakri, J. W. Miles, C. A. Mitchell, Y. Osman, and H. R. Wolfe. 1976. Exposure to pesticides in agriculture: a survey of spraymen using dimethoate in the Sudan. Bull. World Health Organ. 54:217–23.

(10) Courtney, K. D. 1978. Memo: Response to Rebuttal on dimethoate, dated June 30, 1978. From K. Diane Courtney, ETO, HERL, RTP, to William Waugh, Project Manager, SPRD.

(11) Degraeve, N., J. Moutschen, M. Moutschen-Dahmen, J. Gilot-Delhalle, A. Colizzi, N. Housbrechts and M. C. Cholett. 1979. Genetic effects of organophosphate insecticides in mouse. Mutation Research 64(2):131 (abstract only).

(12) deSerres, F. J., and M. D. Shelby. 1979. Recommendations on data production and analysis using the Salmonella/Microsome Mutagenicity Assay. Environmental Mutagenesis 1:87–92.

(13) Durham, W. F., T. B. Gaines, and W. J. Hayes, Jr. 1956. Paralytic and related effects of certain organic phosphorus compounds. AMA Arch. Ind. Health 13:326–330.

(14) Fahrig, R. 1973. Evidence of a genetic effect of organophosphorus insecticides. (Transl. from German.) Naturwissenchaften 60:50–51.

(15) Gaines, T. B., 1969. Acute Toxicity of Pesticides. Toxicology and Applied Pharm. 14:515–534.

(16) Gerstengarbe, S. 1975. Mutagenesis caused by dimethoate—identified by means of the dominant lethal test in the mouse (*Mus musculus* L.). (Transl. from German.) Arch. Sci. J., Univ. Halle, M Series.

(17) Gibel, W., Kh. Lohs, G. P. Wildner, D. Ziebarth, and R. Steiglitz. 1973. Experimental study on cancerogenic, hematotoxic and hepatotoxic activity of organophosphorus pesticides. (Transl. from german.) Arch. Tumor Res. 41(4):311–328.

(18) Gordon, M., B. Cohen, E., Richter, M. Luria, and J. Schoenberg. 1978. Parathion exposures in agricultural spray pilots and ground crews. Aerospace Medical Association, Annual Scientific Meeting, New Orleans, Louisiana.

(19) Hanna, P. J., and K. F. Dyer. 1975. Mutagenicity or organophosphorus compounds in bacteria and Drosophila. Mut. Res. 28:405–420.

(20) Khera, K. S. undated. Evaluation of dimethoate (Cygon 4E) for teratogenic activity in the cat. (unpublished).

(21) McCann, J., E. Choi, E. Yamasaki, and B. N. Ames. 1975. Detection of carcinogens mutagens in the Salmonella/microsome test: Assay of 300 chemical. Prac. Nat. Acad. Sci. USA 72(12):5135–5139.

(22) Mohn, G. 1973. Mutagenic activity of monofuctional alkylating agents including organophosphorus insecticides. Mut. Res. 20:7–15.

(23) NCI. U.S. Department of Health, Education, and Welfare, National Cancer Institute. 1977. Bioassay of dimethoate for possible carcinogencity: Carcinogenesis technical report no. 4. Bethesda, Md.

(24) Scheufler, H. 1975a. Effects of relatively high doses of dimethoate and trichlorophone on the embryogenesis of laboratory mice. (Transl. from German.) Biol. Rdsch. 13(4):238–240.

(25) Shirasu, Y., M. Moriya, K. Kato, A. Furuhashi, and T. Kada. 1976. Mutagenicity screening of pesticides in the microbial system. Mut. Res. 40:19–30.

(26) Steiglitz, R., W. Gibel, and H. Stobbe. 1974. Experimental study on haematotoxic and leukaemogenic effects of trichlorophone and dimethoate. Acta Haematol. 52:70–76.

(27) Wolfe, H. R., W. F. Durham, and J. F. Armstrong. 1967. Exposure of workers to pesticides. Arch. Environ. Health 14:622–633.

The documents cited in this bibliography, as well as other documents which make up the Administrative Record for the Agency's actions on dimethoate, are available for inspection on normal working days between the hours of 8 a.m. to 4:30 p.m. in the offices of the Special Pesticide Review Division, 1921 Jefferson Davis Highway, Crystal Mall Building No. 2, Room 720, Arlington, Virginia 22202.

Dated: January 6, 1981.

Steven D. Jellinek,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 81–1770 Filed 1–16–81; 8:45 am]

BILLING CODE 6560–32–M

[OPP–68010; PH–FRL 1627–4]

Pesticide Products Containing Dimethoate; Intent to Cancel Registration and Deny Applications for Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency issued a preliminary notice of determination concluding the rebuttable presumption against registration and continued registration (RPAR) of pesticide products containing dimethoate which was published in the **Federal Register** of November 19, 1979 (44 FR 66558). This Notice constitutes the Agency's final determination on the dimethoate RPAR and initiates actions to (1) deny applications for registration of dimethoate products for use in dust formulations and (2) to cancel registrations and deny applications for all uses of dimethoate unless the terms and conditions of registration are modified, as described in this Notice, to include required clothing and equipment and to recommend automatic flagging devices in connection with aerial application.

DATE: Requests for a hearing must be received on or before February 18, 1981 or within thirty (30) days from receipt of this Notice, whichever occurs later.

ADDRESS: Requests for a hearing must be submitted to: Hearing Clerk (A–110), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Harvey Warnick, Special Pesticide Review Division (TS–791), Office of Pesticide Programs, Environmental Protection Agency, Room 728D, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202, (703–557–8195).

SUPPLEMENTARY INFORMATION:

I. Introduction

The Environmental Protection Agency issued a notice of rebuttable presumption against registration and continued registration of pesticide products containing dimethoate an organophosphate insecticide and acaricide which was published in the Federal Register of September 12, 1977 (42 FR 45086). The rebuttable presumption was issued on the basis of (1) oncogenicity, (2) mutagenicity, and (3) reproductive and fetotoxic effects. Registrants and other interested persons were provided the opportunity to submit data and information to rebut the presumption. The Agency also requested registrants and other interested parties to submit data on delayed neurotoxicity and the synergism of dimethoate with other pesticides. After reviewing all available information, the Agency determined that the three risk presumptions announced in the dimethoate RPAR had not been rebutted, and that new teratogenic data unavailable when the RPAR was issued indicated that dimethoate may have the potential to produce teratogenic effects. The risks posed by the use of dimethoate were of sufficient concern to require the Agency to consider whether there were offsetting economic, social, or environmental benefits.

After reviewing the information relating to the benefits of the uses of dimethoate and considering risks in relation to benefits, the Agency reached a preliminary decision that the risks of all currently registered uses of dimethoate products are greater than the social, economic and environmental benefits of such uses, unless risk reductions are accomplished by modifications in the terms and conditions of registration. These preliminary decisions were announced in the Preliminary Notice of Determination Concluding the Rebuttable Presumption Against Registration of Pesticide Products Containing Dimethoate, published in the Federal Register of November 19, 1979 (44 FR 66558). The Preliminary Notice was accompanied by a Position Document (PD 2/3) which set forth in detail the Agency's analysis of comments received during the rebuttal phase of the dimethoate RPAR, and the Agency's reasons and factual bases for the regulatory actions which it proposed to initiate. In the Preliminary Notice and accompanying Position Document, the Agency determined to deny all applications for registration of dust formulations of dimethoate and to require certain modifications to the terms and conditions of registration for all the uses of dimethoate. These modifications included label changes (1) to require the use of protective clothing for all applicators, (2) to require the ue of respirators for pilots and mixer/loaders, (3) to require automatic flagging for aerial application, (4) to prohibit air blast application on citrus, pome fruits and pecans and (5) to include a warning to female workers of the potential teratogenic hazard of dimethoate.

These preliminary determinations were submitted to the FIFRA Scientific Advisory Panel and the U.S. Department of Agriculture for review pursuant to sections 6(b) and 25(d) of FIFRA; comments were also solicited from the registrants and any other interested parties. After reviewing the comments which were received from the SAP, the Department of Agriculture and other interested parites, the Agency has made certain modifications to the decision announced in the Preliminary Notice of Determination. These modifications include a decision (1) to retain the air blast use of dimethoate, (2) to eliminate the requirement for the use of automatic flagging devices for aerial application, (3) to eliminate the label warning for female applicators to avoid exposure to dimethoate during pregnancy and (4) to eliminate the protective clothing and equipment requirement for pilots. The reasons which form the basis for these modifications to the proposed decision are set forth in Position Document 4 (PD 4), which is published elsewhere in this issue of the Federal Register.

This final Notice of Determination announces the denial of all applications for registration of dimethoate products in dust formulations. this Notice also initiates actions to cancel or deny registration for all uses of dimethoate products unless the terms and conditons of registration are modified: (1) to require the use of protective clothing for all applicators, (2) to require the use of respirators for flaggers and mixer/loaders and (3) to recommend the use of automatic flagging devices on the dimethoate products labeled for aerial application. In addition to these actions, the Agency has determined that it will request additional data, under the authority of 3(c)(2)(B), to maintain the registrations of dimethoate products in effect. These data requirements include the submission of studies on oncogenicity, mutagenicity, teratogenicity, delayed neurotoxicity, and exposure.

The Notice is organized into four units. Unit I is this introduction. Unit II, entitled "Legal Background", sets forth a general discussion of the regulatory framework within which these actions are taken. Unit III and the accompanying Position Document set forth the regulatory actions which the Agency is implementing concerning dimethoate and the bases for these determinations. Unit IV titled "Procedural Matters", provides a brief discussion of the procedures which will be followed in implementing the regulatory actions which the Agency is announcing in this Notice. The accompanying Position Document 4, published elsewhere in this issue of the Federal Register, sets forth in detail the Agency's analysis of comments submitted by the Secretary of Agriculture, the FIFRA Scientific Advisory Panel (SAP), and other interested parties regarding the regulatory actions announced in the Preliminary Notice. The comments of the FIFRA Scientific Advisory Panel and the Secretary of Agriculture are included in their entirety in Position Document 4.

II. Legal Background

In order to obtain a registration for a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, a manufacturer must demonstrate that the pesticide satisfies the statutory standard for registration. That standard requires (among other things) that the pesticide perform its intended function without causing "unreasonable adverse effects on the environment." FIFRA Section 3(c)(5). The term "unreasonable adverse effects on the environment" is defined as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide." FIFRA Section 2(bb). In effect, this standard requires a finding that the benefits of each use of the pesticide exceed the risks of use, when the pesticide is used in accordance with the terms and conditions of registration, or in accordance with widespread and commonly recognized practices. The burden of proving that a pesticide satisfies the registration standard is on the proponents of registration and continues as long as the registration remains in effect. Under section 6 of FIFRA, the Administrator is rquired to cancel the registration of a pesticide or to modify the terms and conditions of registration whenever he determines that the pesticide no longer satisfies the statutory standard for registration.

The Agency created the RPAR process to facilitate the identification of pesticide uses which may not satisfy the statutory standard for registration and to provide a public, informal procedure for the gathering and evaluation of

information about the risks and benefits of these uses. The regulations governing the RPAR process are set forth at 40 CFR 162.11. This section provides that a rebuttable presumption shall arise if a pesticide meets or exceeds any of the risk criteria set out in the regulations.

The Agency genrally announces that an RPAR has arisen by publishing a notice in the **Federal Register**. After an RPAR is issued, registrants and other interested persons are invited to review the data upon which the presumption is based and to submit data and information to rebut the presumption. Respondents may rebut the presumption of risk by showing that the Agency's initial determination of risk was in error, or by showing that exposure of man or other sensitive species likely to be associated with use of the pesticide will not involve a significant risk of adverse effects of the type in question. See 40 CFR 162.11(a)(4). Further, in addition to submitting evidence to rebut the risk presumption, respondents may submit evidence as to whether the economic, social, and environmental benefits of the use of the pesticide subject to the presumption outweigh the risks of use.

The regulations require the Agency to conclude an RPAR by issuing a Notice of Determination in which the Agency states and explains its position on the question of whether the risk presumptions have been rebutted. If the Agency determines that a presumption has not been rebutted, it then considers available information relating to the social, economic, and environmental costs and benefits of use of the pesticide, including information which registrants, the Department of Agriculture, and other interested persons have submitted to the Agency.

If the risks of a particular pesticide use appear to outweigh its benefits, the Administrator may elect to conclude the RPAR process by issuing a notice of intent to cancel, deny, or reclassify the registration of the pesticide for the use in question, pursuant to FIFRA sections 6(b)(1) and 3(c)(6), or by issuing a notice of intent to hold a hearing to determine whether or not registrations for the use should be cancelled, denied, or reclassified, pursuant to FIFRA section 6(b)(2).

In determining whether the use of a pesticide poses risks which are greater than benefits, the Agency considers modifications to the terms and conditions of registration which can reduce risks, and the impacts of such modifications on the benefits of the use. Among the risk reduction measures short of cancellation which are available to the Agency are changes in the directions for use on the pesticide's labeling and classification of the pesticide for "restricted use" pursuant to FIFRA section 3(d).

FIFRA requires the Agency to submit notices issued pursuant to section 6 to the Secretary of Agriculture for comment, along with an analysis of the impact of the proposed action on the agricultural economy. FIFRA section 6(b). The Agency is required to submit these documents to the Secretary at least 60 days before issuing the notice in final form. If the Secretary of Agriculture comments in writing within 30 days after receiving the notice, the Agency is required to publish the Secretary's comments and the Administrator's response to them in the **Federal Register**. FIFRA also requires the Administrator to submit section 6 notices to the Scientific Advisory Panel for comment on the impact of the proposed action on health and the environment, at the same time and under the same procedures as those described above for review by the Secretary of Agriculture. FIFRA section 25(d).

Although not required to do so under the statute, the Agency has decided that it is consistent with the general theme of the RPAR process and the Agency's overall policy of open decision making to afford registrants and other interested persons an opportunity to comment on the bases for the proposed action during the time that the proposed action is under review by the Secretary of Agriculture and the Scientific Advisory Panel. Accordingly, the Preliminary Notice and the Position Document 2/3 were made available to registrants and other interested persons at the time the decision douments were transmitted for formal external review, through publication of a notice of availability in the **Federal Register** or by other means. Registrants and other interested persons were allowed the same 30 day period of time to comment that the statute provides for receipt of comments from the Secretary of Agriculture and the Scientific Advisory Panel. The Agency considered comments received after this date, to the extent it was possible to do so, consistent with orderely decision-making.

III. Determination and Announcement of Regulatory Actions

As detailed in the Preliminary Notice and PD 2/3, the Agency considered information on the risks associated with the uses of dimethoate, including information submitted by registrants and other interested persons in rebuttal to the Dimethoate RPAR. The Agency also considered information on the social, economic, and environmental benefits of the uses of dimethoate subject to the RPAR, including benefits information submitted by registrants and other interested persons in conjunction with their rebuttal submissions, and information submitted by the United States Department of Agriculture. The Agency's assessment of the risks and benefits of the uses of dimethoate subject to this RPAR, its conclusions and determinations on whether any uses of dimethoate pose unreasonable adverse effects on the environment, and its determinations on whether modifications in the terms or conditions of registration reduce risks sufficiently to eliminate any unreasonable adverse effects, were summarized in the Preliminary Notice and set forth in detail in PD 2/3. PD 2/3 was adopted by the Agency as its Statement of Reasons for the determinations and actions announced in the Preliminary Notice and as its analysis of the impacts of the proposed regulatory actions on the agricultural economy.

This Notice constitutes the Agency's Final Notice of Determination Concluding the Dimethoate RPAR, and announces the regulatory actions which the Agency is implementing concerning dimethoate. The Agency hereby incorporates PD 2/3 and PD 4 as its Statement of Reasons for these actions. The determinations announced in this Notice reflect modifications in the Agency's initial determinations on the risks, benefits, and unreasonable adverse effects of the use of dimethoate, as well as modifications in the regulatory actions announced in the Preliminary Notice. The Agency has concluded that these modifications are appropriate after review of the comments and other information received, in response to PD 2/3 and the Preliminary Notice, from the Secretary of Agriculture, the Scientific Advisory Panel, and other interested parties. The comments received from the SAP and the Secretary of Agriculture are included in Position Document 4. Position Document 4, which is published elsewhere in this issue of the **Federal Register**, discusses in detail the comments and information which were received, and the Agency's reasons for retaining or modifying its initial determinations and the regulatory actions announced in the Preliminary Notice.

A. Determinations on Risks

The dimethoate RPAR was based on information indicating that dimethoate posed the following risks to humans: (1) oncogenicity, (2) mutagenicity, and (3) reproductive and fetotoxic effects. As developed fully in the Position

Document 2/3, the Agency determined that the information submitted to rebut the risk criterion for oncogenicity was insufficient to overcome the presumption against dimethoate for this effect. However, the Agency concluded, based on a re-analysis of the studies involved and the rebuttal comments, that the weight of evidence for dimethoate's oncogenicity is only suggestive, and that the evidence warrants further studies.

The Agency also determined that the rebuttal submissions were insufficient to remove the Agency's concern that dimethoate poses the risks of reproductive and fetotoxic effects to humans. In addition, new teratogenic data unavailable when the RPAR was issued indicated that dimethoate may have the potential to produce teratogenic effects. Finally, the Agency concluded that the rebuttals and additional information submitted did not invalidate the presumption of mutagenic risk, although the risk appeared to be low.

The Agency also received comments concerning delayed neurotoxicity and the synergism of dimethoate with other pesticides, and concluded that there was insufficient evidence to indicate that dimethoate meets or exceeds the risk criteria enumerated in 40 CFR 162.11 for these effects, but that additional information concerning dimethoate's ability to induce delayed neurotoxicity must be generated.

As detailed in PD 2/3, the principal risks of oncogenicity, mutagenicity, and reproductive and fetotoxic/teratogenic effects are posed to applicators, who may be exposed to dimethoate before or during application both dermally and via inhalation. The greatest risk to applicators is incurred by (1) the use of dust formulations for grapes and potatoes and (2) airblast spraying on citrus, pecans and pome fruits. These risks are of sufficient magnitude to require the Agency to determine whether the uses of dimethoate offer offsetting social, economic, or environmental benefits.

B. Determinations on Benefits

The uses of dimethoate which are subject to this Notice include the following classes of use sites: (1) grains, (2) field crops, (3) fruits and nuts, (4) vegetables, and (5) other use sites (including livestock premises, forest seed orchards and nurseries, and ornamentals.)

1. *Grains.* Dimethoate is used on 7.8 percent of the sorghum acreage; less than one percent of U.S. wheat and corn acreage is treated with dimethoate. Several effective alternatives are available for all of the grain use sites. Cancellation of dimethoate use on grain would result in a total annual loss of $8.03 million per year for corn producers and an increase of $608,000 in income for sorghum producers. A qualitative evaluation of the impact of cancellation on wheat producers indicated a minor impact.

2. *Field Crops.* Dimethoate is used on less than one percent of U.S. acreage of soybeans, tobacco, and alfalfa; on 14.6 percent of U.S. cotton acreage; and on 26.0 percent of California and Arizona safflower acreage. For most of the field crops, several alternative controls are available, with the exception of spider mite control on soybeans, which represents a minor and sporadic problem. Cancellation of dimethoate use on field crops would result in an increase in costs of production of $1.73 million annually for cotton and would have a negligible effect on production costs for other field crops.

3. *Fruits and Nuts.* The percent of total U.S. acreage treated with dimethoate was 2.6 percent for apples, <1.0 percent for pears, 12.0 percent for citrus, and 17.0 percent for pecans; 50.5 percent of the California grape acreage was treated with dimethoate. Several effective alternatives are available for apples, pears, and pecans; the alternatives for grapes and citrus are less effective. The cancellation of dimethoate would result in an estimated decrease in farm income of $90,000 for apples, $745,800 for pecans, $551,000 for citrus, and $9.99 million for grapes, and a negligible loss on pears. The effect of cancellation on production for apples, pears, pecans, and grapes would be negligible or slight. Significant adverse effects on the quantity and quality of citrus production would be expected; for grapes, total insecticide use would increase and the IPM program in the Central Valley of California would be ruined. Minor price increases may occur for pecan products, and significant consumer impacts are possible for citrus and grape products.

4. *Vegetables.* Dimethoate use on vegetable crops ranges from 7.1 percent of total U.S. acres treated for lettuce to 66.2 percent for fresh tomatoes. Effective alternatives are generally available except for use on broccoli, fresh snap beans, and fresh tomatoes. The cancellation of dimethoate use on vegetables would result in an estimated reduction in annual farm income of $1.27 million for broccoli, $1.8 million for dry snap beans, $3.6 million for fresh snap beans, and $130,800 for processing snap beans. For fresh tomatoes, the total farm income loss was estimated at $3.9 million. An increase in farm income of $371,000 was projected for processing tomatoes due to less expensive alternative controls. The available data were insufficient to allow an estimation of the overall farm income changes for lettuce and other vegetable crops.

5. *Other Use Sites.* Dimethoate is used for adult fly and maggot control in livestock facilities (50,600 pounds active ingredient in 1978); several effective alternatives are available at near comparable cost. Dimethoate use for forest seed orchards and nurseries is believed to be limited to 150 acres in the South; several effective alternatives are available. For ornamental use, 90% of the dimethoate pesticide products are applied commercially and 10% by homeowners, with use approaching 50,000 pounds active incredient per year. A few site/pest combinations may have pest control problems if dimethoate is unavailable due to a lack of cost-effective alternatives.

C. Determinations of Unreasonable Adverse Effects

For the reasons set forth in detail in the Position Documents (PD 2/3 and PD 4), the Agency has made the following unreasonable adverse effect determinations about the uses of dimethoate.

The Agency has determined that the risks arising from the use of dimethoate dust formulation products are greater than the social, economic and environmental benefits of such use. Accordingly, the Agency has determined that the use of dimethoate in dust formulations will generally cause unreasonable adverse effects in the environment, when used in accordance with widespread and commonly recognized practice.

The Agency has also determined that risks of use of dimethoate products in all non-dust formulations (e.g., wettable powders, emulsifiable concentrates, and granules) are greater than the social, economic, and environmental benefits for all uses, unless risk reductions are accomplished by modifications in the terms and conditions of registration, as described in Section III E. The Agency has determined that these modifications in the terms and conditions of registration accomplish significant risk reductions, without significant impacts on the benefits of use. Accordingly, the Agency has determined that unless these changes in the terms and conditions of registration are accomplished, the use of dimethoate will generally cause unreasonable adverse effects on the environment, when used in accordance with widespread and commonly recognized practice, and the labeling of these dimethoate products

will not comply with the provisions of FIFRA.

D. Other Determination

The Agency has determined that it will request additional data, under the authority of section 3(c)(2)(B), to maintain the registrations of dimethoate products in effect. The request for these data will be independent of the Agency's RPAR determination, as set forth in this Notice, to cancel or to impose more stringent terms and conditions for registration. These data requests will be formally communicated to the registrants in the near future.

The additional studies which the Agency will required are summarized below.

1. A dimethoate oncogenicity study using the same strains of mice and rats used by Gibel. The protocol for this study must be submitted within 90 days of receipt of the Agency's section 3(c)(2)(B) notification letter. This study must be completed within three years of receipt of the section 3(c)(2)(B) notification letter.

2. Mutagenicity tests, including gene mutation studies in mammalian systems, a dominant lethal study in mice and studies designed to detect spindle effects, i.e. and *in vivo* bone marrow cytogenic study. The protocol for these studies must be submitted within 90 days of receipt of the Agency's section 3(c)(2)(B) notification letter. These tests must be completed and submitted within eighteen months of receipt of the section 3(c)(2)(B) notification letter.

3. Delayed neurotoxicity tests in accordance with EPA's proposed pesticide registration guidelines. The protocol for these tests must be submitted within 90 days of receipt of the Agency's section 3(c)(2)(B) letter. These tests must be completed within eighteen months of receipt of the section 3(c)(2)(B) letter.

4. Teratology tests on the technical dimethoate using two species of laboratory animals in accordance with the proposed registration guidelines published in the **Federal Register** of August 22, 1978 (43 FR 37336). The protocol for these tests must be submitted within 90 days of receipt of the Agency's section 3(c)(2)(B) notification letter. These tests must be completed within eighteen months of receipt of the section 3(c)(2)(B) notification letter.

5. Exposure studies to determine worker dermal and inhalation exposure during the application of dimethoate with air blast equipment and dermal and inhalation exposure for flaggers during the aerial application of dimethoate. Exposure data must be gathered for each crop where air blast equipment is used or on crops deemed representative of such applicator exposure situations. Registrants and applicants must submit proposed test protocols for gathering applicator exposure data within 90 days of receipt of the Agency's section 3(c)(2)(B) notification letter and must complete all such tests and submit all exposure data within eighteen months of receipt of the section 3(c)(2)(B) notification letter. The Agency will reevaluate the air blast application of dimethoate after the results of these exposure studies become available.

E. Initiation of Regulatory Actions

Based upon the determinations summarized above in Unit III C and set out in detail in the Position Document 4, published elsewhere in this issue of the **Federal Register**, the Agency is initiating the following regulatory actions:

1. Unconditional denial of all applications for registration of dimethoate products for use in dust formulations.

2. Cancellation and denial of registration of dimethoate products for all uses unless the registrants or applicants for registration modify the labeling of dimethoate products to include the following:

Required Clothing and Equipment for Application

All applicators, including homeowners, flaggers and all personnel involved with the mixing, loading, and transferring operations, must wear the protective clothing and equipment enumerated below. Pilots are exempt from this requirement. The protective clothing and equipment to be worn is as follows:

a. Impermeable gloves (for example, rubber or plastic covered reinforced gloves.)

b. Boots or boot covers.

c. Long-sleeved shirt and long pants.

d. Wide-brimmed hat.

e. Respirators must be worn by flaggers and mixer/loaders.

3. Cancellation and denial of registration for all uses of dimethoate products labeled for aerial application unless the registrants or applicants for registration modify the labeling of these products to include the following statement:

AUTOMATIC FLAGGING DEVICES SHOULD BE USED WHENEVER FEASIBLE

IF HUMAN FLAGGERS ARE EMPLOYED THEY MUST WEAR THE PROTECTIVE CLOTHING AND RESPIRATOR SPECIFIED ON THIS LABEL.

IV. Procedural Matters

This Notice initiates actions to cancel registrations and deny applications for registration of dimethoate products for all uses unless the registrants or applicants correct the terms and conditions of registration as described in this Notice ("conditional" cancellation or denial). This Notice also notifies all applicants for Federal registration of dimethoate products in dust formulations that their applications for registration have been denied unconditionally.

Under sections 6(b)(1) and 3(c)(6) of FIFRA, applicants, registrants and certain other interested or affected parties may request a hearing on the cancellation and denial actions that this Notice initiates. This unit of the Notice explains how such persons may request a hearing and the consequences of requesting or failing to request a hearing in accordance with the procedures specified in this Notice.

A. Procedure for Requesting a Hearing

Registrants affected by the cancellation actions described above may request a hearing on such actions within thirty (30) days of receipt of this notice, or within thirty (30) days from publication of this Notice, whichever occurs later. Any other person adversely affected by the cancellation actions described above may request a hearing within thirty (30) days of publication of this Notice in the **Federal Register.**

Applicants for registration affected by the denial actions described above may request a hearing on such actions within thirty (30) days of receipt of this Notice, or within thirty (30) days of publication of this Notice in the **Federal Register**, whichever occurs later. Other interested persons may, with the concurrence of the applicant, request a hearing during the time period available to the applicant.

All registrants, applicants, and other interested or affected parties who request a hearing must file the request in accordance with the procedures established by FIFRA and the Agency's Rules of Practice Governing Hearings (40 FR Part 164). These procedures require among other things that: (1) all requests must identify the specific registration(s) or application(s) and the specific use(s) for which a hearing is requested, (2) all requests must be accompanied by objections that are specific for each use of the identified pesticide products for which a hearing is requested, and (3) all requests must be received by the hearing clerk within the applicable thirty (30) day period. Failure to comply with these requirements will

automatically result in denial of the request for a hearing.

Request for hearings must be submitted to: Hearing Clerk (A–110), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

It should be emphasized that the cancellation and denial actions initiated by this Notice will be implemented both on a use-by-use basis and a registration-by-registration or application-by-application basis. In other words, if a hearing request is not reviewed for a particular use specified on a particular registration or application, the actions proposed in this Notice regarding that pesticide use will become effective at the end of the thirty day period, even though a hearing might have been requested with respect to the other pesticide uses for the same registration or application, or with respect to the same pesticide use for other registrations or applications.

B. Consequence of Filing or Failing to File a Hearing Request

1. *Consequences of Filing a Timely and Effective Hearing Request.* If a hearing on any action initiated by this Notice is requested in a timely and effective manner, the hearing will be governed by the Agency's Rules of Practice for hearings under FIFRA section 6 (40 CFR Part 164). In the event of a hearing, each cancellation and denial action subject to the hearing will not become effective except pursuant to an order of the Administrator at the conclusion of the hearing.

2. *Consequences of Failure to File in a Timely and Effective Manner.* No hearing will be available concerning denial of any particular application for Federal registration of a dimethoate dust formulation product unless the affected applicant itself either files or concurs in a timely request for a hearing. Denial of any application for Federal registration of a dimethoate product in a dust formulation for which a hearing has not been specifically requested will become final and effective at the end of the applicable thirty day period.

If no hearing concerning the conditional cancellation or denial of registration of a specific use of a specific pesticide product contining dimethoate has been requested by the end of the applicable thirty day period, registration of that use of that dimethoate product will be subject to cancellation or denial unless the registrant or applicant amends its application for registration to include the modifications in the terms and conditions of registration specified in this Notice. Immediately following expiration of the applicable thirty day period, the Agency will notify all affected registrants of the procedures to be followed in amending their applications for registration. That notification will (1) establish the date(s) on which the cancellations and denials will become effective unless the registrants and applicants have applied to amend their registrations or correct their applications to include the terms and conditions of registration specified in this Notice, and (2) will provide other necessary instructions and information.

Dated: January 6, 1981.

Steven D. Jellinek,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 81–1771 Filed 1–16–81; 8:45 am]

BILLING CODE 6560–32–M

federal register

Monday
January 19, 1981

Part VII

Department of Education

Selection Criteria for Fiscal Year 1981; Program Regulations

DEPARTMENT OF EDUCATION

Office of Management

34 CFR Parts 211, 215, 305, 307, 309, 315, 318, 324, 338, 408, 525, 526, 527, 624, 643, 644, 645, 646, 726, and 740.

Selection Criteria for Fiscal Year 1981

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Department of Education amends the selection criteria for programs administered under the parts listed in the heading to this document.

The Education Department General Administrative Regulations (EDGAR) were published in the **Federal Register** on April 3, 1980 (45 FR 22494). EDGAR establishes general criteria that are used with specific program criteria to select applications for funding under direct grant programs of the Department of Education. These amendments are made to incorporate the EDGAR criteria in the program regulations specified in the heading above, thereby making the program regulations conform to EDGAR requirements. These conforming amendments also delete program selection criteria that duplicate the EDGAR criteria. The general effect of these changes is to establish a uniform set of selection criteria in five topic areas: plan of operation, quality of key personnel, budget and cost effectiveness, evaluation plan, and adequacy of resources.

EFFECTIVE DATE: These conforming amendments are expected to take effect 45 days after they are transmitted to Congress. Regulations usually are transmitted to Congress several days before they are published in the **Federal Register**. The effective date is changed if the Congress takes certain adjournments. If you want to know the effective date of these regulations call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: F. H. Hundemer, Jr., Director, Policy Division, Office of Procurement and Assistance Management, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 5680, ROB–3), Washington, D.C. 20202. Telephone (202) 245–1766. For general information on Education Division programs, telephone the appropriate Regional Office listed below:

Region I—Boston, Massachusetts, (617) 223–6814.
Region II—New York, New York, (212) 264–8145.
Region III—Philadelphia, Pennsylvania, (215) 596–1044.
Region IV—Atlanta, Georgia, (404) 221–2243.
Region V—Chicago, Illinois, (312) 353–6679.
Region VI—Dallas, Texas, (314) 767–3711.
Region VII—Kansas City, Missouri, (816) 374–5800.
Region VIII—Denver, Colorado, (303) 837–4295.
Region IX—San Francisco, California, (415) 556–4570.
Region X—Seattle, Washington, (206) 442–0450.

SUPPLEMENTARY INFORMATION:

Background

The Education Department General Administrative Regulations (EDGAR) were published as final regulations on April 3, 1980 (45 FR 22494). Part 75 (originally published as Part 100a of 45 CFR). EDGAR describes the application and award procedures for a direct grant made by the Department of Education. Part 75 of EDGAR also covers other issues relating to the administration of Department of Education direct grant programs. For a full understanding of the scope of EDGAR, please review the EDGAR final regulations.

Discretionary Grant Programs and Selection Criteria

The majority of the direct grant programs administered by the Department of Education are discretionary grant programs. Section 75.200 of EDGAR describes what a discretionary grant program is and how selection criteria is used in this kind of program.

The Department of Education published a notice of proposed rulemaking (NPRM) on April 3, 1980 (45 FR 22806) to incorporate the EDGAR selection criteria in certain program regulations and invited public comment on the proposed conforming amendments. The NPRM proposed conforming amendments to 29 parts of Title 45 of the Code of Federal Regulations.

On November 21, 1980, the Department of Education published at 45 FR 77368 a notice transferring certain regulations from Title 45 of the Code of Federal Regulations (45 CFR) to Title 34 of the Code of Federal Regulations (34 CFR) and assigning new designation numbers to the transferred parts. The revisions published in this document carry the new designations. The new designations also are used in all references.

The transferred parts of 45 CFR included all of those for which conforming amendments were proposed in the NPRM published April 3, 1980. The conforming amendments made final by this document affect 20 parts of 34 CFR. The affected parts are listed in the heading to this document. The conforming amendments proposed on April 3 for several parts affecting programs authorized under the Higher Education Act are not made final by this document. The conforming amendments to those parts will be published separately with other revisions of those parts.

Two public comments were received on the proposed regulations. One of these comments applied to proposed amendments to the Teacher Center Program (34 CFR Part 240). Part 240 was published in final December 8, 1980, at 45 FR 80988, and those regulations are not included in this document.

The second public comment received applied to the proposed amendments to four parts for which final regulations revisions are published in this document (34 CFR Parts 643, 644, 645, and 646). A summary of this second comment, the Department of Education response to it, and of technical changes in proposed amendments to two other parts follow:

§ *408.211 Selection criteria.* (Formerly § 105.211)

Changes. Proposed amendments to section 408.211 have been deleted because the EDGAR selection criteria do not apply to this vocational education program, which operates solely under contracts with Indian and tribal organizations.

§ *643.6 Selection criteria*

§ *644.8 Selection criteria*

§ *645.6 Selection criteria*

§ *646.7 Selection criteria*

Comment. A commenter suggested several changes in the selection criteria under Part 644—Educational Opportunity Centers, Part 645—Upward Bound Program, Part 646—Special Services for Disadvantaged Students Programs; and Part 634—Talent Search Program. The commenter suggested that a criterion on "past performance" be added and be assigned 30 percent of the total possible points. The commenter also suggested changes in the distribution of points among the other selection criteria. As proposed by the commenter, the selection criteria and point distribution would be identical in all programs as follows.

	Part 644	Part 645	Part 646	Part 643
Past Performance	30	30	30	30
Operating Plan/Design	15	15	15	15
Quality of Personnel	16	16	16	16

	Part 644	Part 645	Part 646	Part 643
Resources and Organization	10	10	10	10
Budget and Cost Effectiveness	5	5	5	5
Evaluation	4	4	4	4
Need	20	20	20	20

Response. No change has been made. A recently enacted amendment to the authorizing legislation for these programs revises the applicable statutory language to require that past performance be made a factor in selecting grantees under these programs. The amendment does not become effective for these programs until fiscal year 1982. The suggested changes in point distribution will be given further consideration when revised regulations are developed for these programs to implement the recent legislative amendments.

Changes. Many of the numerical and alphabetical designations of paragraphs have been revised in these four sections. The changes were necessary to put geographic and area considerations in correct relationships with other elements of the selection criteria. A typographical error incorrectly proposing 18 points for § 644(a)(2) (*Quality of key personnel*) has been corrected to 10 points.

§ 624.5 Selection criteria

Changes. The number of points assigned to § 624.52(a)(1) (*Plan of operation.*) has been increased from 17 to 20 and § 624.52(a)(5) (*Adequacy of resources.*) has been deleted because it is inappropriate to the nature and purpose of the program for strengthening developing institutions.

For a table that shows the old 45 CFR Part numbers and the new 34 CFR Part numbers as redesignated, see the document published November 21, 1980 in the **Federal Register** at 45 FR 77368.

Applicability

On their effective date, these regulations become applicable to competition for new grants made from appropriations for fiscal year 1981 and future fiscal years.

Citation of Legal Authority

A citation of statutory or other legal authority appears in parentheses on the line following each substantive provision of these regulations.

Dated: January 13, 1981.

Shirley M. Hufstedler,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations to read as follows:

PART 211—GUIDANCE AND COUNSELING

1. Section 211.33 is revised to read as follows:

§ 211.33 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new grants under this subpart. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (Maximum 10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (Maximum 10 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (Maximum 10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (Maxium 10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (Maximum 3 points)

(1) The Secretary reviews each application that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need.* (Maximum 9 points) The application clearly describes the need, through documented evidence for training and/or improved supervisory services, and the procedures used in determining the need. The need should be based on the guidance needs of students in the location where trainees are employed.

(g) *Activities.* (Maximum 19 points) The application—

(1) Describes training or supervisory objectives and activities which respond effectively to the needs of students documented in the needs assessment;

(2) Describes project activities which are designed to serve as a resource for improving guidance and counseling services within schools which receive supervisory services, or which are served by teacher and counselor trainees;

(3) Gives evidence, in those applications proposing to provide training, of commitments from outside organizations, groups, or individuals to cooperate in the implementation of proposed activities or in those applications proposing to improve supervisory services, of plans for working with other appropriate units; and

(4) Clearly describes the criteria and processes for selecting participants in training activities and clearly describes criteria and processes for developing comprehensive and coordinated guidance programs in activities to improve supervisory services.

(h) *Distribution of projects.* (Maximum 9 points) The extent to which approval of the project will contribute to—

(1) An equitable geographic distribution of programs funded under this subpart throughout the United States in both urban and rural areas; and

(2) The funding of a wide variety of projects which collectively can demonstrate diverse approaches to meet effectively the purposes of this subpart.

(i) *Models.* (Maximum 10 points) The extent to which approval of the project will contribute to the establishment of a model or models which can be replicated by other agencies or institutions with similar educational needs. In applying this criterion, the Secretary shall consider—

(1) The extent to which similar needs to those addressed by the proposed project exists in other agencies or institutions; and

(2) The design of the proposed project.

(j) *Alleviation of unemployment among youth.* (Maximum 5 points) The extent to which approval of the project has potential for contributing to the alleviation of unemployment among youth through inter-relationships with business and industry, the professions, and other occupational pursuits.

(k) *World of work.* (Maximum 5 points) The project involves inservice training to—

(1) Increase the understanding of teachers and counselors of the world of business, industry, professions, and other occupational pursuits through exposure to these areas; and

(2) To provide for increased use of persons employed in business, industry, the professions and other occupational pursuits in the guidance and counseling programs by—

(i) Bringing these persons into the schools to assist teachers and counselors; and

(ii) Bringing students into the work-place for observation and participation in order to acquaint them with the nature of the work.

(20 U.S.C. 2534(a))

2. Section 211.45 is revised to read as follows:

§ 211.45 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new grants under this subpart. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (Maximum 47 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (Maximum 10 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (Maximum 10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (Maximum 10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (Maximum 3 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need.* (Maximum 10 points) The need for the proposed plan is clearly established.

(g) *Cooperative arrangements.* (Maximum 10 points) The strength and quality of arrangements made by the applicant to work with other appropriate institutions and agencies.

(20 U.S.C. 2534(b))

3. Section 211.49 is revised to read as follows:

§ 211.49 Capacity to carry out the project.

Notwithstanding the specific selection criteria in § 211.45, the Secretary will not fund an application under this subpart unless the Secretary is satisfied that the applicant has the capacity successfully to carry out the project.

(a) In making this judgment, the Secretary will consider such factors as—

(1) Both the programmatic and financial management capacities of the applicant organization and its staff;

(2) Past performance by the applicant—

(i) In carrying out any prior grant under this subpart; or

(ii) In carrying out similar projects—with respect to those matters as achievement of objectives, adherence to the project conditions, programmatic and financial management, and the governing board's assumption of responsibility; and/or

(3) Consideration of local community factors which may prevent the successful operation of the grant.

(b) If the Secretary decides not to fund an application based upon this section, the Secretary will do so only after providing reasonable notice and an opportunity to the applicant to rebut, in writing or in an informal meeting with the responsible officials of U.S. Department of Education, the basis for the decision.

(20 U.S.C. 2534(b))

PART 215—FOLLOW THROUGH PROGRAM

4. Section 215.15 is revised to read as follows:

§ 215.15 Selection criteria for refunding of projects.

The Secretary uses the criteria in this section to determine whether an applicant has satisfactorily operated a project funded in the previous year under the Follow Through program. Each of the criteria is rated on the following scale: unsatisfactory, satisfactory, above average, outstanding.

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the application will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) The proportion of children enrolled in the schools of the project who are low-income according to the official poverty line as defined by the Office of Management and Budget.

(g) The proportion of children enrolled in the schools of the project who are graduates of Head Start or similar preschool programs as required by § 215.12(a).

(h) The provision for parental and community involvement as required by § 215.26(b).

(i) The participation of Follow Through parents in the development and operation of the project as required by § 215.19(a) and (d).

(j) The role of the Policy Advisory Committee in recommending the filling of staff positions as required by § 215.19(d)(3) and (4);

(k) The extent to which the membership of the Policy Advisory Committee is composed of low-income parents elected by these parents as required by § 215.19(b);

(l) The extent to which the Policy Advisory Committee participates in the decision-making process in respect to important aspects of the project in accordance with § 215.19(d);

(m) The extent to which priority is given to low-income parents in the employment of nonprofessionals and paraprofessionals as required by § 215.20;

(n) If appropriate, the extent to which the supplementary training program is serving nonprofessional and paraprofessinal staff of the project in accordance with § 215.26(h)(3).

(o) The role of the Career Development Committee as required by § 215.19(d)(9).

(p) The provision for staff training as required by § 215.26(g);

(q) The extent to which the instructional component is implemented as required by § 215.26(a).

(r) The provision and coordination of comprehensive services as required by § 215.26 and 215.26(b):

(1) Nutrition.

(2) Medical and dental services.

(3) Social services.

(4) Psychological services.

(5) Career development.

(s) The use or the coordination, or both, or other resources and programs with the project in accordance with § 215.25(b).

(t) The extent to which the evaluations conducted to date indicate program effectiveness according to criteria such as those defined by § 215.24(b).

(Economic Opportunity Act, Title V, Secs. 551(a)(1), (3) 554(a) (Pub. L. 93–644 Sec. 8(a)))

5. The title and paragraph (b) of § 215.42 are revised to read as follows:

§ 215.42 Funding and selection criteria for grants or contracts.

* * * * *

(b) *Selection criteria.* The Secretary uses the criteria in this paragraph (b) to evaluate applications for grants and proposals for contracts under this subpart. The criteria are not weighted, but are each rated on the following scale: unsatisfactory, satisfactory, above average, outstanding.

(1) *Plan of operation.* (i) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Secretary looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.* (i) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Secretary looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(2)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (i) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Secretary looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.* (i) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(ii) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.* (i) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Secretary looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(6) *Programmatic.* (i) The extent to which the applicant has shown or will show familiarity with the Follow Through program and the projects in its State through site visits and other means;

(ii) The extent to which the applicant will promote coordination of Follow Through with other State and local programs having similar objectives;

(iii) The extent to which the applicant will assist local projects in identifying and making the maximum use of available public and private resources which can contribute to the development of comprehensive projects;

(iv) The extent to which the applicant will assist local projects in improving parent-school-community relationships;

(v) The extent to which the applicant will assist local projects in evaluating project activities and disseminating information regarding project activities and their evaluation; and

(vi) The extent to which the applicant will assist local projects with staff training and development programs.

(7) *Management.* The extent to which the applicant will seek information from the local project sites to meet their project needs for technical assistance.

(Economic Opportunity Act, Title V, Sec. 553(a)(3) Pub. L. 93–644 Sec. 8(a))

6. Section 215.52 is revised to read as follows:

§ 215.52 Selection criteria.

The Secretary provides financial assistance under this subpart only to those applicants who sponsor educational approaches currently being implemented in the Follow Through program. The Secretary uses the criteria in this section to determine whether an applicant has satisfactorily operated a project funded in the previous year under the Follow Through program. Each of the criteria is rated on the following scale: unsatisfactory, satisfactory, above average, outstanding:

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate;

(f) The extent to which the evaluations conducted to date indicate program effectiveness according to criteria in § 215.24(b).

(g) The extent to which parents have been and will be involved in sponsor activities.

(h) The extent to which the sponsor has provided and will provide for the training of—

(1) Administrators;

(2) Teachers;

(3) Teacher aides and other paraprofessionals;

(4) Parents; and

(5) Others.

(Economic Opportunity Act, Title V, Sec. 553(a)(1) (Pub. L. 93–644 Sec. 8(a)))

PART 305—REGIONAL RESOURCE CENTERS

7. A new § 305.17 is added to part 305, to read as follows:

§ 305.17 Additional criteria.

(a) In addition to any other criteria for selection under this part, the Secretary uses the criteria in this section to evaluate applications for new grants.

(b)(1) *Plan of operation.* (i) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Secretary looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.* (i) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Secretary looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (d)(2)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (i) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Secretary looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation Plan.* (i) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590. Evaluation by the grantee.

(ii) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.* (i) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Secretary looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 1421)

PART 307—CENTERS AND SERVICES FOR DEAF-BLIND CHILDREN

8. A new § 307.41 is added to part 307, to read as follows:

§ 307.41 Additional criteria.

(a) In addition to any other criteria for selection under this part, the Secretary uses the criteria in this section to evaluate applications for new grants.

(b)(1) *Plan of operation.* (i) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Secretary looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—Members of racial or ethnic minority groups.

(2) *Quality of key personnel.* (i) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Secretary looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (d)(2)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(1) Members of racial or ethnic minority groups;

(4) The elderly.

(iii) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (i) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Secretary looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.* (i) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(ii) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.* (i) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Secretary looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 1422)

PART 309—EARLY EDUCATION FOR HANDICAPPED CHILDREN

7. Part 309 is amended by adding a new § 309.61 as follows:

§ 309.61 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new grants under Subparts A, B, and C of this part. The criteria are not weighted.

(a) *Plan of operation.* (1) The Secretary reviews each application for information the quality of shows that the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Handicapped persons; and

(C) The elderly.

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 1423)

PART 315—AUXILIARY ACTIVITIES

10. Section 315.4 is revised to read as follows:

§ 315.4 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new grants. The criteria are not weighted.

(a) *Enhance effectiveness.* The Secretary reviews each application for information that shows the activities under the proposed project will serve to enhance the effectiveness of the center or program to which they will be related.

(b) *Complement basic functions.* The Secretary reviews each application for information that shows the activities under the proposed project will serve to complement rather than displace the basic functions of the center or program to which they will be related.

(c) *Additional criteria*—(1) *Plan of operation.* (i) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Secretary looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.* (i) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Secretary looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (d)(2)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(1) Members of racial or ethnic minority groups;

(2) Women;

(3) Handicapped persons; and

(4) The elderly.

(iii) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (i) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Secretary looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.* (i) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(ii) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.* (i) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Secretary looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 1424)

PART 318—TRAINING PERSONNEL FOR THE EDUCATION OF THE HANDICAPPED

11. Section 318.20 is revised to read as follows:

§ 318.20 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new awards. The criteria are not weighted.

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) The extent to which the applicant specifically provides evidence that program graduates are meeting the educational needs of handicapped children at the local, State, or national level.

(g) The extent to which program philosophy, program objectives, and activities implemented to attain program objectives are related to the educational needs of handicapped children.

(h) The extent to which—

(1) Present and former students;

(2) Employing agencies (school districts, State agencies, etc.); and

(3) Individuals (parents, practicing teachers, etc.), are involved in program planning, implementation, and evaluation.

(i) The extent to which the evaluation design and procedures—

(1) Provide for assessment of the effectiveness and efficiency of the use of program resources in the attainment of program objectives; and

(2) Provide for the collection of quantifiable program performance information including—

(i) The numbers of personnel prepared and placed in positions relevant to the education of handicapped children;

(ii) The type and location of positions accepted by program graduates;

(iii) The number of handicapped children served by program graduates;

(iv) The length of time that program graduates serve handicapped children;

(v) Employers evaluation of program graduates' proficiency; and

(vi) The effectiveness of program graduates in facilitating the educational progress of handicapped children.

(j) The extent to which the application describes procedures for assessing the impact, and in case of an application for continuation support, provides evidence of impact of the program upon other related programs within the institution, community programs for the education of handicapped children, and improvement of services for handicapped children at the local, State, and/or national level.

(k) The extent to which the application describes and specifies the various roles or positions for which students are prepared, the tasks associated with these roles, and the competencies that must be acquired to complete each task successfully.

(l) The extent to which the application includes a delineation of competencies that each program graduate will acquire and will subsequently exhibit and how the competencies will be evaluated.

(m) The extent to which substantive content and organization of the program—

(1) Are appropriate for the student's attainment of professional knowledge and competencies that are necessary for the provision of quality educational services for handicapped children; and

(2) Demonstrate an awareness of relevant methods, procedures, techniques, and instructional media or materials that can be used in the preparation of qualified educators of handicapped children.

(n) The extent to which approprate practicum facilities are—

(1) Utilized for observation, participation, practice teaching, laboratory or clinical experience, internship, and other supervised experiences of adequate scope, combination, and length; and

(2) Accessible to the applicant and students.

(o) The amount of fiscal and other effort the applicant will contribute to the program, and a delineation of the procedures that will be implemented for the increase of this effort over a specified time period in relationship to the amout of Federal funds awarded for support of the program.

(20 U.S.C. 1432, 1434)

PART 324—RESEARCH IN EDUCATION OF THE HANDICAPPED

12. Section 324.7 is revised to read as follows:

§ 324.7 Selection criteria for research projects.

The Secretary uses the criteria in this section to evaluate applications for new grants. The maxmium score for all of the criteria is 100 points.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows

that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) The potential importance of the project to the education of the handicapped. (15 points)

(g) The probable impact of proposed research and development products and the extent to which products can be expected to have a direct influence on the handicaped or personnel responsible for the education of the handicapped. (15 points)

(h) Technical soundness of the research and development plan and adequacy of specification of procedures. (30 points)

(20 U.S.C. 1441, 1442)

13. Section 324.8 is revised to read as follows:

§ 324.8 Selection criteria for model programs.

The Secretary uses the criteria in this section to evaluate applications for new awards. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (7 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) The importance and relevance of the program to the education of handicapped children. (10 points)

(g) The probable impact of proposed end products. (10 points)

(h) The extent to which the program is eligible for consideration as a "model." (See § 324.5.) (15 points)

(i) Technical soundness of the proposal as judged by plans for assessment of a child's progress and appropriateness of program approach. (13 points)

(j) The extent to which the program plans for the development and implementation of individualized education programs. (See 34 CFR 300.340.) (5 points)

(k) The extent of coordination with other appropriate agencies. (5 points)

(20 U.S.C. 1441, 1442)

PART 338—REGIONAL EDUCATION PROGRAMS FOR HANDICAPPED PERSONS

14. Section 338.18 is revised to read as follows:

§ 338.18 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new awards. The criteria are not weighted.

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(1) The Secretary reviews each application for information that shows the quality of key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) Whether the program will be carried out in facilities easily accessible to physically handicapped persons.

(g) Whether the program will be located in an area in which public transportation is readily available, or transportation will be provided at reasonable cost to handicapped persons participating in the program.

(h) Whether the program will serve handicapped persons for whom other appropriate education programs are not readily available.

(i) The likelihood that the services provided under the proposed program will be continued by the applicant following the expiration of Federal funding as measured by evidence of financial and other commitment of the applicant to the program and other funds available to the program.

(20 U.S.C. 1424a)

PART 408—COMMISSIONER'S DISCRETIONARY PROGRAMS OF VOCATIONAL EDUCATION

15. Section 408.110 is revised to read as follows:

§ 408.110 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new awards. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (Maximum 34 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (Maximum 8 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of is nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (Maximum 7 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (Maximum 7 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (Maximum 3 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *National need.* (Maximum 15 points). The need section clearly—

(1) Describes the national need in vocational education for the proposed project;

(2) Indicates specifically who or what will be helped; and

(3) Describes the problem rather than symptoms of the problem.

(g) *Literature review.* (Maximum 5 points). The literature review is sufficiently comprehensive to—

(1) Establish the basis for the problem;

(2) Describe the problem in contrast to the symptoms of the problem;

(3) Provide a strong conceptual framework for the proposed objectives and proposed plan, including the general design and specific procedures of the proposed plan, along with the management, evaluation, dissemination, and training procedures, when appropriate; and

(4) Describe what has been done previously to alleviate the problem and point out the gaps that will be alleviated by this specific proposed work.

(h) *Results, end products, outcomes, and dissemination.* (Maximum 9 points). The application clearly describes:

(1) What will be delivered to the government.

(2) The format in which the results, products, or outcomes will be delivered to the government.

(i) *Institutional capability and commitment.* (Maximum 4 points). The application provides adequate evidence of—

(1) Institutional or individual's experience and commitment to the proposed work; and

(2) Assurance of support from cooperating agencies, local educational agencies, postsecondary institutions, business, industry, and labor, where applicable for successful implementation of the project.

(j) *Sex bias and stereotyping.* (Maximum 8 points). The application provides appropriate plans to eliminate sex bias and stereotyping in the proposed results, end products, and outcomes, and the proposed dissemination plans.

(20 U.S.C. 2401)

PART 525—BILINGUAL VOCATIONAL TRAINING PROGRAM

16. Section 525.606 is revised to read as follows:

§ 525.606 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new awards. The maxmium score for all of the criteria is 100 points.

(a) *Plan of operation.* (Maximum 33 points).

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (Maximum 25 points).

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (Maximum 10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (Maximum 12 points).

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (Maximum 3 points).

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need.* (Maximum 10 points).

(1) Describes the need for the proposed bilingual vocational training;

(2) Provides specific evidence of the need;

(3) Indicates specifically how the need will be met; and

(4) Describes, where appropriate, ongoing and planned activities in the community relative to the need.

(g) *Institutional capability and commitment.* (Maximum 7 points). The

application provides adequate evidence of—

(1) Institutional experience and commitment to the proposed work;

(2) Documented assurance of support from cooperating agencies, institutions, or community groups where applicable for successful implementation of the project.

(20 U.S.C. 2420)

PART 526—BILINGUAL VOCATIONAL INSTRUCTOR TRAINING PROGRAM

17. Section 526.616 is revised to read as follows:

§ 526.616 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new awards. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (Maximum 25 points).

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (Maximum 25 points).

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (Maximum 10 points).

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (Maximum 12 points).

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (Maximum 3 points).

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need.* (Maximum 10 points). The need section clearly—

(1) Describes the need for the proposed instructor training;

(2) Provides specific evidence of the need;

(3) Indicates specifically how the need will be met; and

(4) Describes, where appropriate, ongoing and planned activities in the community relative to the need.

(g) *Institutional capability and commitment.* (Maximum 7 points). The application provides adequate evidence of—

(1) Appropriate accreditation of the applicant institution by regional or national associations and approval by appropriate State agencies of the courses offered; and

(2) Documented assurance of support from cooperating agencies, institutions, or community groups where applicable for successful implementation of the project.

(h) *Ongoing vocational training.* (Maximum 4 points). The extent to which the applicant actually has an ongoing vocational training or vocational education program in the field for which persons are to be trained. Include a listing of the vocational courses offered by the applicant.

(i) *Language capabilities.* (Maximum 4 points). The extent to which the applicant institution can provide instructors with adequate language capabilities in the language other than English to be used in the bilingual job training program for which the instructors are being trained.

(20 U.S.C. 2420)

PART 527—BILINGUAL VOCATIONAL INSTRUCTIONAL MATERIALS, METHODS, AND TECHNIQUES PROGRAM

18. Section 527.626 is revised to read as follows:

§ 527.626 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new grants. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (Maximum 35 points).

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups

that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (Maximum 10 points).

(1) The Secretary reviews each application for information that shows the quality of key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (Maximum 5 points).

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (Maximum 10 points).

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (Maximum 3 points).

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need.* (Maximum 20 points). The need section clearly—

(1) Describes the national significance and the need in bilingual vocational training for the proposed project;

(2) Provides specific evidence of the need;

(3) Indicates specifically who or what will be helped; and

(4) Describes the problem rather than the symptoms of the problem.

(g) *Literature review.* (Maximum 5 points). The literature review is sufficiently comprehensive to—

(1) Establish the basis for the problem;

(2) Describe the problem in contrast to the symptoms of the problem;

(3) Provide a strong conceptual framework for the proposed objectives and proposed plan, including the general design and specific procedures of the proposed plan, along with the management, evaluation, dissemination, and training procedures (when appropriate); and

(4) Describe what has been done previously to alleviate the problem and point out the gaps that will be alleviated by this specific proposed work.

(g) *Results, end products, outcomes, and dissemination.* (Maximum 8 points). The application clearly describes—

(1) What will be delivered to the Government; and

(2) The format in which the results, products, or outcomes will be delivered to the Government.

(i) *Applicant's capability and commitment.* (Maximum 4 points). Documented assurance of support from cooperating agencies, local educational agencies or postsecondary institutions, business, industry, and labor, where applicable for successful implementation of the project.

(20 U.S.C. 2420)

PART 624—STRENGTHENING DEVELOPING INSTITUTIONS PROGRAM

19. Section 624.52 is revised to read as follows:

§ 624.52 Selection criteria.

The Secretary uses the following criteria to select applications for new grants:

(a) *General criteria.* An applicant may receive up to 50 points for the general selection criteria in this paragraph:

(1) *Plan of operation.* (20 points)

(i) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Secretary looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Secretary looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (a)(2)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as

other information that the applicant provides.

(3) *Budget and cost effectiveness.* (14 points)

(i) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Secretary looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.* (9 points)

(i) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(ii) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(b) *Program criteria.* An applicant may receive up to 50 points under the following criteria:

(1) The extent to which the applicant's mission and goals statement reflects the needs of its constituents. (14 points)

(2) The extent to which the size, scope, and duration of the proposed activities will contribute to the stated goals. (22 points)

(3) The extent to which any proposed cooperative arrangements will help achieve project objectives. (9 points)

(4) The extent to which a plan has been developed to ensure continuation of the proposed activities after the grant ends. (5 points)

(c) The Secretary considers for selection only those applications that receive a rating of 50 or more points.

(20 U.S.C. 1051, 1054)

PART 643—TALENT SEARCH PROGRAM

20. Section 643.7 is revised to read as follows:

§ 643.7 Selection criteria.

(a) The Secretary uses the criteria in this paragraph to evaluate applications for new grants. The maximum score for all of the criteria is 100 points.

(1) *Plan of operation.* (10 points)

(i) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Secretary looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Secretary looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (a)(2)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (5 points)

(i) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Secretary looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Cost are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.* (5 points)

(i) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(ii) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.* (3 points)

(i) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Secretary looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(6) *Need.* (33 points) (i) The extent to which the target area of the project is characterized by having a percent of youths from low-income families, residing or attending school in the area, that exceeds the minimally acceptable 25 percent, or exceeds 15 percent for those proposing to serve sparsely populated or geographically isolated areas; and

(ii) The number of youths who are eligible to be served by a project who reside or attend schools in the target area.

(7) *Design.* (16 points) (i) The extent to which the project will, in the target area, increase the rate of secondary school completion and postsecondary admissions, decrease the rate of secondary schools dropouts, and increase the number of secondary and postsecondary dropouts who reenter secondary and postsecondary educational programs; and

(ii) The comprehensiveness of the applicant's plan for—

(A) Identifying and selecting eligible participants and assessing and documenting their potential for postsecondary education;

(B) Providing career and academic guidance and counseling;

(C) Disseminating information on student financial aid to the target population;

(D) Assisting youths in gaining admission or readmission to secondary schools and a variety of postsecondary institutions which have adequate supportive services, if needed by the participants;

(E) Assisting youths enrolling in postsecondary institutions in obtaining student financial aid; and

(F) Determining whether the participants actually enrolled in secondary programs or postsecondary institutions received adequate financial aid.

(8) *Resources and organization.* (21 points)

(a) The extent to which the applicant has provided for the orientation of secondary and postsecondary schools in the target area to the goals and objectives of the Talent Search Program and has received written commitments by community and other relevant organizations for the utilization of community and other resources to supplement authorized activities.

(b) *Population to be served.* In selecting applications for funding, the Secretary will consider the need for the project in the area the applicant proposes to serve as compared to the need of the total target population to be served.

(c) *National demonstration projects.* The Secretary will select a limited number of applications to be funded as Talent Search national demonstration projects on the basis of the criteria in paragraph (a) of this section and the following additional criteria:

(1) Whether the proposed project is national or inter-regional in scope or presents a clearly new or experimental technique or design for the provision of Talent Search services to eligible participants.

(2) Whether the proposed project duplicates or competes with existing regional or national programs, or consolidates existing regional or inter-regional educational activities under the aegis of a single agency or institution.

(3) Whether, with regard to proposed projects presenting a new or experimental technique or design, the proposed activities and results can be readily replicated and utilized by other educational programs concerned with the provision of services to similar youths.

(4) Whether the proposed project will provide services not readily available on a local regional basis to such youths.

(5) Whether the proposed project will provide disadvantaged students a variety of educational opportunities and options for postsecondary education.

(20 U.S.C. 1070d–1)

PART 644—EDUCATIONAL OPPORTUNITY CENTERS

21. Section 644.6 is revised to read as follows:

§ 644.6 Selection criteria.

(a) The Secretary uses the criteria in this paragraph to evaluate applications. The criteria are not weighted.

(1) *Plan of operation.* (i) The Secretary reviews each application for information that shows the quality of the plan of operation of the project.

(ii) The Secretary looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purposes of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.* (i) The Secretary reviews each application for information that shows the quality of key personnel the applicant plans to use on the project.

(ii) The Secretary looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (a)(2)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (i) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Secretary looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.* (i) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(ii) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.* (i) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Secretary looks for information that shows—

(A) The facilities that the applicant plans to use to serve the low-income families in the target area;

(B) The equipment and supplies that the applicant plans to use are adequate.

(6) *Need.* The degree to which services are needed to enhance access to postsecondary education, as indicated by—

(i) The number of secondary and postsecondary students and other students and other persons residing in the area;

(ii) The number of low-income families in the target area;

(iii) The historical rate of participation in postsecondary education by residents in the area; and

(iv) The number of persons to be served by the Center;

(7)(i) The extent to which the applicant has successfully operated a Center comparable or identical to those authorized under this part.

(ii) If that Center was not funded under the Educational Opportunity Centers Program, the applicant shall—

(A) Provide a description of that Center, including the number of low-income persons served and the kinds of services offered;

(B) The number of persons enrolled in and graduated from postsecondary institutions as a result of services offered; and

(C) The percentage of increase in postsecondary enrollment and graduation by residents of the area served.

(8)(i) The comprehensiveness of the applicant's plan for carrying out the activities under § 644.7; and

(ii) The extent to which these activities will result in increased enrollment and retention in and graduation of low-income, educationally disadvantaged persons from postsecondary institutions.

(9) The extent to which representatives from the community, secondary schools, and postsecondary schools have participated in the formulation of the proposal and will participate in the operation of the Center;

(10) The extent to which all members of a consortia will make resources available and participate in the activities of the Center to reach the goals and objectives of the proposed work program;

(11) The extent of the Center's relationship to Talent Search, Upward Bound, and Special Services for Disadvantaged Students projects in the area and to any other similar programs and services, including those for the physically handicapped, in terms of—

(i) Coordinating services to individuals who participate in more than one of these programs;

(ii) Providing services not otherwise available from Talent Search, Upward Bound, and Special Services projects and other similar programs; and

(iii) Avoiding duplication of services.

(12) The degree to which the Center will draw upon and coordinate the resources and staff efforts of institutions of higher education and postsecondary education in admitting low-income, educationally disadvantaged persons.

(b) *Geographic considerations.* The Secretary will award grants or contracts to insure the major concentrations of low-income persons, in both urban and rural areas, will be represented among the areas served by Centers.

(20 U.S.C. 1070d–1)

PART 645—UPWARD BOUND PROGRAM

22. Section 645.8 is revised to read as follows:

§ 645.8 Selection criteria.

(a) The Secretary uses the criteria in this paragraph to evaluate applications for new awards. The maximum score for all of the criteria is 100 points.

(1) *Plan of operation.* (10 points)

(i) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Secretary looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.* (18 points)

(i) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Secretary looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (a)(2)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (5 points)

(i) The Secretary reviews each applicant for information that shows that the project has an adequate budget and is cost effective.

(ii) The Secretary looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.* (5 points)

(i) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(ii) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.* (9 points)

(i) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Secretary looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(6) *Need.* (33 points) The number of youths who would be eligible to participate under this part who will be enrolled in the target schools or reside in the area to be served during the project period.

(7) *Design.* (20 points) (i) The comprehensiveness of the applicant's plan for identifying and selecting eligible participants, assessing and documenting their educational need and potential for postsecondary education through the use of standardized measurement instruments, and any other evaluative methods the applicant may choose to use, providing career and academic guidance and counseling, preparing and motivating project participants for admission to postsecondary institutions, and assisting participants in applying for admission to postsecondary institutions which are appropriate for these participants' abilities and ambitions; and

(ii) The extent to which the project will generate academic skills and motivation that will enable the participants to gain admission to postsecondary institutions and assist participants to attain a minimum of one year's growth, as measured by standardized measurement instruments stipulated in the application, in those academic skills such as reading, writing, mathematics and science which are essential for postsecondary education and in which participants are deficient.

(8) *Resources and Organization.* (8 points) (i) The extent to which the applicant has provided for the orientation of target school and applicant staff to the goals and

objectives of the Upward Bound Program and has provided for the utilization of community and other resources to supplement authorized activities;

(b) *Population to be served.* In selecting applications for funding, the Secretary will consider the need for a project in the area that the applicant proposes to serve as compared to the need of the total target population to be served.

(c) Except for veterans projects, preference will be given to those applicants for new awards that propose to carry out a summer residential component.

(d) Special consideration will be given to those applicants for new awards that propose to serve veterans if the applicant will serve an area in which the needs of eligible veterans for the services provided under this part cannot adequately be met without the project.

(e) *National demonstration awards.* The Secretary will select a limited number of applications to be funded as Upward Bound national demonstration projects on the basis of the criteria contained in paragraph (a) of this section and the following additional criteria:

(1) Whether the proposed project is national or inter-regional in scope, or presents a clearly new or experimental technique or design for the provision of Upward Bound services to eligible participants.

(2) Whether the proposed project duplicates or competes with existing regional or national programs, or consolidates existing regional or inter-regional educational activities under the aegis of a single agency or institution.

(3) Whether, with regard to proposed projects presenting a new or experimental technique or design, the proposed activities and results can be readily replicated and utilized by other educational programs concerned with the provision of services for similar youths.

(4) Whether the proposed project will provide services not readily available on a local or regional basis for these youths.

(5) Whether the proposed project will provide disadvantaged students a variety of educational opportunities and options for postsecondary education.

(20 U.S.C. 1070d–1)

PART 646—SPECIAL SERVICES FOR DISADVANTAGED STUDENTS PROGRAM

23. Section 646.6 is revised to read as follows:

§ 646.6 Selection criteria.

(a) The Secretary uses the criteria in this section to evaluate applications for new awards. The maximum score for all of the criteria is 100 points.

(1) *Plan of operation.* (10 points)

(i) The Secretary reviews each application for information that shows the quality of the plan of operation for this project.

(ii) The Secretary looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purposes of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.* (7 points).

(i) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Secretary looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (a)(2)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (5 points).

(i) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Secretary looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.* (9 points).

(i) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(ii) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.* (3 points).

(i) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Secretary looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(6) *Need.* (33 points). The extent to which the institution has made available educational opportunities to students of deprived educational, cultural, or economic backgrounds, and to students of limited English-speaking ability, or with physical handicaps, or who are disadvantaged because of severe rural isolation.

(7) *Project plan.* (12 points). The comprehensiveness of the applicant's plan for selecting students to be served by the project, conducting an assessment of supportive services needed by the students, and providing the services.

(8) *Resources and organization.* (21 points).

(i) The degree to which student financial assistance at the applicant institution will be used to meet the needs of the students who will be participating in the project;

(ii) The degree to which administrative and academic policies have as their purpose the maximization of a student's chances for graduating from the host institution;

(iii) The extent to which the project director will be consulted on those administrative and academic policies that affect the participant's chances of completing an educational program at the institution; and

(iv) The extent to which the applicant proposes to orient the faculty and staff of the institution to the goals and objectives of the Special Services Program and to utilize institutional resources available to the project.

(b) *Population to be served.* In selecting applications for funding, the Secretary will consider the need for the project in the area the applicant proposes to serve as compared to the need of the total target population to be served.

(c) *National demonstration awards.* The Secretary will select a limited number of applications to be funded as Special Services national demonstration projects on the basis of the criteria contained in paragraph (a) of this section and the following additional criteria:

(1) Whether the proposed project is national or inter-regional in scope, or presents a clearly new or experimental technique or design for the provision of special services for students from deprived educational, cultural, or economic backgrounds, or for students with physical handicaps or for students of limited English-speaking ability enrolled at the institution which is the beneficiary of the award.

(2) Whether the proposed project duplicates or competes with existing regional or national programs or consolidates existing regional or inter-regional educational activities under the aegis of a single agency or institution.

(3) Whether, with regard to proposed projects presenting a new or experimental technique or design, the applicant's proposed activities and expected results can be readily replicated and utilized by other educational programs concerned with the provision of special supportive services for similar students.

(4) Whether the proposed project will provide services not readily available on a local or regional basis for participants.

(5) Whether the proposed project will provide disadvantaged students a variety of educational opportunities and career options.

(20 U.S.C. 1070d–1)

PART 726—CAPACITY—BUILDING FOR STATISTICAL ACTIVITIES IN STATE EDUCATIONAL AGENCIES

24. Section 726.10 is revised to read as follows:

§ 726.10 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new grants. The maxmium score for all of the criteria is 100 points.

(a) *Plan of operation.* (18 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (14 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (9 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (3 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Significance of project.* (37 points).

The significance of the project in improving the long-term statistical capability of the State agency, as measured by a reduction of data burden; improvement in the timeliness of data reporting; improvement in the quality, comparability, or utility of data; increase in educational agencies, institutions of higher education, or other agencies of the State; or similar statistical objectives.

(g) *Commitment.* (14 points) The adequacy of the educational agency's commitment and arrangements made to ensure the long-term effect of the proposed activities after the expiration of Federal funds.

(20 U.S.C. 1221–1(b)(3)6(e))

PART 740—NATIONAL ALCOHOL AND DRUG ABUSE PREVENTION PROGRAM

25. Section 740.14 is revised to read as follows:

§ 740.14 Selection criteria.

(a) The Secretary uses this criteria in this section to evaluate applications for new awards under this subpart. The criteria are not weighted.

(1) *Plan of operation.* (i) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Secretary looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.* (i) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Secretary looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (a)(2)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (i) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Secretary looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.* (i) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(ii) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.* (i) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Secretary looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(6) The extent of the alcohol and drug abuse problem in the schools and local community to be served.

(7) The extent to which team membership includes persons who have demonstrated leadership capabilities.

(8) The extent to which the proposed alcohol and drug abuse prevention and early intervention program activities of the applicant are addressing or will address unmet alcohol and drug abuse problems in the schools and local communities to be served.

(9) The extent to which alcohol and drug abuse prevention and early intervention efforts by the applicant will be coordinated with related efforts in the schools and communities served by the applicant.

(10) The degree of the applicant's commitment to support and facilitate the alcohol and drug abuse education activities of the team after training is completed as demonstrated by the applicant's stated intent to support these activities administratively and financially.

(11) The extent and manner in which the team will be utilized after training in the development and administration of alcohol and drug abuse prevention and early intervention programs in the schools of the applicant educational agency.

(b) In the awarding of funds under this subpart, the Secretary will take into consideration the extent to which the funds will be distributed throughout the Nation among school systems of varying characteristics such as geographic size, ethnic composition, concentration of persons with limited English-speaking ability, and socioeconomic levels in urban, suburban, and rural areas.

(20 U.S.C. 1002).

26. Section 740.25 is revised to read as follows:

§ 740.25 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new awards under this subpart. The criteria are not weighted.

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages

applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) The extent of the alcohol and drug abuse problem in the local community to be served.

(g) The extent to which team membership includes persons who have demonstrated leadership capabilities.

(h) The extent to which the proposed program activities address unmet alcohol and drug abuse prevention needs in the local community to be served.

(i) The extent to which alcohol and drug abuse prevention efforts by the applicant will be coordinated with related efforts in the schools and communities served by the applicant.

(j) The degree of the applicant's commitment to support and facilitate the alcohol and drug abuse education activities of the team after training is completed as demonstrated by the applicant's stated intent to support these activities administratively and financially.

(k) The extent and manner in which the team will be utilized after training in the development and administration of drug abuse prevention programs in the community.

(20 U.S.C. 1002)

[FR Doc. 81-1676 Filed 1-16-81; 8:45 am]

BILLING CODE 4000-01-M

federal register

Monday
January 19, 1981

Part VIII

Department of Transportation

Urban Mass Transportation Administration

Charter Bus Operations

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 604

[Docket No. 80-U]

Charter Bus Operations

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Advance Notice of Proposed Rulemaking (ANPRM).

SUMMARY: The Urban Mass Transportation Administration (UMTA) is proposing a revision of, and inviting comment on, its existing charter bus regulations. UMTA seeks to clarify the duties of those recipients who engage in charter bus operations only within their urban area, and the additional duties of those recipients who engage in charter bus operations outside their urban area. It also seeks to provide more reliable protection to private operators in the intercity charter bus industry while reducing paperwork burdens on recipients. This revision does not include in its coverage operations of recipients assisted by funds provided under authority of Section 18 of the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. § 1614. Those operations will be covered by a separate rulemaking action to be issued by the Federal Highway Administration.

DATE: Comments must be received on or before March 5, 1981.

ADDRESS: Comments must be submitted to UMTA Docket No. 80-U, 400 7th Street SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination in room 9320 at the above address between 8:30 a.m. and 5:00 p.m., Monday through Friday. Receipt of comments will be acknowledged by UMTA if a self-addressed, stamped postcard is included with the comment.

FOR FURTHER INFORMATION CONTACT: Theodore Munter, Office of the Chief Counsel, (202) 426-1936; or Ernesto Fuentes, Office of the Chief Counsel, (202) 426-1906.

SUPPLEMENTARY INFORMATION: All comments received before the expiration of the comment period will be considered before further action is taken. Comments received after the expiration of the comment period will be considered to the extent feasible.

The Administrator has determined that this rulemaking is not significant under the criteria in the DOT Order for Improving Government Regulations (44 FR 11042, February 26, 1979).

Under the DOT Order, a full evaluation is not warranted at this stage since the expected economic impact cannot be evaluated until comment is received on the proposed revisions to the existing regulations.

The provisions of OMB Circular A-95 apply to this Advance Notice of Proposed Rulemaking. It covers the following programs as listed in the Catalog of Federal Domestic Assistance (CFDA):

20.205—Highway Research, Planning, and Construction
20.500—Urban Mass Transportation Capital Grants
20.507—Urban Mass Transportation Capital and Operating Assistance Formula Grants

UMTA has prepared a side-by-side comparison of the existing charter bus regulation with the proposed revision. Requests for copies should be sent to the address listed above, or to the individuals listed in the contact section.

Discussion

Background

UMTA's current charter bus regulations, 49 CFR Part 604, were published in 1976. An Advance Notice of Proposed Rulemaking (ANPRM) was issued simultaneously with amendments to the regulation, 41 FR 56680 (Dec. 29, 1976), and a public hearing was held on January 16, 1977. The comments and testimony about the regulations were collected in Docket 76-10, which together with Docket 75-02 on which the existing regulations are based, and three years of administration of the regulation and adjudication of complaints thereunder, represents UMTA's basis for evaluating the regulations. The term "commenters" used herein refers to those who filed comments in either docket or subsequently.

UMTA has decided to issue an Advance Notice of Proposed Rulemaking at this time because of the length of time since the last issuance and because of the complexity of the issues involved.

Authority

UMTA's charter bus regulations are designed to implement two provisions of its enabling statute, the Urban Mass Transportation Act of 1964, as amended (UMT Act, or the Act), 49 U.S.C. 1601 et seq. First, Section 12(c)(6), states that the "mass transportation" for which UMTA provides funds and equipment shall "not include * * * charter * * * service." 49 U.S.C. 1608(c)(6). The Comptroller General interpreted this provision to disallow the use of assistance provided under the UMT Act for the purchase of buses or other equipment intended for charter service. The Comptroller General's opinion, however, allowed, even encouraged, the "incidental" use for charter of vehicles purchased for mass transit so long as such chartering "does not detract from or interfere with urban mass transportation service for which the equipment is needed." Opinion of the Comp. Gen., B-160204 (Dec. 7, 1966). UMTA implements this incidental use restriction in its existing regulations primarily by the use of three presumptions as to what types of charter bus operations will be presumed not to be incidental. 49 CFR 604.11(b). The proposed revision retains these presumptions. Proposed § 604.11. The incidental use restriction applies to all UMTA recipients operating charter service with vehicles purchased with UMTA assistance, whether inside or outside their urban areas.

The second provisions of the statute, section 3(f), is a special provision enacted to protect private operators in the "intercity charter bus industry" from being foreclosed from doing business by competing UMTA recipients and operators for them using Federal subsidies to compete. 49 U.S.C. 1602(f); Pub. L. 93-650 (1974); Pub. L. 93-383, § 813(a) (1974). Under this provision, each recipient of federal funds under the UMT Act or parts of the Federal Aid Highway Act (23 U.S.C. 103(e)(4) and section 142(a) and (c) (hereinafter the "Acts") for the purchase or operation of buses must, as a condition of assistance, enter into a special charter bus agreement with the Secretary of Transportation. Each such recipient must agree that it will not engage in charter bus operations outside the urban area within which it provides regularly scheduled mass transportation service, except as provided in its charter bus agreement. Terms of that charter bus agreement become operative if the recipient or an operator for it engages in charter bus operations outside its urban area. The statute does not specify what the protective terms of the section 3(f) agreement shall be, but states that they shall be "fair and equitable arrangements, . . . appropriate in the judgment of the Secretary to assure that financial assistance granted under the Act will not enable recipients to foreclose private operators from the intercity charter bus industry." 49 U.S.C. 1602(f). The Senate Committee which drafted the statutory language in its present form stated that "the bill * * * is designed to give the

Secretary of Transportation the authority to tailor arrangements to provide equitable solutions," and noted that even though the purpose of the bill was "to prevent public subsidies from driving private enterprise out of the charter bus industry" that "grantees of Federal assistance ought not to be prohibited from offering the public needed charter service." Comm. on Banking, Housing, and Urban Affairs, "Federal Financing of Urban Mass Transit Equipment to Protect Private Bus Operators Engaged in Intercity Charter Service", S. Rep. No. 93–547, 93d Cong., 1st Sess. 2 (1973).

Under the existing regulations, the special charter bus agreement which recipients have been required to sign has sought to assure these fair and equitable arrangements by requiring each recipient, should it engage in charter bus operations outside its urban area, to allocate to its charter operations a portion of its actual costs and certain as-if-private costs and then certify that its charter revenues equal or exceed those costs. 49 CFR 604.3, 604.13, 604.15, and Appendix B. The proposed revision allows a recipient, should it engage in charter bus operations outside its urban area, to continue to use this arrangement for compliance, if it chooses, or if it does not choose to do so, to be subject to what UMTA anticipates will be a less burdensome and more effective rate-comparability approach. *See* proposed § 604.20 and Appendix A. These two approaches are discussed in detail *infra*. Under the proposal, the simple form agreement, which is set forth as Proposed Appendix A, incorporates both of these options. Under the proposal, recipients are also free to employ other means for assuring these fair and equitable arrangements, if an agreement containing the alternative is approved by the Administrator. Proposed § 604.21. The proposal is thus designed to permit recipients maximum flexibility consistent with ensuring that fair and equitable arrangements exist "to assure that financial assistance granted under this Act will not enable recipients to foreclose private operators from the intercity charter bus industry." 49 U.S.C. 1602(f).

Scope and Coverage

(a) *All Recipients.* All recipients who receive assistance under the Acts for the purchase or operation of buses, whether they engage in charter bus operations or not, are required by statute to enter into a charter bus agreement with UMTA. 49 U.S.C. 1602(f); *see* 49 CFR 1.51 (delegation of authority). The proposed standard terms of this agreement are set forth in Proposed Appendix A.

All recipients who engage in any charter bus operations, either inside or outside their urban areas, must comply with the requirement that any UMTA-assisted buses, facilities or equipment be used only incidentally in charter operations so as not to detract from or interfere with mass transportation service. No recipient may reimburse the cost of providing charter service with any financial operating assistance under the Acts. The regulation incorporates this requirement since charter bus operations are a class of transportation service that is ineligible for support under the UMT Act. 49 U.S.C. 1608(c)(6). See also, proposed UMTA Section 5 Operating Assistance Regulations, 45 FR 56742 *et seq.* (Aug. 25, 1980). In reviewing any complaints concerning the incidental use of buses in charter operations, UMTA intends to use the three presumptions as to what is not incidental use contained in UMTA's existing regulation (49 CFR 604.11(b)). These presumptions, discussed in greater detail in the portion of this preamble entitled "Incidental Use Presumptions", are retained in the proposed regulation (Proposed § 604.11) together with an explicit statement of the means by which a recipient may overcome these presumptions (Proposed § 604.12).

A recipient who can show that it derived $15,000 or less in gross annual revenues from charter bus operations during its most recently completed fiscal year will have a complete defense under the proposal to any complaint to UMTA concerning any aspect of its charter bus operations.

(b) *Recipients with Charter Bus Operations only within the Urban Area.* A recipient whose charter bus operations are entirely inside its urban area may publish and mail to private operators a one-time notice to that effect and file with UMTA appropriate documentation including a precise description showing the boundaries of its urban area. Proposed § 604.2(e). The recipient may then only be subject to the incidental use restriction and to the statutory requirement to enter into an agreement. Such recipients may be exempted from the hearing and annual notice requirements. Proposed §§ 604.4 and 604.23(b). In addition, paragraph (b) of its charter bus agreement, imposing arrangements pursuant to section 3(f), will not be operative. Proposed §§ 604.20 and 604.23(b).

A private operator who disagrees with the area determined by UMTA to be the recipient's urban area is free to file a complaint at any time (Proposed § 604.30), but is encouraged to object at the time provided to submit written comments under Proposed § 604.23, or to submit oral comments at a hearing. Proposed § 604.4. If at any time the recipient begins charter bus operations outside its urban area, or is found to engage in such operations as a result of a complaint or otherwise, it must immediately mail and publish notice and thereafter comply with the hearing and notice requirements of Proposed §§ 604.2, 604.4, 604.22 and 604.23. Such recipient will also be held responsible for compliance with the fair and equitable arrangements set forth in paragraph (b) of its charter bus agreement as of the date any of its charter operations go outside its urban area. Proposed § 604.2(e).

A recipient who once engaged in charter bus operations outside its urban area, but who decides to operate charter buses only within its urban area in the future, may obtain the exemption from the hearing and notice requirements and from compliance with paragraph (b) of its charter bus agreement in the manner provided by proposed § 604.2(e) and § 604.23(b). A recipient who does not file for this exemption will be presumed to engage in at least some charter bus operations outside its urban area. Proposed § 604.23(c).

(c) *Recipients with Charter Bus Operations Outside the Urban Area.* A recipient who engages in charter bus operations outside its urban area will be held responsible for compliance with the notice requirements (Purposed § 604.23(c)) and all terms of its charter bus agreement in addition to the incidental use restriction (Proposed § 604.10). For such recipient, paragraph (b) of its charter bus agreement containing the rate-comparability or certification-of-cost requirements will be operative. Proposed Appendix A.

Under the proposal, as under the existing charter bus regulation, the requirements for fair and equitable arrangements would be imposed on *all* charter bus operations, whether the charter operations were conducted inside or outside the urban area. Proposed § 604.20 and Appendix A, section (b).

UMTA has considered the alternative of allowing recipients to defend against a complaint alleging a violation of either cost certification or rate-comparability approaches by a showing that the particular challenged bus run did not travel beyond the boundaries of its urban area. However, UMTA has tentatively concluded that such a defense would be unworkable under a certification-of-costs approach since such an approach would require close attention to a precise boundary line and

would result in the separate accounting for charter bus runs and in the maintenace of separate tariffs. This would result in overly complex certifications of costs and thus be confusing to the public: Under rate-comparability, the defense concerning the points of travel of a particular bus run would be reliable concerning a given complaint, but could lead to a two-tiered rate system which could be administratively burdensome and also confusing to the public. It would give rise to controversy since most private operators would have no comparable rate system. UMTA specifically invites comments on this matter, i.e. whether it is appropriate to include the intracity portion of a recipient's charter business as a means of achieving the Congressional purpose of protecting the intercity charter bus industry or to establish a two-tiered system for intercity and intracity charter service.

Definitions

Applicants, Grantees, Recipients and Subrecipients

These terms have all been consolidated into one definition to facilitate usage in the regulation. The term "recipient" is used to cover all of them. UMTA recognizes that distinctions do exist (e.g., applicants may not already be receiving funds under a prior approved grant); however, the subcategories are obvious and easily distinguishable.

Charter Bus Operations

The proposed revision retains UMTA's current definition of "charter bus operations." Proposed § 604.3(e); *compare* 49 CFR § 604.3. This definition emphasizes the essential element of "exclusive" use along with other distinguishing characteristics of charter such as a group under a single contract, charge-per-vehicle, and passenger-determined itinerary.

Though commenters sought to have the regulation identify various types of services as charter or noncharter, UMTA believes that a generally applicable definition avoids the technicalities of further subclassifications of service. The following discussion is offered as a guide to interpretation in response to the questions of commenters.

a. School bus service: Under the definition of charter bus operations the transportation of students in incidental charter operations is permissible; however this must be distinguished from the more regular or daily school bus service that is prohibited under section 3(g) of the UMT Act and the school bus regulations issued pursuant to that section. 49 U.S.C. 1602(g); 49 CFR Part 605; *see Chicago Transit Authority* v. *Adams*, 607 F.2d 1284 (7th Cir. 1979), *cert. denied*, —— U.S. ——, 100 S. Ct. 2175 (1980).

b. Sightseeing service: Section 12(c)(6) of the UMT Act, 49 U.S.C. 1608(c)(6) specifically excludes sightseeing service from the definition of mass transportation. Thus it is ineligible for support with funds provided under the Acts. Although this type of service is not regulated by UMTA's charter regulation, by inference from the Comptroller General's decision on charters, any use of mass transportation buses or other equipment by a recipient for sightseeing must be "incidental" to regularly scheduled mass transportation service. *See* Opinion of the Comp. Gen. B–160204 (Dec. 7, 1966); *see also* UMTA Complaint Decision, *San Antonio Sightseeing, Inc.* v. *San Antonio Metropolitan Transit Authority*, July 7, 1980. However, regularly scheduled cultural loop buses without a guide are normally considered eligible mass transportation. In determining whether these types of service are mass transportation, charter, or sightseeing, UMTA will consider whether the trip is exclusive or open to the public, whether fares are charged on a group or individual basis, whether the itinerary is determined by the passengers or not, and other factors that pertain to bus service that meets the definition of charters.

c. Special mass transportation and certain paratransit services: Special mass transportation service, such as vanpooling, subscription bus service, paratransit for elderly and handicapped, or demand responsive service such as dial-a-ride, can create questions because particular vehicle runs under such services are often offered "exclusively" to a defined group of people who set the itinerary and may pay for the service on a per-vehicle rather than on a per-person basis. As discussed below, however, each of these forms has characteristics making it part of the statutory definition of mass transportation, thus eligible for UMTA funding, and exempt from the charter restrictions of this part.

"Special" mass transportation service is that which is targeted to serve only a specific portion of the general public, 49 U.S.C. 1608(c)(6). The Congressional committee which expanded the definition of mass transportation to include this type of service provided two examples of the types of service that might be involved, i.e., special service from ghettos to specific places of employment, limited to those riders who work there and coordinated to shift changes, or special service from elderly housing developments to hospitals and clinics. These services might require additional buses which the transit system involved could not afford to provide without Federal aid. House Committee on Banking and Currency, Report on H.R. 17989, Housing and Urban Development Act of 1968, 90th Cong., 2nd Sess., H.R. Rep. No. 1585, at 66 (1968). Dial-a-ride or demand-responsive service has been called into question by some commenters. Dial-a-ride is not charter because it is open to passengers other than the first requester, because fares are usually charged for individuals rather than for the vehicle, and because it is part of a regular, continuing, coordinated and comprehensive mass transportation system.

Vanpools are also not charter. For instance, corporations that institute vanpools for their employees might receive UMTA assistance through a local recipient as one of many agents of such recipient. This makes the service a regular and continuing transportation service, unlike charter service which is provided on an ad hoc basis. In addition, this type of vanpool-service is broadly available to the public as part of a publicly available, nonexclusive program. This is consistent with the definition of "mass transportation." 49 U.S.C. 1608(c)(6). This is unlike a charter operation that is exclusive and operates on an itinerary that is alterable at the will of the users.

Subscription bus service, like that purchased by some suburban communities to transport their residents to urban centers, may be either mass transportation or charter depending on the degree of the service's exclusivity and its regular and continuing nature. If the service is only occasional it is likely to be charter. If it is regular and continuing it may also be charter if the group of potential subscribers is artificially restricted by residence status or membership criteria. It will be mass transportation if subscriptions are available to anybody willing to pay for the service and if it is coordinated with the area's other mass transportation service.

UMTA acknowledges that some of these special mass transportation services may encroach on certain services provided by private operators, but notes that in regard to mass transportation, private operators are protected not by the charter bus agreements of section 3(f), 49 U.S.C. 1602(f), but by the requirement to provide for the "maximum participation

of private enterprise" in sections 3(e) and 8(e) of the UMT Act, 49 U.S.C. 1602(e) and 1607(e).

d. Sudden or Emergency Demands: Many public authorities asked for an exemption from the charter regulations for large-scale sudden demands for charter bus service that might occur during airport fog-ups, rail stoppages, transit strikes, or major sports events or conventions. The basis for such an exception might be that private operators cannot provide the number of buses required. Private operators reply that they are willing and able to, and in some areas actually do, provide at least a portion of such services. By examining the various types of emergency demands one can distinguish those cases which are "mass transportation" and therefore eligible for funding and not subject to this regulation. For example, the provision of back-up service to mass transportation operators, such as for a subway breakdown, for feeder line service, or to cover for a transit strike in those areas where more than one operator provides mass transportation, is considered "mass transportation." UMTA will look beyond the immediate transaction to determine whether the service being compensated for is mass transportation.

However a particular kind of emergency service might be classified, UMTA encourages recipients, under the combined policies of sections 3(e), 3(f) and 8(e) of the UMT Act, 49 U.S.C. 1602 (e) and (f), and 1607(e), to include to the maximum extent feasible the participation of private enterprise.

In contrast to back-up service for a subway breakdown, UMTA believes that the provision of emergency service to an airport or to an intercity common carrier would be considered charter where the service was an emergency substitute for a service which is not regularly scheduled mass transit service under the Act. Some have stated that the sudden, emergency nature of needs for service such as an unexpected need for a shuttle from one airport to another should exempt recipients from compliance with the charter regulation. UMTA believes this argument is not persuasive. A service that was not mass transportation before the emergency is not converted to eligible mass transportation by the occurrence of the emergency. As a consequence, UMTA believes that a recipient who chooses to compete for or to offer such service, shold be subject to the charter regulation.

e. Contract service, social service, and agency service, such as may be provided by a public authority to a nursing home to take elderly patients to religious services or to a court system to take juries to the scene of a crime, are generally considered charters under the definition of charter bus operations. They will be subject at least to the incidental use restriction.

Urban Area

The definition of "urban area" serves a critical triggering function under section 3(f). Once a recipient engages in charter operations outside the "urban area within which it provides regularly scheduled mass transportation service" its charter operations become subject to agreed upon "arrangements, appropriate in the judgment of the Secretary, to assure that the financial assistance granted under [the] Act will not enable public bodies and publicly and privately owned operators for public bodies to foreclose private operators from the intercity charter bus industry * * *" 49 U.S.C. 1602(f). So long as a recipient keeps its charter bus operations within its "urban area" it need not comply with the "fair and equitable arrangements" for the protection of private operators imposed by its section 3(f) agreement with UMTA although it must comply with incidental use presumptions pursuant to UMTA's and the Comptroller General's interpretations of the definition of mass transportation in section 12(c)(6) of the UMT Act. Presently, the charter regulation makes all of a recipient's charter bus operations, both within and without its urban area, subject to the arrangements of a recipient's section 3(f) agreement when a recipient engages in charter bus operations outside its urban area, and the proposed revisions continue this policy. For a discussion of alternatives and an invitation for comments, see the *Scope* section above. UMTA also uses the concept of "urban area" in the incidental use presumptions and proposes to continue to do so as a mechanism for implementing the Comptroller General's incidental use interpretations of the definition of mass transportation. 49 CFR 604.11(b); *compare* Proposed § 604.11.

The definition of "urban area" for purposes of the UMT Act is left to the Secretary's discretion. "[T]he term 'urban area' means any area * * * which is appropriate, in the judgment of the Secretary, for a public transportation system to serve commuters or others * * *" 49 U.S.C. 1608(c)(10). UMTA's definition of urban area under its existing charter regulations consists of three parts: the "authorized" area, the "urbanized" area defined by the Census, and other areas as determined by the Secretary. 49 CFR 604.3.

The proposed revisions set forth only slight modifications to correct the citations, to clarify the original meaning of the definition, and to clarify that administrative discretion exists under the statute to either add to or subtract from what would otherwise be the "urban area." Proposed § 604.3(i). UMTA acknowledges the difficulties in applying a general definition of urban area throughout the country so that the boundaries of each urban area are sufficiently defined to resolve any questions. This is compounded by the fact that the definition of urban area is tied to the concept of the area authorized to be served by the recipient which may change over time. The appropriateness of any definition to a local area's charter market may vary according to the relation between population centers, boundary lines, points of interest or other charter service generators. Comment is requested on whether recipients should be required to submit a map or some other similarly precise form of description of their urban areas for purposes of the charter regulation.

Many commenters addressed the question of the definition of urban area and suggested numerous variations tailored to the needs and interests of the particular commentors. Restrictive suggestions proposed that the urban area be limited to the area *actually* served by the recipient's mass transportation. These were accompanied by various proposals for means of dealing with the areas between, or in the immediate vicinity of, route lines and terminals, including suggestions that UMTA adopt Interstate Commerce Commission and public utility commission definitions of incidental service or feeder areas or that UMTA simply connect the end points of actual routes. Numerous other commenters made suggestions, either restrictive or expansive in a given case, that urban areas be defined by the boundaries of states, or political subdivisions, or the Bureau of Census designed "urbanized" areas.

UMTA believes that the current definition of urban area, adding together the authorized area and the urbanized area in which a recipient operates, accurately reflects the area for which recipients can provide charter operations without foreclosing the intercity charter bus industry. In the interest of fairness to recipients and private operators UMTA intends to use its discretion to add to an urban area for charter bus operations only in those cases where a recipient is actually providing regularly scheduled mass

transportation service outside its "urbanized" area and authorized area and is not prohibited from doing so.

UMTA intends to subtract from what would otherwise be part of a recipient's urban area where it is improbable that a recipient would actually provide mass transportation service to such areas. When and if such adjustments are made, UMTA also intends, in the interest of clarity, to include the entire area of a major political subdivision served at least in part by the recipient's mass transportation, unless such would be inequitable in the particular case.

A recipient who intends to confine its charter operations to within its urban area so as to obtain the exemption under Proposed § 604.2(e) must submit an accurate description of its urban area and must give the notice prescribed by § 604.23(b). *See* Scope.

Operator for a Recipient

Section 3(f) expressly applies to "operator[s] of mass Transportation for . . . [recipient] public bod[ies]" and to "Publicly and privately owned operators for public bodies." 49 U.S.C. 1602(f). UMTA has traditionally interpreted both of these phrases to apply to the same class of operators. Some commenters suggested that the only class of operators for recipients subject to these provisions were those who were legally agents of a recipient so that lessees of Federally-assisted equipment were not bound by the regulation. Such a narrow interpretation would exclude many who might benefit from subsidies. The proposed revisions present a definition that includes all who engage in charter bus operations and who are directly or indirectly assisted by Federal financial assistance. It would exclude from its scope those contract operators who provide service as a result of arms-length economic transactions. Comment is specifically invited on this issue.

Public Hearings and Public Comments

The requirements concerning public hearings are being revised. Charter operations may be commented upon in hearings held pursuant to §§ 3(d) and 5(i) of the UMT Act, 49 U.S.C. 1602(d) and 1604(i). The notices for these hearings would be issued under the procedure of proposed § 604.22 and would contain the information required by proposed § 604.23.

It should be noted that UMTA recently proposed regulations for § 5 operating assitance grants. 45 FR 56743 (August 25, 1980). One proposed change modifies the current requirement that a public hearing be held on all operating asistance grant applications. The proposed regulations require a public hearing on applications for an operating assistance grant only when a written request for a hearing is submitted. Thus, if a private charter operator wanted to make its views or objections known, it would have to request a public hearing on a § 5 operating assitance grant.

The current guidelines for § 3 and § 5 capital assistance grants require a public hearing for all capital assistance applications.

Private operators can submit written comments based on the notices required by proposed §§ 604.22 and 604.23. If a public hearing is held, private operators will be given an opportunity to present their views and comments. A transcript on any public hearing held must be made. The transcript along with written comments made by private operators must be submitted to UMTA along with each grant application.

UMTA will require the recipient to consider the written and oral comments of the private charter operators before a grant application is submitted to UMTA. Proposed § 604.4.

If a recipient which operates charter service pursuant to the rate-comparability approach changes to a cost certification approach or revises its outstanding cost certification, it must give notice of such changes to private charter operators, under the procedures in proposed § 604.22. The notice must contain the information required by proposed § 604.23. The recipient must consider any comments received as result of this notice. The comments must be submitted to UMTA along with the request for approval of the certification of costs. If UMTA determines that a basis exists to question the cost allocation or certification of costs, UMTA may, at its discretion, hold a fact-finding hearing before approving such submission. Proposed § 604.26.

Incidental Use of Presumptions

The portion of the present regulation implementing the Comptroller General's "incidental use" interpretations of the exclusion of charters from mass transportation includes three rebuttable presumptions of what is not incidental use. Although some commenters objected to the presumptions, the proposed revision retains them to give guidance to recipients as to the kinds of charters are considered acceptable under the incidental use provision. Proposed § 604.11. The presumptions also give private operators and objective standard by which to identify and complain about violations.

Although the opportunity to rebut the presumptions has always existed, the proposed revision makes explicit that there is the opportunity of rebuttal. The presumptions may be rebutted by an affirmative showing by the recipient or operator for it that any charter which occurs during a daily peak period occurred at a time when the recipient had no less than 110 percent of the buses needed to meet that daily peak demand available for mass transportation service, and that any challenge charter activity did not otherwise detract from or interfere with mass transportation service. UMTA acknowledges seasonal and holiday variations in peak and allows the variations as part of the defense against a complaint. Proposed § 604.12. Buses stockpiled for emergency use may not be used for charters and may not be considered in rebutting presumptions as to incidental use. *See* 45 FR 13994–5 (Mar. 3, 1980) *to be codified* in 49 CFR Part 641 relating to bus stockpiling. It is not UMTA's policy to discourage or encourage charter bus operations by recipients but only to insure that their charters do not unduly interfere with private operators or with mass transportation. In establishing the incidental use standard, the Comptroller General encouraged the chartering of otherwise idle equipment by public authorities because "such [chartering] service contributes to the success of * * * mass transportation * * * by bringing in additional revenues and providing full employment to drivers and other employees. It may * * * even reduce the need for Federal * * * grant assistance." Opinion of the Comp. Gen., B–160204 (1976).

Requirements for Recipients who Engage in Charters Outside Their Urban Areas

While all recipients must enter into a charter bus agreement as a condition of assistance, certain portions of that agreement will only apply if the recipient engages in charter bus operations outside of the urban area. The proposed standard language of the charter bus agreement is broken into three parts. Proposed Appendix A. The first part implements the incidental use restriction of the Comptroller General's Opinion on incidental use. The second part sets forth the "fair and equitable arrangements" to protect private operators pursuant to section 3(f). The third part specifies UMTA's enforcement powers. In accordance with the statute, the arrangements contained in the second part of the agreement do not restrict the recipient's operations unless the recipient, or an operator for it, engages in charter bus operations outside of the urban area. 49 U.S.C. 1602(f).

The following discussion describes the nature and interpretation of the arrangements in the second paragraph of the agreement which would, under the rule as proposed, apply to recipients who themselves, or through operators for them, engage in charter bus operations outside the urban area.

Rate-Comparability

The proposed revision adoptes, as the basic term of the section 3(f) agreement, a requirement that no recipient who engages in charter bus operations outside its urban area, nor any operator for such recipient, will charge rates for charter bus operations that are lower than the lowest rate charged by the three largest private operators rendering the same or similar service in the area. Proposed Appendix A, section (b). The requirement would apply to all charters both within and without the urban area. UMTA's rationale for using rate-comparability as an arrangement of the section 3(f) agreement is to spare many recipients the burden of a relatively unproductive accounting exercise and to give private operators some degree of marketplace protection, thus better achieving the Congressionally intended result of protecting those operators. It is anticipated that the proposed approach will reduce staff time demand on UMTA, the recipients, and potential complainants. However, the proposed rate-comparability requirement is not intended to be a regulation of rates.

In decising to include this alternative, UMTA considered many approaches in addition to only continuing the present certification of costs scheme, including mandating referrals, rights of first refusal, or regulating a recipient's solicitations or advertisement of charter bus operations. While UMTA invites comment on innovative approaches, it presently considers the present cost certification an the rate-comparability approaches as the most appropriate.

Rate-comparability was suggested by the House Committee on Public Works which introduced the concept of the agreement in section 3(f) and which drafted the language substantially in its present form as a means of protecting private charter operators. That Committee suggested that "a local public transportation authority might agree with the Secretary of Transportation not to offer charter service to places outside an urbanized area at rates lower than the lowest rates of private operators in the area." H.R. Rep. No. 93–553, 93rd Cong., 1st Sess. 3 (1973). Certain local areas have adopted arrangements that are similar to the Committee's suggestion. A Colorado statute requires of public operators that "the schedule of charges for special charter service shall be equal to but not less than those charged by authorized common carriers rendering the same or similar service." Colo. Rev. Stat. 32–9–103(7)(b) (1973).

Section 12(d) prohibiting UMTA from regulating rates under its section 3 capital program, 49 U.S.C. 1608(d), does not prohibit the proposed rate-comparability approach. The approach is justified by section 3(f)'s direction that "fair and equitable arrangements" be in place and by legislative history suggesting the rate-comparability approach as a fair and equitable arrangement and by section 12(d) itself in light of the fact that a section 3(f) charter agreement is a "condition of assistance," 49 U.S.C. 1602(f), and thus necessary to require compliance by the recipient with its undertaking "furnished in connection with the application for the grant." 49 U.S.C. 1608(d).

Under the approach in the proposed revision, a private operator may complain if he learns of a recipient's charter being offered at lower than the lowest private rate of the three largest private operators in the area offering the same or similar service. UMTA's determination of whether a recipient's rate is "lower than the lowest" private rate would not depend on the means used to calculate the rate, such as miles or hours, but upon bottom-line cost to the passengers.

UMTA's determination of what constitutes "same or similar service" for purposes of such complaints could raise several issues. Differences in equipment, such as between a transit bus, a recliner seat bus, or a van, would not preclude all comparison, but might give rise to the need for adjustments. Adjustments might also be needed to compensate for differences in deadhead mileage costs. Classification of service by local public utility commissions (PUC) or the Federal Interstate Commerce Commission (ICC) cannot be adopted outright, but may provide useful analogies.

UMTA, consistent with its role as a grant-in-aid agency rather than a regulatory agency, favors the use of easily applied presumptions, such as one that a transit bus is the "same or similar" to a recliner seat bus for trips of one-hundred miles or less and must therefore have no lower rates, but that for longer distances rates may be lower. More detailed provisions if appropriate, should be the subject of local adjustment. Comments are specifically invited on this issue.

A recipient may charge lower rates but in conformity with a certification of costs formulated as prescribed by Proposed Subpart C (*see* esp. proposed § 604.23(c) and § 604.24). UMTA considered allowing those using the rate-comparability approach to defend against complaints that rates were being charged lower than that which the rate-comparability approach requires: (1) by submitting a certification of costs to show that the recipient has met all of its as-if-private costs from charter revenues, along with evidence that the challenged rate was not designed to foreclose private operators or (2) by submitting evidence that no private operator was willing and able to provide the challenged services. Proposed Appendix A, section (b). However, such defenses would then require the recipient instead simultaneously to follow the two approaches or to deal with charter on a charter run-by-charter run basis. This would take away the very strengths of the rate-comparability approach that recommends it, i.e., ease of application.

UMTA foresees potential difficulties in implementing this rate-comparability provision in areas in which only one, or at most two, private operators exist. UMTA recognizes that an automatic fall-back to a cost-certification approach for this situation may impose accounting burdens on those small recipients least able to deal with them. One alternative is to permit the use of rate-comparability where there are only one or two private operators if there is local assurance that the rates charged by the operator(s) are reasonable, and comment is requested on this approach. Another alternative, permissible under this proposal as written would be the local agreement tailored to local circumstances, permitted under proposed § 604.21.

Other Agreements

The current regulation allows UMTA and a recipient to enter into an agreement with terms other than those set forth in the standard agreement where UMTA finds that the requirements of the statute can be met by that alternate agreement. 49 CFR 604.14. Under this provision, UMTA has agreed to waive certain requirements of its regulation, such as cost certifications, for areas that have locally tailored agreements or provisions of state law deemed appropriate to meet the requirements of section 3(f).

UMTA proposes to retain the option to enter into locally tailored agreements, in special circumstances needed on a case-by-case basis to suit the local situation. Proposed 604.21. Such locally tailored agreements can account for local variations in geography, market conditions, and law, to a degree not possible under uniform standards contained in the regulation, and can

thereby give greater protection to private operators while avoiding unnecessary restrictions on recipients. It also balances the need for avoiding destructive competition with recipients yet not constructing artifical obstacles to private operators competing among themselves. Such agreements can satisfy the requirements of section 3(f) when entered into between UMTA and "the applicant or any public body * * * or any publicly owned operator receiving * * * assistance." 49 U.S.C. 1602(f). Such agreements may be entered into any time by petition of the parties to UMTA. Standard charter bus agreement provisions will apply to recipients until such time as a locally tailored agreement is approved by UMTA. UMTA will review the terms of any proposed agreement to insure its consistency with section 3(f) of the UMT Act before making it part of a grant agreement.

UMTA will only enter into those parts of an agreement that protect private operators from charter competition with a public body, pursuant to section 3(f). Nothing in agreements to which UMTA becomes a party may prevent competition among private operators or prevent other private operators from entering the local charter market. Nor may anything in such agreements restrict the recipients' mass transportation operations.

Certification of Costs

Many commenters objected to the cost certification approach as being an unreliable accounting exercise. Recipients objected to the paperwork burdens and private operators criticized the approach as providing them no easy to understand and evaluate means of judging or complaining about a recipient's compliance. The proposed revision seeks to answer these comments by making rate-comparability and alternative arrangement.

The certification of costs approach in the existing regulation has required a recipient to allocate to is charter operations both the actual costs of the charter operations and certain as-if-private costs, such as taxes and depreciation, and then to certify that its charter revenues equal or exceed those costs. Thus, the recipients show that they do not use UMTA assistance to support charter operations. 49 CFR 604.3, 604.13, and Appendix B.

The proposed revision allows recipients subject to rate-comparability requirements to do away with the cost certification approach. Proposed Appendix A, section (b)(2). However, as an alternative to rate-comparability, recipients may choose to retain the current cost certification approach as a means of complying with the regulations. Proposed Appendix A, section (b)(3).

Many recipients objected to the allocation of specific costs to charter, such as depreciation and state-imposed taxes, on the theory that tax exemption advantages enjoyed by public authorities are not the result of financial assistance under the Act, or, in the case of depreciation, that such a cost is never recognized in public accounting. UMTA has considered these objections and believes it inappropriate to attempt to determine chains of causation under each scheme of local law and accounting to decide which costs are avoidable because of subsidies and which are avoidable for other reasons. UMTA is further of the opinion that requiring public recipients to justify any lower-than-private operator rates by an accounting for the full range of as-if-private costs is fair and equitable in light of the fact that many recipient's charter runs become possible only as a result of the scale and visibility of recipient's operations resulting from federal subsidies.

If a recipient engages in charter operations outside its urban area and where a recipient decides to use certification of costs as its primary means of compliance under the proposed revision, such fact must be reflected in its charter agreement and in its annual notice to private operators. Proposed § 604.23(c). The recipient must also obtain prior approval of its cost certification and revise the certification upon a change in its charter operations. Proposed § 604.26. The triggering event for a revision of the certification of costs has been changed from a revenue change of 25 percent or more "from the average two preceeding fiscal quarters," 49 CFR § 604.30(b), to a revenue change for a year of 25 percent or more from the average of the two previous years. Proposed § 604.26(c).

This amendment is in response to comments about seasonal variations in the level of charter service. The averaging of the previous two years will ameliorate unusual circumstances that might occur if different or only one year were used as the reference point. The use of years is made instead of quarters to even out seasonal differences within each year.

Comment is invited on the content of the cost certification approach, on its benefits and flaws under the existing regulation, and on its use as an option under the proposed revision.

Notice to Private Operators

Although UMTA will continue to monitor bus needs of individual recipients, basic to enforcing the proposed charter regulations is inquiry and complaint by private operators who must be attentive to protection of their own interests. Adequate notice to private operators of the nature of a recipient's charter service and of the opportunities to comment on that service is therefore important to insure that these regulations are fair and equitable. The proposed revisions: (1) changes the time for providing notice to an annual basis which may coincide with the filing of notice for a grant, (2) changes the content of the notice to reflect rates consistent with the rate-comparability approach, (3) identifies more clearly the class of private operators entitled to receive such notice, and (4) provides certain exemptions where appropriate. Proposed §§ 604.2 (e) and (f), 604.22, and 604.23.

The proposed revision concerning annual notice preserves an exemption for the case where no private operators have requested notice and none are publicly listed as operating in the recipient's area. Proposed § 604.22(b); *compare* 49 CFR 604.16.

The frequency of notice has been changed to annual basis rather than publication and mailing with every grant application. This reduces the administrative burdens on recipients while providing private operators with predictable periodic information on a recipient's charter operations. A recipient's annual charter notice may coincide with its publication of notice for any grant or may be published and mailed separately. The right of private operators to comment either in writing (Proposed § 604.23) or at a public hearing held pursuant to the provisions of proposed § 604.4 is retained in this proposal. Recipients must forward private operators' comments to UMTA, and UMTA will consider those comments along with others before awarding grants. Proposed §§ 604.4, 604.22 and 604.23.

Many commenters addressed the question of the class of private operators that should receive direct notice. Some requested that the requirement of direct notice be eliminated entirely. Some objected to the means used to identify those who receive notice under the present regulation. Public authorities asserted that the class of private operator "operating" in the area, 49 CFR 604.15, was too difficult to identify; private operators asserted that notice to the class of private operators "originating"

in the area, 49 CFR 604.20(b), did not reach enough of the relevant group. The proposed revision has been amended to give notice whenever required: (1) to each private charter operator publicly listed as operating within the recipient's urban area, and (2) to each private charter operator or representative thereof who has requested in writing to be notified. Proposed § 604.22.

The recipients who are exempted from annual notice include those who will operate charters only within their urban area. To obtain this exemption recipients must give a one-time notice to any requester for such information and to private operators publicly listed as operating in the recipient's urban area and file the information published in its notice with UMTA. If a recipient who has obtained such an exemption later operates charters outside its urban area it immediately becomes subject to the requirements for those conducting charters outside their urban areas. Proposed § 604.2(e). Recipients who can certify that there are no private charter operators publicly listed as operating in their urban area and who have received no requests for annual notification will continue to be exempted from notice requirements after published notice of their intent to obtain this exemption. Proposed § 604.22(b); *Compare* 49 CFR 604.16. Recipients who derive less than $15,000 in annual revenues from charter bus operations will also be exempted from annual notice requirements. Proposed §§ 604.2(d) and 604.23(a).

Complaint Procedures

Several private operators requested that UMTA's administrative findings on charter bus complaints concerning a recipient be disseminated by the same means of publication and direct notice to the same mailing list of operators who receive notice of a recipient's operations. UMTA has considered this request and decided in the proposal to continue its practice of directly notifying only the respondent and complainant while making information on particular complaints and decisions available to others upon request.

UMTA takes this opportunity to reaffirm its policy of keeping the complaint procedure as informal as possible by proposing to amend the regulation's language to require that complaints simply "contain a statement of the specific grounds [for a] complaint," and by specifying that "no formal briefs or other technical forms of pleading or motion are required." Proposed § 604.30(e). This change of language is in response to private operators' comments on the seeming formality of the requirement that the initial charter complaint contain "evidence" sufficient to enable a determination of "probable cause" that a violation of the charter agreement exists. 49 CFR § 604.40. The language also makes it clear that an interested party is permitted to file a complaint without the necessity of retaining legal counsel. Proposed § 604.30(e) *compare* CFR 604.40.

A complainant's first recourse under the proposed regulation is to the recipient so that complaints may be resolved where possible by simple adjustments, conciliation, or exchange of information. Proposed § 604.30(a).

When a complaint if filed with UMTA, UMTA will give the recipient 30 days to prepare and submit a report. UMTA may ask a recipient to prepare such a report without having received a complaint. Proposed § 604.30(c). After receipt of the recipient's report, the complainant has 30 days in which to file a rebuttal. UMTA reserves the right to request additional information as needed and may hold an evidentiary hearing or call a conference on the matter at anytime during the processing period. In response to the commenters who criticized the fact that UMTA imposes time limits on both the complainants and respondents but then delays its own adjudication, UMTA will establish a goal of 30 days after the receipt of all materials for the processing of charter complaints. The entire process should thus take 90 days to complete.

Some commenters questioned UMTA's ability to be objective since it administers a program supporting the recipients and because its existing regulations call for prior approval of a recipient's cost certifications that are later challenged in complaints. UMTA has enforced section 3(f) and section 12(c)(6) of the Act without bias. UMTA feels it is appropriate for it to have the first opportunity to review the operations of its recipients. As a consequence, the proposed regulation retains substantially the same review process that is in the present regulations. Also, UMTA retains its option to submit any complaint to an evidentialy hearing including conducting it before a hearing examiner. Proposed § 604.32(c). UMTA invites comments on the efficacy of using an administrative law judge to decide complaints and on the apportionment of the cost of the hearing among the parties and the Government.

Reporting and Records

Other than the requirement of annual notice to private operators and the filing requirements needed to obtain certain exemptions, the proposed revision imposes no regular reporting requirements on recipients. UMTA does, however, reserve the right to request special reports as may be needed for the resolution of complaints or other purposes. Proposed § 604.6.

Each recipient remains under the obligation to maintain and preserve such records as are sufficient to demonstrate that it is in compliance with the terms of its charter bus agreement. It is anticipated that ordinary management records such as charter manifests, rate schedules, and books of account will be sufficient to show compliance with these regulations except where a recipient chooses to justify lower-than-private rates by a cost certification approach. Proposed § 604.5.

Note.—UMTA believes that the revisions proposed in this advanced notice of proposed rulemaking may have a significant economic effect on a substantial number of small businesses and governmental jurisdictions. We would be interested in comments that address this topic to assist UMTA in making the necessary economic assessment of our proposed action.

In consideration of the foregoing, it is proposed that Part 604 of Title 49 of the Code of Federal Regulations be revised to read as follows:

PART 604—CHARTER BUS OPERATIONS

Subpart A—General

Sec.

604.1 Purpose.
604.2 Scope and exemptions.
604.3 Definitions.
604.4 Public hearing requirements and public comments.
604.5 Records.
604.6 Reports.

Subpart B—Incidental Use: Requirements for Nonexempt Recipients

604.10 Use of mass transportation equipment for charters.
604.11 Incidental use presumptions.
604.12 Rebutting the presumptions.

Subpart C—Charter Bus Agreements: Additional Requirements for Recipients Who Engage in Charter Bus Operations Outside the Urban Area

604.20 Agreement.
604.21 Other agreements and arrangements.
604.22 Procedure for notice to private operators.
604.23 Contents of notice to private operators.
604.24 Contents of certification of costs.
604.25 Review of charter bus operations before awarding grants.
604.26 Revision of agreement.

Subpart D—Complaint Procedures and Remedies

604.30 Filing a complaint.
604.31 Recipient report; rebuttals.

604.32 Further investigation and hearing.
604.33 Decision; remedies.
604.34 Judicial review.
Appendix A—Standard Charter Bus Agreement
Appendix B—Comptroller General Opinion
Appendix C—Cost Certification Expenses List

Authority: Urban Mass Transportation Act, as amended, 49 U.S.C. 1601 *et seq.*, 1602(f), 1608(c)(6); Title 23 of the United States Code that authorizes the use of Federal aid highway funds for the purchase of buses, 23 U.S.C. 103(e)(4), and 142(a) and (c); and 49 CFR 1.51.

Subpart A—General

§ 604.1 Purpose.

The purpose of this Part is to govern the operation of charter bus service by recipients of Federal financial assistance under the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1602 *et seq.*, and those provisions of title 23 of the United States Code that authorize the use of Federal aid highway funds for the purchase of buses, 23 U.S.C. §§ 103(e)(4), and 142(a) and (c), pursuant to § 3(f) and § 12(c)(6) of the UMT Act, 49 U.S.C. §§ 1602(f) and 1608(c)(6).

§ 604.2 Scope and exemptions.

(a) This Part applies to all recipients, and to all operators for recipients, of assistance under the Acts for the purchase or operation of buses except those receiving federal financial assistance provided under § 18 of the UMT Act or unless specifically exempted herein.

(b) All recipients and operators for recipients must comply with incidental use requirements specified in § 604.10 through § 604.12.

(c) All recipients must enter into an agreement as specified in § 604.20 or § 604.21 as a condition of assistance under the Acts.

(d) A recipient who toghether with any operators for it derived fifteen thousand dollars ($15,000) or less in gross annual charter revenues, during its most recently completed fiscal year, from charter bus operations is exempt from administrative review for compliance with the incidental use requirement contained in this Part or for compliance with the terms of its charter bus agreement and need only comply with the one-time notice requirement of § 604.23(a).

(e) A recipient who does not intend to have itself or any operators for it engage in any charter bus operations outside its urban areas, as defined in § 604.3(i), may file an affidavit to that effect with UMTA and give the notice prescribed by § 604.22(a).

If the Administrator finds that an exemption to this paragraph is justified, (s)he may exempt the recipient from the terms of paragraph (b) of the recipient's charter bus agreement, the hearing requirement of § 604.4, and the continuing notice requirements of § 604.23(c). If the recipient or any operator for it conducts any charters outside its urban area after receipt of the exemption, the exemption shall be void and the recipient shall immediately comply with §§ 604.4, 604.22 and 604.23(c) and Appendix A, Section (b).

(f) Recipients may be exempted from annual notice requirements where they certify that there are no private charter bus operators publicly listed as operating in their urban area after it certifies that it has received no request for such a notice, and after publishing notice of their intent to so certify pursuant to § 604.22(b).

(g) Recipients may enter into locally tailored agreements pursuant to § 604.21. The terms of a locally tailored agreement may be substituted for those of the standard charter bus agreement.

§ 684.3 Definitions.

(a) Except as otherwise provided, terms defined in the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. § 1601 *et seq., esp.* §§ 1604 and 1608, are used in this part as so defined.

(b) "The Acts" means the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. § 1601 *et seq.*, and those parts of title 23 of the United States Code, 23 U.S.C. §§ 103(e)(4), and 142(a) and (c), providing funds for assistance to public bodies purchasing buses.

(c) "Administrator" means the Administrator of the Urban Mass Transportation Administration.

(d) "Certification of costs" means a statement about a recipient's costs using generally accepted accounting principles, consistent with a recipient's regular accounting method, containing the elements of cost that are attributable to a recipient's charter bus operations and certified to be true and accurate by a recipient's chief financial officer in conformity with Appendix C.

(e) "Charter bus operations" means transportation by bus of a group of persons who, pursuant to a common purpose, and under a single contract, at a fixed charged for the vehicle or service, in accordance with the carrier's tariff, have acquired the exclusive use of a bus to travel together under an itinerary either speed on in advance or modified after having left the place of origin. This definition includes the incidental use of buses for the exclusive transportation of school students, personnel, and equipment.

(f) "Interested party" means an individual, partnership, corporation, association, or public or private organization that has a financial interest which is adversely affected by the act or acts of a recipient or operator for a recipient regarding charter bus operations.

(g) "Operator for a recipient" means one who conducts mass transportation service for a recipient and who is directly or indirectly assisted by Federal financial assistance. Such operators may be publicly or privately owned and may include lessees of Federally-assisted buses and other equipment.

(h) "Recipient" means one who has received or is receiving Federal financial assistance under the Acts; the term also includes applicants of Federal financial assistance provided under the Acts, whether they are already recipients of such assistance or first-time applicants, and includes sub-recipients of a recipient and public bodies applying for assistance that will be passed on to another public or quasi-public body or operator for them.

(i) "Urban area" means the entire area in which a recipient is authorized by appropriate local, State, and Federal law to provide regularly scheduled mass transportation service and those portions of a recipient's "urbanized area," as defined in the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. §§ 1608(c)(11), if any, which are outside of its authorized area. In exceptional cases, the boundaries of such an area may be adjusted pursuant to the Secretary's discretion under section 12(c)(10) of the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. § 1608(c)(10).

§ 604.4 Public hearing requirements and public comments.

(a) An interested party may present oral comment on the charter bus operations of a recipient during any hearings that are held pursuant to the hearing requirements for application for federal financial assistance provided under sections 3(d) and 5(i) of the UMT Act, 49 U.S.C. 1602(d) and 1604(i), and any regulations issued pursuant thereto and have the comments considered as provided under § 604.4 and § 604.25(b).

(b) If oral comments are made about the recipient's charter bus operations during a public hearing, a transcript of the hearing shall be provided to the Administrator for consideration along with the recipient's application for financial assistance.

(c) Private charter bus operators may file written comments on a recipient's proposed or existing charter bus operations pursuant to a notice issued

under § 604.23. The recipient shall submit the written comments of private charter bus operators to the Administrator together with a transcript of that portion of any public hearings that are held that relates to the recipient's charter bus operations.

(d) Written comments submitted pursuant to § 604.23 or oral comments made at a hearing shall be considered by the recipient prior to submission of its application to the Administrator for financial assistance.

(e) The Administrator will consider the comments filed by private charter bus operators prior to making any findings regarding proposed charter bus operations.

§ 604.5 Records.

(a) Each recipient shall maintain such records as are sufficient to demonstrate that its charter operations are in compliance with the terms of its agreement.

(b) Upon the request of an officer or employee of the Government, the recipient shall make the records maintained pursuant to paragraph (a) available for audit and inspection.

(c) Each recipient required to maintain any record under paragraph (a) shall preserve that record for three years after the last day of the calendar year in which the record was made or events recorded in that record occurred, whichever is later.

§ 604.6 Reports.

The Administrator may order any recipient or an operator for a recipient to file special or separate reports setting forth information relating to any transportation service rendered by such recipient, in addition to any other reports required by this Part.

Subpart B—Incidental Use: Requirements for Nonexempt Recipients

§ 604.10 Use of mass transportation equipment for charters.

(a) No recipient or operator for a recipient not exempted by § 604.2(d) shall engage in charter bus operations using buses, facilities, or equipment funded under the Acts except on an incidental basis so as not to interfere with or detract from mass transportation service in compliance with the Opinion of the Comptroller General of the United States, B–160204 (Dec. 7, 1966) reprinted in Appendix B to this Part.

(b) Recipients or operators for recipients shall not use Federal operating assistance provided under the Act to reimburse the costs of engaging in charter bus operations.

§ 604.11 Incidential use presumptions.

Any of the following uses in charter bus operations of buses, equipment, or facilities assisted under the Acts will be presumed by UMTA not to be incidental:

(a) Weekday charters which occur during peak morning and evening rush hours.

(b) Weekday charters which require buses to travel more than fifty miles beyond the recipient's urban area.

(c) Weekday charters which require the use of a particular bus for more than a total of six hours in any one day.

§ 604.12 Rebuttal of the presumptions.

A recipient or operator for a recipient who engages in charter bus operations that are presumed not to be incidental under § 604.11 may overcome such presumption by an affirmative showing that such operations do not detract from or interfere with mass transportation services. Where a recipient shows that 110% of the number of buses needed for any given daily peak period are available for mass transportation service during that period, charter bus operations occurring during that period may be considered incidental. UMTA's evaluation of peak demand will be based on estimates filed in application and planning materials and will take into account seasonal and other regular variations in peak demand.

Subpart C—Charter Bus Agreements: Additional Requirements for Recipients Who Engage in Charter Bus Operations Outside the Urban Area

§ 604.20 Agreement.

(a) In accordance with section 3(f) of the UMT Act, 49 U.S.C. 1602(f), every recipient shall, as a condition of assistance, become a party to a written agreement with UMTA as specified in this subpart. The agreement in effect at the time of grant approval is applicable to and incorporated by reference into all grant agreements between the Government and the recipient.

(b) Except as provided in § 604.21 the agreement must contain the terms and arrangements set forth in the agreement in Appendix A of this Part.

§ 604.21 Other agreements and arrangements.

Where the Administrator determines that the requirements of section 3(f) of the UMT Act can be met by fair and equitable arrangements other than those set forth in paragraph (b) of the agreement set forth in Appendix A of this Part, the Administrator may approve the use of such alternative arrangements in the agreement with a recipient, as appropriate, so long as the alternative arrangements do not interfere with free and open competition among the private operators.

§ 604.22 Procedure for notice to private operators.

(a) Whenever notice is required to be given by the recipient under § 604.23, the notice must be—

(1) Published in a newspaper of general circulation in the recipient's urban area; and

(2) Provided directly to—

(i) Each private charter bus operator publicly listed as operating within the recipient's urban area.

(ii) Each private charter bus operator or legal representative thereof who has requested in writing to receive the notice as provided under § 604.23.

(b) The obligation to provide direct notice to private operators under § 604.23 is satisfied if a recipient who has received no request for such notice publishes a one-time notice in a newspaper of general circulation in its urban area stating that it has applied for assistance under the Acts and that it has certified that there are no private charter bus operators publicly listed as operating in its urban area.

§ 604.23 Contents of notice to private operators.

(a) A recipient who, together with operators for it, derived $15,000 or less in gross annual charter revenues from charter bus operations during its most recently completed fiscal year so as to receive the exemption specified in § 604.2(d) must only state in a notice under § 604.22 that it derives less than $15,000 in gross annual charter revenues and that it will be exempt from administrative enforcement of the requirements of this Part.

(b) A recipient who does not intend to engage in or have any operator for it engage in charter bus operations outside its urban area, and who seeks the exemption specified in § 604.2(e) from annual notice and other requirements shall provide the following one-time notice by the means specified in § 604.22:

(1) A description, including citations to relevant authority, of the areas in which the recipient is authorized by local, State, and Federal law to conduct mass transportation service, and charter bus operations. Where there are disputes pending that would affect charter bus operations, this information must be included in that notice.

(2) Separate descriptions of the areas in which the recipient actually is conducting mass transportation service and charter bus operations.

(3) A statement that the recipient and any operators for it do not conduct charters outside the urban area as defined in 49 CFR § 604.3, and that documentation establishing this fact is on file with UMTA and with the recipient and is available for inspection at reasonable times at the offices of the recipient.

(4) A statement that Federal financial operating assistance will not be used to reimburse the costs of charter bus operations and that any use of Federally-assisted buses, facilities or equipment for charter bus operations will be incidental to and will not interfere with or detract from regularly scheduled mass transportation service.

(5) The address to which comments on the recipient's operations must be sent.

(c) A recipient not exempted from the notice requirements of this section by paragraphs §§ 604.22(b), and 604.23(a) and (b), shall be presumed to be engaging in charter operations outside its urban area and must *before* entering into the agreement specified in § 604.20 of this Part, before revising an agreement as specified in § 604.26, and at least once each year, provide the notice by the means specified in § 604.22 which shall include the following information:

(1) A description including citations to relevant authority of the areas in which the recipient is authorized by local, State, and Federal law to conduct mass transportation and charter operations. Where there are disputes pending that would affect charter bus operations, this information must be included in that notice.

(2) Separate descriptions of the areas in which the recipient actually is conducting mass transportation service and charter bus operations.

(3) An estimation of the number of each type of bus which the recipient employs in its existing and proposed charter bus operations, and the number of weekdays or weekends those buses will be available for charter bus operations.

(4) An abstract of rates to be charged for charter bus operations.

(5) A statement that no charter rate will be charged that is lower than the lowest of the three largest private operators providing the same or similar service in the recipient's urban area.

(6) If the recipient chooses to use a certification of costs in lieu of the statement in paragraph (c)(5): (i) a statement that revenues generated by its charter bus operations are consistent with its certification of costs as prescribed by § 604.3(d), § 604.24 and Appendix C; and (ii) a copy of its certification of costs.

(7) A statement that Federal financial operating assistance will not be used to reimburse the cost of charter bus operations and that any use of Federally-assisted buses, facilities or equipment for charter bus operations will be incidental to and will not interfere with or detract from regularly scheduled mass transportation service.

(8) The address to which comments on the recipient's operations must be sent.

§ 604.24 Contents of certification of costs.

(a) A certification of costs as may be required by this Part must include depreciation expense on Federally-assisted buses, facilities and equipment as an element of cost, and State and Federal taxes, whether or not the recipient is required to pay such taxes. This certification must give assurance that the revenues generated by charter bus operations are, and shall remain, equal to or greater than the cost of providing the service. The period covered by a recipient's statement must not be less than two or greater than four of its most recently completed fiscal quarters. All costs which are subject to certification are listed in Appendix C of this Part.

(b) The certification of costs shall also contain the appropriate documentation that identifies the costs of charter operations, the methods of cost allocation used and shows the distribution of costs attributable to the recipient's charter bus operations.

§ 604.25 Review of charter bus operations before awarding grants.

(a) If the Administrator finds that a recipient has not complied with the notice requirements of § 604.22 and § 604.23, the hearing provisions of § 604.4 or otherwise finds that the recipient's proposed charter bus operations are unacceptable, (s)he will notify the recipient in writing stating the reasons for his/her findings and may withhold approval of any pending application for a grant or impose other sanctions as specified in § 604.30 through § 604.35 of this Part.

(b) If the recipient chooses to comply with this Part by use of a certification of costs the Administrator may approve and accept the recipient's certification of costs after review of the certification, review of the public comments, if any, and after a showing by the recipient that it has complied with the notice and hearing requirements of this Part. Such acceptance and approval is subject to audit and inspection which may be conducted at any time by the Government under § 604.5(b).

(c) Submission of the certification of costs to the Administrator for approval need not be made again for approval under paragraph (b) unless required to under § 604.25 or § 604.33.

§ 604.26 Revision of agreement.

(a) Any recipient which prior to (effective date part adopted) entered into an agreement with the Administrator concerning charter bus operations shall nodify the agreement to conform to the requirements of this Part according to the procedures for entering into a new agreement under this Part.

(b) The Administrator may require the recipient to reissue the notice required by this subpart and to modify any existing agreement to conform to the requirements of this Part where there is a change from the conditions through which the recipient obtained an exemption under § 604.2, § 604.22, § 604.23 or an alternative agreement under § 604.21.

(c) A certification of costs filed under this subpart shall be revised by a recipient by filing properly certified revisions with the Administrator. The recipient shall send notice of the revisions to private charter bus operators in the recipient's urban area under the procedures of § 604.22 and containing the information required by § 604.23. The private operators may file comments on the charter operations with the Administrator within 15 days after receipt of notice. The proposed revisions will become effective 30 days after the end of the period allowed for private operators to file comments with the Administrator unless within that period the Administrator finds the proposed revisions to be unacceptable and notifies the party filing the certification of costs.

(d) The Administrator may require that the certification of costs be revised using the procedures in this subpart where a year of a recipient's charter operations has a gross revenue change of 25 percent or more from the average of the two preceding years.

(e) If revision of a certification of costs is necessary and after review of the proposed revision and any public comments received by the recipient or the Administrator, the Administrator may, in his/her discretion, hold a fact-finding hearing on the proposed revision to the certification.

Subpart D—Complaint Procedures and Remedies

§ 604.30 Filing a complaint.

(a) An interested party [hereinafter the complainant] wishing to file a complaint alleging a violation or violations of terms of an agreement entered into pursuant to this Part or of

the requirements of this Part shall submit the complaint for resolution to the recipient or operator for it [hereinafter the respondent] whose actions have given rise to the complaint. The complainant shall give the respondent a reasonable opportunity to resolve the alleged violation.

(b) If resolution is not obtained from the respondent, the complainant may file a complaint with the Administrator setting forth the alleged violation or violations of terms of an agreement entered into pursuant to this Part or of the requirements of this Part that were submitted to the respondent. The complainant shall send a copy of this complaint to the respondent.

(c) If, at any time, the Administrator has reason to believe that a violation may have occurred, the Administrator will provide written notification to the respondent of the conduct which constitutes an alleged violation of the agreement.

(d) The complaint must be in writing and must:

(1) Include the name and address of the complainant;

(2) Identify the recipient and any operator for the recipient whose actions have given rise to the complaint;

(3) Include a copy of the complaint filed with the respondent under subparagraph (a); and

(4) Contain a statement of the specific grounds of the complaint and be fully supported to the greatest extent feasible.

(e) No formal briefs or other technical forms of pleading or motion are required, but a complaint and other submissions must be concise, logically arranged, and clear. Complainants need not be represented by legal counsel in complaint proceedings.

§ 604.31 Respondent report and rebuttals.

(a) The Administrator will allow the respondent not more than 30 days to eliminate the cause of a complaint or to respond in a written report with supporting evidence or documentation. The respondent shall send this report to UMTA and simultaneously send a copy of the report to the complainant.

(b) The complainant is allowed 30 days after receipt of the recipient's report to submit a rebuttal to the Administrator.

(c) The late submission of any report or rebuttal may result in disposition of the complaint without consideration of that material.

§ 604.32 Further investigation and hearing.

(a) The Administrator may call a conference on the complaint. If such conference is called, the Administrator may invite the complainant, respondent and such other parties as the Administrator deems appropriate. The conference normally will be held prior to the expiration of the period for filing rebuttals to the respondent's report. Ordinarily, not more than one conference will be held on a complaint.

(b) The Administrator may undertake such further investigation as (s)he deems necessary.

(c) The Administrator may in his/her discretion direct that an evidentiary hearing be held including before an administrative law judge.

§ 604.33 Decision and remedies.

(a) After review of all materials, the Administrator will make a written determination as to whether the respondent has engaged in charter bus operations in violation of its agreement or of this Part.

(b) The Administrator will order such remedial action as (s)he deems appropriate. If the Administrator determines there has been a continuing pattern of violations (s)he may bar a respondent from further financial assistance under the Acts until such violations are corrected.

(c) The Administrator's determination will be sent to the respondent, to any operator whose actions have given rise to the complaint, and to the complainant.

§ 604.34 Judicial review.

The determination of the Administrator pursuant to this subpart will be final and conclusive on all parties, but is subject to judicial review pursuant to 5 U.S.C. 701–706.

Appendix A—Standard Charter Bus Agreement

(a) Pursuant to the definition of mass transportation in section 12(c)(6) of the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1608(c)(6), the recipient agrees that the project buses, facilities and equipment shall be used for the provision of mass transportation service within its urban area and that any use of project buses, facilities and equipment in charter service will be incidental to and shall not detract from or interfere with the use of such facilities and equipment in mass transportation services to the public.

(b) Pursuant to section 3(f) of the Urban Mass Transportation Act of 1964, as amended 49 U.S.C. 1602(f), this paragraph sets forth fair and equitable arrangements to assure that financial assistance granted by the Governor under the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1601 *et seq.*, or under those provisions of Title 23, United States Code, that authorize the use of Federal aid highway funds for mass transportation uses, 23 U.S.C. 103(e)(4), and § 142(a) and (c) ("the Acts"), will not be used by the recipient, or any publicly or privately owned operator from the recipient, to foreclose private operators from the intercity charter bus industry where such private operators are willing and able to provide such service.

(1) The recipient agrees that neither it, nor any operator for it, will engage in charter bus operations outside the urban area, as defined in 49 CFR 604.3(i), in which it provides regularly scheduled mass transportation service except as provided herein.

(2) The recipient agrees that neither it nor any operator for it will charge rates for charter bus operations that are less than the lowest rate charged by the three largest private operators providing the same or similar service in the area.

(3) The recipient agrees that if it chooses to use a certification of costs in lieu of the method of compliance set out in subparagraph (b)(2), above, that revenues from less-than-private charter rates will equal or exceed the cost of providing the charter bus operations consistent with a certification of costs formulated as prescribed by 49 CFR Part 604.

(4) The recipient, or any operator for the recipient of project buses, facilities and equipment, agrees that it will not establish any charter rate which is designed to foreclose competition by private charter bus operators.

(5) Such other arrangements as the recipient proposes in lieu of those of this agreement and as are specifically concurred in by the Administrator pursuant to 49 CFR 604.21 are incorporated by reference into this agreement.

(c) The recipient agrees that if the Administrator determines that there has been a violation of this agreement, (s)he may order such remedial measures as (s)he may deem appropriate, including cancellation of this agreement, and that the Administrator may prohibit disbursement of funds under any grant agreement to the recipient and if (s)he determines that there has been a continuing pattern of violations of the terms of this agreement may ban future Federal financial assistance to the recipient.

Appendix B—Comptroller General Opinion

Comptroller General of the United States,

Washington, D.C., December 7, 1966.

B–160204.

Dear Mr. Wilson: The enclosure with your letter of October 4, 1966, concerns the legality of providing a grant under the Urban Mass Transportation Act of 1964 to the City of San Diego, (City), California. The problem involved arises in connection with the definition in subsection 9(d)(5) of the act, 49 U.S.C, 1608(d)(5), excluding charter or sightseeing service from the term "mass transportation."

It appears from the enclosure with your letter that the City originally included in its grant application a request for funds to purchase 8 buses designed for charter service. Subsequently the City amended its application by deleting a request for a portion of the funds attributable to the charter bus coaches. However, in addition to the 8 specially designed charter buses initially applied for, the City allegedly uses about 40 of its transit type buses to a substantial extent for charter-type services. In light of

these factors surrounding the application by the City, the enclosure requests our opinion with regard to the legality of grants under the act as it applies to certain matters (in effect questions), which are numbered and quoted below and answered in the order presented.

Number one:

"The grant of funds to a City to purchase buses and equipment which are intended for substantial use in the general charter bus business as well as in the Mass Transportation type business."

The Urban Mass Transportation Act of 1964 does not authorize grants to assist in the purchase of buses or other equipment for any service other than urban mass transportation service. Section 3(a) of the act limits the range of eligible facilities and equipment to "* * * buses and other rolling stock, and other real or personal property needed for an efficient and coordinated mass transportation system." In turn, "mass transportation" is defined, in section 9(d)(5) of the act, specifically to exclude charter service. We are advised by the Department of Housing and Urban Development (HUD) that under these provisions, the Department has limited its grants to the purchase of buses of types suitable to meet the needs of the particular kind of urban mass transportation service proposed to be furnished by the applicant.

HUD further advises that:

"One of the basic facts of urban mass transportation operations is that the need for rolling stock is far greater during the morning and evening rush hours on weekdays than at any other time. For that reason, any system which has sufficient rolling stock to meet the weekday rush-hour needs of its customers must have a substantial amount of equipment standing idle at other times, as well as drivers and other personnel being paid when there is little for them to do. To relieve this inefficient and uneconomical situation, quite a number of cities have offered incidental charter service using this idle equipment and personnel during the hours when the same are not needed for regularly scheduled runs. Among the cities so doing are Cleveland, Pittsburgh, Alameda, Tacoma, Detroit and Dallas.

"Such service contributes to the success of urban mass transportation operations by bringing in additional revenues and providing full employment to drivers and other employees. It may in some cases even reduce the need for Federal capital grant assistance.

"We do not consider that there is any violation of either the letter or the spirit of the Act as a result of such incidental use of buses in charter service. To guard against abuses, every capital facilities grant contract made by this Department contains the following provisions:

" 'Sec. 4. *Use of Project Facilities and Equipment*—The Public Body agrees that the Project facilities and equipment will be used for the provision of mass transportation service within its urban area for the period of the useful life of such facilities and equipment. . . . The Public Body further agrees that during the useful life of the Project facilities and equipment it will submit to HUD such financial statements and other data as may be deemed necessary to assure compliance with this Section.' "

It is our view that grants may be made to a city under section 3(a) of the act to purchase buses needed by the city for an efficient and coordinated mass transportation system, even though the city may intend to use such buses for charter use when the buses are not needed on regularly scheduled runs (i.e. for mass transportation purposes) and would otherwise be idle.

Number two:

"Whether a grant of such funds is proper if charter bus use is incidental to mass public transportation operations. If so, what is the definition of 'incidental use.' "

We are advised by HUD that under its legislative authority, it cannot and does not take charter service requirements into consideration in any way in evaluating the needs of a local mass transportation system for buses or other equipment.

HUD further advises that:

"However, as indicated above, we are of the opinion that any lawful use of project equipment which does not detract from or interfere with the urban mass transportation service for which the equipment is needed would be deemed an incidental use of such equipment, and that such use of project equipment is entirely permissible under our legislation. What uses are in fact incidental, under this test, can be determined only on a case-by-case basis."

In view of what we stated above in answer to the first question, the first part of question two is answered in the affirmative.

As to the second part of the question, in *Security National Insurance Co.* v. *Secuoyah Marina*, 246 F.2d 830, "incident" is defined as meaning "that which appertains to something else which is primary." Thus, we cannot say HUD's definition of "incidental use" as set forth above is unreasonable. Under the act involved grants may be made to purchase buses only if the buses are needed for an efficient and coordinated mass transportation system. It would appear that if buses are purchased in order to meet this need, and are, in fact, used to meet such need, the use of such buses for charter service when not needed for mass transportation services would, in effect, be an "incidental use," insofar as pertinent here. In our opinion such incidental use would not violate the provisions of the 1964 act.

Number three:

"The grant of funds for mass public transportation purposes to a City which has expressed an intent to engage in the general charter bus business when such funds would in effect constitute a subsidy to the City of its intended charter bus operations; i.e. freeing Municipal funds with which to purchase charter bus equipment."

Section 4(a) of the 1954 Act (49 U.S.C. 1603(a)) provides, in part, as follows:

"* * * The Administrator (now Secretary), on the basis of engineering studies, studies of economic feasibility, and data showing the nature and extent of expected utilization of the facilities and equipment, shall estimate what portion of the cost of a project to be assisted under section 1602 of this title cannot be reasonably financed from revenues—which portion shall hereinafter be called 'net project cost'. The Federal grant for such a project shall not exceed two-thirds of the net project cost. The remainder of the net project cost shall be provided, in cash, from sources other than Federal funds * * *."

It is clear from the legislative history of the act involved that the "revenues" to be considered are mass transportation system revenues including any revenues from incidental charter operations. There is nothing in the language of the act which requires HUD to take into account the status of the general funds of an applicant city in determining how much capital grant assistance to extend to that city.

It should be noted that in a sense nearly every capital grant to a city constitutes a partial subsidy of every activity of the city which is supported by tax revenues, since it frees tax revenues for such other uses.

Number four:

"With specific reference to the application of the City of San Diego for funds under its application to the Department of Housing and Urban Development dated June 2, 1966, whether the Act permits a grant to purchase equipment wherein 25 per cent of such equipment will be used either exclusively or substantially in the operation of charter bus services."

As to the City of San Diego's grant application, we have been advised by HUD as follows:

"As explained above, the Act authorizes assistance only for facilities to be used in mass transportation service. We could not, therefore, assist San Diego in purchasing any equipment to be used 'exclusively' in the operation of charter bus service. Furthermore, as also explained above, assisted mass transportation equipment can be used only incidentally for such charter services.

"Whether equipment used 'substantially' in such service qualifies under this rule can be answered only in the light of the specifics of the San Diego situation. * * * we have already, during our preliminary review of the City's application, disallowed about $150,000 of the proposed project cost which was allocated to the purchase of eight charter-type buses.

"The final application of the City of San Diego is presently under active consideration by this Department. In particular, we have requested the City to furnish additional information as to the nature and extent of the proposed use, if any, of project facilities and equipment in charter service, so that we can further evaluate the application under the criteria above set forth. We have also requested similar information from Mr. Fredrick J. Ruane, who has filed a taxpayers' suit (Superior Court for San Diego County Civil #297329) against the City, contesting its authority to engage in charter bus operations."

As indicated above, it is clear that under the act in question grants may not legally be made to purchase buses to be used "exclusively" in the operation of charter bus service. However, in view of the purposes of the act involved it is our opinion that a city which has purchased with grant funds buses needed for an efficient mass transportation system, is not precluded by the act from using such buses for charter service during idle or

off-peak periods when the buses are not needed for regularly scheduled runs. As indicated above, such a use would appear to be an incidental use.

The fourth question is answered accordingly.

As requested, the correspondence enclosed with your letter is returned herewith.

Sincerely yours,

Frank H. Weitzel,

Assistant Comptroller General of the United States.

Enclosures.

The Honorable Bob Wilson, House of Representatives.

Appendix C—Cost Certification Expenses List

Expense Reporting—List of Expenses

Labor

1. Operators' Salaries and Wages
2. Other Salaries and Wages

Fringe Benefits

1. FICA or Railroad Retirement
2. Pension Plans (including long-term disability insurance)
3. Hospital, Medical and Surgical Plans
4. Dental Plans
5. Life Insurance Plans
6. Short-Term Disability Insurance Plans
7. Unemployment Insurance
8. Workmen's Compensation Insurance or Federal Employees Liability Act Contributions
9. Sick Leave
10. Holiday (including all premiums paid for on holidays)
11. Vacation
12. Other Paid Absence (bereavement pay, military pay, jury duty pay, etc.)
13. Uniform and Work Clothing Allowances
14. Other Fringe Benefits
15. Distribution of Fringe Benefits

Services

1. Management Service Fees
2. Advertising Fees
3. Professional and Technical Services
4. Temporary Help
5. Contract Maintenance Services
6. Custodial Services
7. Security Services
8. Propulsion Power
9. Utilities Other than Propulsion Power
10. Dues and Subscriptions
11. Travel and Meetings
12. Bridge, Tunnel and Highway Tolls
13. Other Services

Materials and Supplies Consumed

1. Fuel and Lubricants
2. Tires and Tubes
3. Other Materials and Supplies

Casualty and Liability Costs

1. Premiums for Physical Damage Insurance
2. Recoveries of Physical Damage Losses
3. Premiums for Public Liability and Property Damage Insurance
4. Payouts for Uninsured Public Liability and Property Damage Settlements
5. Provision for Uninsured Public Liability and Property Damage Settlements
6. Payouts for Insured Public Liability and Property Damage Settlements
7. Recoveries of Public Liability and Property Damage Settlements
8. Premiums for Other Corporate Insurances
9. Other Corporate Losses
10. Recoveries of Other Corporate Losses.

Leases and Rentals

1. Transit Way and Transit Way Structures and Equipment
2. Passenger Stations
3. Passenger Parking Facilities
4. Passenger Revenue Vehicles
5. Service Vehicles
6. Operating Yards or Stations
7. Engine Houses, Car Shops and Garages
8. Power Generation and Distribution Facilities
9. Revenue Vehicle Movement Control Facilities
10. Data Processing Facilities
11. Revenue Collection and Processing Facilities
12. Other General Administration Facilities

Depreciation and Amortization

1. Transit Way and Transit Way Structures and Equipment
2. Passenger Stations
3. Passenger Parking Facilties
4. Passenger Revenue Vehicles
5. Service Vehicles
6. Operating Yards or Stations
7. Engine Houses, Car Shops and Garages
8. Power Generation and Distribution Facilites
9. Revenue Vehicle Movement Control Facilities
10. Data Processing Facilities
11. Revenue Collection and Processing Facilities
12. Other General Administration Facilities

Property Retirement Write-Offs

1. Property Retirement Write-Offs

Interest Expense

1. Interest on Debt Obligations (net of interest capitalized)

Other Taxes

1. Federal Income Tax
2. State Income Tax
3. Property Tax
4. Vehicle Licensing and registration Fees
5. Fuel and Lubricant Taxes
6. Other Taxes

Expense Transfers

1. Function Reclassifications
2. Expense reclassifications
3. Capitalization of Nonoperating Costs

Subsidy Payments

1. Purchased Transportation Service

March 29, 1976.

Inflationary Impact Statement

Final Regulations

Charter Bus Operations. I certify that, in accordance with Executive Order 11821, dated November 27, 1974, and Departmental implementing instructions, and Inflationary Impact Statement is not required for the final regulations on Charter Bus Operations.

Robert E. Patricelli,

Urban Mass Transportation Administrator.

Dated: January 1, 1981.

Theodore C. Lutz,

Administrator.

[FR Doc. 81-1579 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-57-M

federal register

Monday
January 19, 1981

Part IX

Department of Education

Centers for Independent Living

DEPARTMENT OF EDUCATION

34 CFR Part 366

Centers for Independent Living

AGENCY: Department of Education.

ACTION: Final regulations with invitation to comment.

SUMMARY: The Secretary adopts final regulations for the purpose of implementing the Centers for Independent Living Program authorized under Section 711 of the Rehabilitation Act of 1973, as amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Public Law 95–602).

EFFECTIVE DATE: These regulations are expected to be effective forty-five days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the **Federal Register.** The effective date is changed if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

Comment due date: March 20, 1981.

ADDRESSES: Comments should be addressed to: Mr. Harold F. Shay, Director, Division of Manpower Development, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, Room 3321, Mary E. Switzer Building, 330 C Street, S.W., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Mr. Harold F. Shay, Telephone: (202) 245–0079.

SUPPLEMENTARY INFORMATION: *Waiver of Proposed Rulemaking Procedures Affecting Selection Criteria*

The Secretary of Health, Education, and Welfare published a Notice of Proposed Rulemaking in the **Federal Register** on November 29, 1979 that covered all new vocational rehabilitation and independent living rehabilitation authorities contained in the Rehabilitation, Comprehensive Services and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602). Proposed regulations for the Centers for Independent Living Program were included in this Notice of Proposed Rulemaking.

On May 4, 1980, the Department of Education was established and the Rehabilitation Services Administration became part of the Office of Special Education and Rehabilitative Services within this new Department. As a result, the publication of regulations under the Rehabilitation Act of 1973, as amended, is now subject to the provisions of Section 431 of the General Education Provisions Act and other requirements in effect in the Department of Education. It has become necessary therefore to revise the proposed regulations for the Centers for Independent Living Program in order to make them conform with requirements affecting Department of Education programs, including selection criteria to be used in the evaluation of applications submitted for grant assistance. These selection criteria had not been in the previously published Notice of Proposed Rulemaking.

In accordance with Section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), it is the practice of the Department of Education of offer interested parties the opportunity to comment on all proposed regulations, including the selection criteria to be used in discretionary grant programs such as the Centers for Independent Living Program. The publication of an additional proposed rulemaking covering the selection criteria for this program would be impracticable and contrary to the public interest under 5 U.S.C. 553(b) if grants are to be made in a timely manner in Fiscal Year 1981, however, and the selection criteria are therefore being published as final regulations in this document.

Although the selection criteria for the Centers for Independent Living Program have been previously identified in the Office of Human Development Services Program Announcement No. 13653–801 published in the **Federal Register** on January 17, 1980, it is recognized that there has not been an opportunity for the public to comment specifically on their appropriateness for this program. Interested parties are therefore invited to submit comments and suggestions on the selection criteria to be used in the awarding of grants in future fiscal years. All comments and suggestions must be received no later than (the sixtieth day after publication of these regulations).

Summary of Changes

Some comments were received in response to the earlier published proposed regulations for the Centers for Independent Living Program and changes are also being made in these revised regulations in response to these comments. A Summary of Comments and Response to the proposed regulations is included in Appendix A.

References to EDGAR

Readers will note that references to the Education Department General Administrative Regulations (EDGAR) cite Title 34 of the Code of Federal Regulations. EDGAR was transferred to Title 34 through final regulations published in the **Federal Register** on November 21, 1980 (45 FR 77368).

However, EDGAR was initially published in the **Federal Register** on April 3, 1980 (45 FR 22494) under Title 45 of the Code of Federal Regulations (CFR). For readers wishing to refer to that EDGAR document, the following cross-references will be helpful:

—45 CFR Part 74 is now 34 CFR Part 74.

—45 CFR Part 100a is now 34 CFR Part 75.

—45 CFR Part 100b is now 34 CFR Part 76.

—45 CFR Part 100c is now 34 CFR Part 77.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before the 60th day after publication of this document will be considered in any future revisions of the final regulations.

All comments submitted in response to these final regulations will be available for public inspection during and after the comment period in Room 3321, Mary E. Switzer Building, 330 C Street, S.W., Washington, D.C., between 8:30 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays.

The Department also requests comments on whether the regulations in this document would require submission of information that is already being gathered by or is available from any other agency or authority of the United States.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (Pub. L. 96–354, enacted Sept. 19, 1980) requires each Federal agency to prepare an initial regulatory flexibility analysis and a final regulatory flexibility analysis for each regulation that—

(1) Is published as a notice of proposed rulemaking after January 1, 1981, and

(2) Has a significant economic impact on a substantial number of small entities (small businesses, small organizations, or small governmental jurisdictions).

Because the Department has not yet established its own definitions of "small organization" and "small governmental jurisdiction", as contemplated by the Act, it is not possible to prepare a full initial regulatory flexibility analysis at this time. Further, since the regulations

in this document are required by statute to be published in final no later than May 31, 1981, it is impracticable to delay publication while the necessary definitions are being developed. As noted elsewhere in this preamble, it was impracticable to take public comments before publishing these regulations as final. For the same reasons, it was impracticable to delay the regulation while an initial regulatory flexibility analysis was prepared. In these circumstances, the Regulatory Flexibility Act permits a waiver or delay of the initial regulatory flexibility analysis. If it is determined that these regulations are subject to that Act, the Secretary will prepare the necessary analyses at a later date.

As an interim measure, this document, to the maximum extent possible, includes information of the kind contemplated by the Regulatory Flexibility Act, including the reasons for the regulations, the objectives and legal basis for the regulations, and any significant issues and alternatives for consideration by the public. To assist the Department in determining whether the Regulatory Flexibility Act applies to these regulations, and in complying with the Act's requirements, public comment is especially invited on the following matters:

(1) The number and kind of small entities (small businesses, small organizations, or small governmental jurisdictions) affected by the regulations;

(2) The reporting, recordkeeping, and compliance burdens imposed by the regulations on small entities;

(3) The type of professional skills necessary for preparation of any reports or records required by the regulations;

(4) Any Federal rules that may duplicate, overlap, or conflict with the regulations;

(5) Any significant alternatives that would accomplish the purposes of the applicable statute but would minimize any significant economic impact of the regulations on small entities. The Secretary is particularly interested in suggestions on alternatives such as the following:

- The establishment of differing reporting or compliance requirements or timetables that take into account the resources available to small entities.
- The clarification, consolidation, or simplification of compliance and reporting requirements for small entities.
- The use of performance rather than design standards.
- An exemption for small entities from coverage of part or all of the regulations.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations. The first citation is the appropriate section of the Rehabilitation Act of 1973 as amended.

This is followed by a citation to the same provision in the United States Code.

(Catalog of Federal Domestic Assistance Program Number 84.132, Centers for Independent Living)

Dated: January 12, 1981.

Shirley M. Hufstedler,

Secretary of Education.

Accordingly, the Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 366 as follows:

PART 366—CENTERS FOR INDEPENDENT LIVING

Subpart A—General

Sec.

366.1 What is the Centers for Independent Living Program?
366.2 Who is eligible for assistance under this program?
366.3 What regulations apply to this program?
366.4 What definitions apply to this program?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

366.10 What specific activities may be supported under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

366.30 How does the Secretary evaluate an application?
366.31 What selection criteria does the Secretary use in this program?

Subpart E—What Conditions Must Be Met by a Grantee?

366.40 What are the matching requirements?
366.41 How are services to be administered under this program?
366.42 What the requirements pertaining to the protection, use, and release of personal information?

Authority: Sections 12(c) and 711 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 711(c) and 796(e)).

Subpart A—General

§ 366.1 What is the Centers for Independent Living Program?

This program is designed for planning, establishing and assisting in the continuing operation of centers for independent living.

(Section 711 of the Act; 29 U.S.C. 796e)

§ 366.2 Who is eligible for assistance under this program?

(a) Applications may be made by designated State vocational rehabilitation units.

(b) If a designated State unit has failed to submit an application within six months after the beginning of a fiscal year or if a State unit has advised the Secretary in writing at any time within six months after the beginning of a fiscal year of its decision not to submit an application, applications for Federal assistance may be made by local public agencies and by private nonprofit organizations within the State. The written statement of a designated State unit decision not to apply is binding for that fiscal year.

(Sections 711 (a) and (d) of the Act; 29 U.S.C. 796e(d))

§ 366.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct grant programs);

(b) The regulations in EDGAR, 34 CFR Part 77 (General); and

(c) The regulations in this Part 366.

(Section 711 of the Act; 29 U.S.C. 796e)

§ 366.4 What definitions apply to this program?

(a) The following definitions in 34 CFR Part 77 apply to this program—

Applicant
Application
Award
Budget Period
Department
EDGAR
Nonprofit
Project
Project Period
Public
Secretary

(b) The following definitions also apply to the Centers for Independent Living Program—

"Center for independent living" means a program of services or a facility which offers a combination of independent living services for severely handicapped individuals or groups of severely handicapped individuals such as:

(1) Intake counseling to determine the severely handicapped individual's need for specific independent living services;

(2) Referrals and counseling services with respect to attendant care;

(3) Attendant care and the training of personnel to provide attendent care;

(4) Counseling and advocacy services with respect to legal and economic rights and benefits;

(5) Peer counseling;

(6) Independent living skills, counseling and training, including training in the maintenance of necessary equipment, training in job seeking skills, counseling on therapy needs and programs, and special independent living skill training for blind individuals or deaf individuals;

(7) Housing and transportation referral and assistance;

(8) Surveys, directories, and other activities to identify appropriate housing and accessible transportation and other support services;

(9) Health maintenance programs;

(10) Community group living arrangements;

(11) Education and training necessary for living in the community and participating in community activities;

(12) Individual and group social and recreational activities;

(13) Interpreter services for deaf or deaf-blind individuals and reading services for blind individuals; and

(14) Other programs and services necessary to provide resources, training, counseling, services or other assistance of substantial benefit in promoting the independence, productivity and quality of life for severely handicapped individuals.

(Section 711(c) of the Act; 29 U.S.C. 796e(c))

"Designated State unit" or "designated State vocational rehabilitation unit" means either:

(1) The State agency vocational rehabilitation bureau, division, or other organizational unit which is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of handicapped individuals and which is responsible for the administration of the vocational rehabilitation program of the State agency; or

(2) The independent State commission, board, or other agency which has vocational rehabilitation, or vocational and other rehabilitation as its primary function.

(Section 7(3) of the Act; 29 U.S.C. 706(3))

"Severely handicapped individual" means an individual whose ability to function independently in family or community, or whose ability to engage or continue in employment is so limited by the severity of his or her physical or mental disability that independent living rehabilitation services are required in order to achieve a greater level of independence in functioning in family or community or engaging or continuing in employment. Independent living rehabilitation services needed by a severely handicapped individual are appreciably more costly and of appreciably greater duration than vocational rehabilitation services that might be provided under 34 CFR Part 361.

(Section 702(a) of the Act; 29 U.S.C. 796a(a))

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 366.10 What specific activities may be supported under this program?

(a) The Centers for Independent Living Program provides financial assistance for planning, establishing and operating centers for independent living. Grant funds under this program must be used only for establishing new centers for independent living or expanding or improving ongoing centers of independent living;

(b) Grant funds may not be used in whole or in part to supplant other existing funding support already being used by a center for independent living.

(Sections 12(c) and 711 of the Act; 29 U.S.C. 711(c) and 796e)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 366.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application under this program on the basis of the criteria specified in § 366.31. The maximum possible score for each complete criterion is stated in parentheses. The number of points awarded for each criterion depends on how well the applicant meets all the elements under that criterion.

(b) The Secretary awards up to 100 points for these criteria.

(Sections 12(c) and 711 of the Act; 29 U.S.C. 711(c) and 796e)

§ 366.31 What selection criteria does the Secretary use in this program?

(a) *Evidence of need* (5 points).

(1) The Secretary reviews each application for information that shows that the need for the project has been adequately justified;

(2) The Secretary looks for information that shows that need for the Center for Independent Living has been established in terms of existing programs and facilities and includes an assessment of the potential of the existing programs and facilities to meet service needs for independent living services of severely handicapped individuals in the geographical area to be served.

(b) *Plan of operation* (25 points).

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Service comprehensiveness* (15 points).

(1) The secretary reviews each application for information that shows the comprehensiveness of the services to be available in each center.

(2) The Secretary looks for information that shows—

(i) Evidence that the center will utilize all presently available services;

(ii) Evidence that effort will be made to provide as many as possible of the services identified in the definition of "center for independent living" in § 366.4(b); and

(iii) Evidence that the project will service individuals with a broad range of disabilities including disabled persons who may have limited knowledge about the project such as the mentally retarded and the sensory impaired.

(d) *Quality of key personnel* (10 points).

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory

employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(e) *Involvement of severely handicapped persons* (20 points).

(1) The Secretary reviews each application for information that shows that severely handicapped persons are appropriately involved in conducting center activities.

(2) The Secretary looks for information that shows that severely handicapped persons or their parents, guardians or other representatives, as appropriate, will be substantially involved in planning, policy direction and management of the center and, to the greatest extent possible, will be employed by the center.

(f) *Budget and cost effectiveness* (10 points).

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(g) *Evaluation plan* (5 points).

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(h) *Adequacy of resources* (10 points).

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(Sections 12(c) and 711 of the Act; 29 U.S.C. 711(c) and 796e)

Subpart E—What Conditions Must Be Met By a Grantee?

§ 366.40 What are the matching requirements?

No minimum share is required of applicants but each applicant is encouraged to furnish as large a part of the total project costs as possible.

(Sections 12(c) and 711 of the Act; 29 U.S.C. 711(c) and 796e)

§ 366.41 How are services to be administered under this program?

The designated State unit may either directly operate a center for independent living or a group of centers or it may award one or more contracts to other public or nonprofit agencies or organizations in the State for the purpose of operating a center or a group of centers.

(Sections 12(c) and 711 of the Act; 29 U.S.C. 711(c) and 796e)

§ 366.42 What are the requirements pertaining to the protection, use, and release of personal information?

(a) All personal information about individuals served by any project under this part, including lists of names, addresses, photographs, and records of evaluation, must be held confidential.

(b) The use of information and records concerning individuals must be limited only to purposes directly connected with the project, including project evaluation activities. This information may not be disclosed, directly or indirectly, other than in the administration of the project unless the consent of the agency providing the information and the individual to whom the information applies, or his representative, has been obtained in writing. The Secretary and other Federal or State officials responsible for enforcing legal requirements have access to this information without written consent being obtained. The final product of the project may not reveal any personal identifying information without written consent of the individual or his or her representative.

Note.—The following appendix will not appear in the Code of Federal Regulations.

Appendix A—Summary of Comments and Responses to Notice of Proposed Rulemaking Published in the Federal Register of November 29, 1979.

§ *366.2 Who is eligible for assistance under this program?* (Formerly § 1362.100(c))

Comment. A number of comments were received concerning the application eligibility requirements. Special concern was expressed about the timing of the process so that local public agencies and private nonprofit organizations would have adequate notice when a State unit has decided not to apply for Federal grant funds and would have sufficient time to prepare an application.

Response. A change has been made in this section. Paragraph (b) has been revised to specify that the six-month period in which only State units would be eligible applicants would start at the beginning of the fiscal year rather than after the application submittal deadline date established by the Secretary. In this way, other applicants will more easily be able to determine their eligibility status and will be better able to plan the preparation of their own applications.

The paragraph has also been revised to clarify that when a State unit's decision not to apply for grant funds is made in writing to the Secretary, it is binding for the fiscal year in which it is made. This change will also facilitate the application process for local agencies and organizations.

§ *366.4 What definitions apply to this program?* (Formerly § 1362.100(b))

Comment. Question was raised about the definition of a "center for independent living" and whether the term "facility" in the proposed definition referred to a "rehabilitation facility," as defined in the Act and in the regulations for the State plan for vocational rehabilitation services in 34 CFR Part 361.

Response. No change has been made in this section in this regard. The term "facility" does not refer to a "rehabilitation facility," as defined under the Rehabilitation Act, but simply indicates a place where independent living services may be provided or coordinated. Since the proposed definition did not specify "rehabilitation facility," no additional change appeared to be necessary.

§ *366.4 What definitions apply to this program?* (Formerly § 1362.100(a))

Comment. Question was asked whether independent living services under this program were to be limited to individuals only or whether these services might also be provided to groups of severely handicapped individuals.

Response. A change has been made in this section. The definition of "center for independent living" has been revised to clarify that services under this special grant program are not required to be individualized but may also be provided on a group basis.

Comment. It was suggested in some comments that special independent

living services for communicatively disabled individuals should appropriately be identified as available under a center for independent living program.

Response. A change has been made in this section. The list of services in the definition of "centers for independent living" has been revised to include interpreter services for deaf individuals, including tactile interpreting for deaf-blind individuals, and reading services for blind individuals.

§ 366.10 What specific activities may be supported under this program? (Formerly § 1362.100(a))

Comment. Question was asked by one commenter about whether grant funds under this program could be used to supplant other sources already being utilized to support ongoing centers for independent living. It was pointed out that securing funding for currently operating centers for independent living is generally done with great difficulty and the utilization of this new grant program resource would be of great benefit in maintaining these ongoing center programs.

Response. A change has been made in this section. It is noted that this section is a new grant authority which was added to the Rehabilitation Act in 1978 and funds became available for the first time in 1979. There is no indication that the Congress intended that these grant funds be used to supplant existing resources to provide basic continuing support to ongoing centers for independent living programs. This section has been revised, therefore, to clarify that grant funds may be used only to establish new center programs and center services or to expand or improve existing programs which meet all the requirements of this section. Grant funds under this section may not be used to maintain the current scope of service and level of operation of an ongoing center program being supported under other available funding sources.

§ 366.31(e) What selection criteria does the Secretary use in this program? (Formerly § 1362.100(e)).

Comment. It was suggested by some commenters that the concept of "substantial involvement in policy direction and management" of centers by severely handicapped individuals be defined to mean at least 51% of project staff and management. It was felt that anything less than this level would not reflect a meaningful participation by these severely handicapped persons.

Response. No change has been made in this section in this regard. Although more precise requirements in this area would be desirable, it does not appear that the establishment of an arbitrary percentage would be an effective device for achieving the objective of ensuring an appropriate level of project control by handicapped persons. An arbitrary percentage requirement would substantially reduce administrative flexibility in managing center programs.

The extent to which severely handicapped individuals are involved in project direction and management is an important factor considered in the competitive review of applications and it is felt that the competitive review process and the monitoring of ongoing projects are the best ways to ensure that the intent of the section is achieved in an effective way.

[FR Doc. 81-1786 Filed 1-16-81; 8:45 am]
BILLING CODE 4000-01-M

federal register

Monday
January 19, 1981

Part X

Department of Education

Vocational Rehabilitation Service Projects; Final Regulations and Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Parts 362, 369, 370, 371, 372, 373, 374, 375, 378, 379, and 395

Vocational Rehabilitation Service Projects; Final Regulations With Invitation To Comment

AGENCY: Department of Education.

ACTION: Final regulations with invitation to comment.

SUMMARY: The Secretary adopts regulations for the purpose of implementing different Vocational Rehabilitation Service Projects authorized under the Rehabilitation Act of 1973, as amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602). These regulations include the requirements for Client Assistance Projects, Handicapped American Indian Vocational Rehabilitation Service Projects, Comprehensive Rehabilitation Centers, Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Individuals, Special Projects and Demonstrations for Making Recreational Activities Accessible to Handicapped Individuals, Handicapped Migratory Agricultural Workers and Seasonal Farmworker Vocational Rehabilitation Service Projects, Projects for Initiating Special Recreation Programs for Handicapped Individuals, and Projects with Industry.

DATES: All comments, suggestions, or objections must be received on or before March 20, 1981.

Effective Date: These regulations are expected to be effective forty-five days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the **Federal Register.** The effective date is changed if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

ADDRESSES: Comments should be addressed to: Mr. Harold F. Shay, Director, Division of Manpower Development, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, Room 3321, Mary E. Switzer Building, 330 C Street, SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Mr. Harold F. Shay, Telephone: (202) 245–0079.

SUPPLEMENTARY INFORMATION:

Waiver of Proposed Rulemaking Procedures Affecting Selection Criteria

The Secretary of Health, Education, and Welfare published a Notice of Proposed Rulemaking in the **Federal Register** on November 29, 1979 that covered all new vocational rehabilitation and independent living rehabilitation authorities contained in the Rehabilitation, Comprehensive Services and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602). Proposed regulations for the different Vocational Rehabilitation Service Projects were included in this Notice of Proposed Rulemaking.

On May 4, 1980, the Department of Education was established and the Rehabilitation Services Administration became part of the Office of Special Education and Rehabilitative Services within this new Department. As a result, the publication of regulations under the Rehabilitation Act of 1973, as amended, is now subject to the provisions of Section 431 of the General Education Provisions Act and other requirements in effect in the Department of Education. It has become necessary therefore to revise the proposed regulations for each of the Vocational Rehabilitation Service Projects in order to make them conform with requirements affecting Department of Education programs, including selection criteria to be used in the evaluation of applications submitted for grant assistance. These selection criteria had not been included in the previously published Notice of Proposed Rulemaking.

In accordance with Section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1343(b)(2)(A)), it is the practice of the Department of Education to offer interested parties the opportunity to comment on all proposed regulations, including the selection criteria to be used in the different discretionary grant programs. The publication of an additional proposed rulemaking covering the selection criteria for the different Vocational Rehabilitation Service Projects would be impracticable and contrary to the public interest under 5 U.S.C. 553(b) if grants are to be made in a timely manner in fiscal year 1981, however, and the selection criteria are therefore being published as final regulations in this document.

Although the selection criteria for many of the Vocational Rehabilitation Service Projects have been previously identified in Application Notices published in the **Federal Register,** it is recognized that there has not been an opportunity for the public to comment specifically on their appropriateness. Interested parties are invited therefore to submit comments and suggestions on the Selection Criteria to be used in the awarding of grants in future fiscal years. All comments and suggestions must be received no later than March 20, 1981.

Summary of Changes

Some comments were received in response to the Notice of Proposed Rulemaking provisions covering the Client Assistance Program and the Projects with Industry Program. Changes are also being made in these revised regulations in response to these comments. A Summary of Comments and Responses to the proposed regulations is included in Appendix A.

References to EDGAR

Readers will note that references to the Education Department General Administrative Regulations (EDGAR) cite Title 34 of the Code of Federal Regulations. EDGAR was transferred to Title 34 through final regulations published in the **Federal Register** on November 21, 1980 (45 FR 77368).

However, EDGAR was initially published in the **Federal Register** on April 3, 1980 (45 FR 22494) under Title 45 of the Code of Federal Regulations (CFR). For readers wishing to refer to that EDGAR document, the following cross-references will be helpful:

—45 CFR Part 74 is now 34 CFR Part 74.
—45 CFR Part 100a is now 34 CFR Part 75.
—45 CFR Part 100b is now 34 CFR Part 76.
—45 CFR Part 100c is now 34 CFR Part 77.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before the 60th day after publication of this document will be considered in any future revisions of the final regulations.

All comments submitted in response to these final regulations will be available for public inspection during and after the comment period in Room 3321, Mary E. Switzer Building, 330 C Street, S.W., Washington, D.C. between 8:30 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays.

The Department also requests comments on whether the regulations in this document would require submission of information that is already being gathered by or is available from any other agency or authority of the United States.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (Pub. L. 96-354, enacted Sept. 19, 1980) requires each Federal agency to prepare an initial regulatory flexibility analysis and a final regulatory flexibility analysis for each regulation that—

(1) Is published as a notice of proposed rulemaking after January 1, 1981, and

(2) Has a significant economic impact on a substantial number of small entities (small businesses, small organizations, or small governmental jurisdictions).

Because the Department has not yet established its own definitions of "small organization" and "small governmental jurisdiction", as contemplated by the Act, it is not possible to prepare a full initial regulatory flexibility analysis at this time. Further, since the regulations in this document are required by statute to be published in final no later than May 31, 1981, it is impracticable to delay publication while the necessary definitions are being developed. As noted elsewhere in this preamble, it was impracticable to take public comments before publishing these regulations as final. For the same reasons, it was impracticable to delay the regulations while an initial regulatory flexibility analysis was prepared. In these circmstances, the Regulatory Flexibility Act permits a waiver or delay of the initial regulatory flexibility analysis. If it is determined that these regulations are subject to that Act, the Secretary will prepare the necessary analyses at a later date.

As an interim measure, this document, to the maximum extent possible, includes information of the kind contemplated by the Regulatory Flexibility Act, including the reasons for the regulations, the objectives and legal basis for the regulations, and any significant issues and alternatives for consideration by the public. To assist the Department in determining whether the Regulatory Flexibility Act applies to these regulations, and in complying with the Act is requirements, public comment is especially invited on the following matters:

(1) The number and kind of small entities (small businesses, small organizations, or small governmental jurisdictions) affected by the regulations;

(2) The reporting, recordkeeping and compliance burdens imposed by the regulations on small entities;

(3) The type of professional skills necessary for preparation of any reports or records required by the regulations;

(4) Any Federal rules that may duplicate, overlap, or conflict with the regulations;

(5) Any significant alternatives that would accomplish the purposes of the applicable statute but would minimize any significant economic impact of the regulations on small entities. The Secretary is particularly interested in suggestions on alternatives such as the following:

- The establishment of differing reporting or compliance requirements or timetables that take into account the resources available to small entities.
- The clarification, consolidation, or simplification of compliance and reporting requirements for small entities.
- The use of performance rather than design standards.
- An exemption for small entities from coverage of part or all of the regulations.

Citation of Legal Authority

A citation of statutory authority is placed in parentheses on the line following each substantive provision of these regulations. The first citation is the appropriate section of the Rehabilitation Act of 1973, as amended. This is followed by a citation to the same provision in the United States Code.

(Catalog of Federal Domestic Assistance Program Number 84.128, Rehabilitation Services—Special Projects)

Dated: January 13, 1981.

Shirley M. Hufstedler,

Secretary of Education.

PART 369 [REDESIGNATED AS PART 395]

Accordingly, the Secretary amends Title 34 of the Code of Federal Regulations by redesignating Part 369 as Part 395 and by redesignating Subpart A of Part 362 as 34 CFR Part 369 and revises the regulations to read as follows:

PART 369—VOCATIONAL REHABILITATION SERVICE PROJECTS

Subpart A—General

Sec.

369.1 What are the Vocational Rehabilitation Service Projects?
369.2 Who is eligible for assistance under these programs?
369.3 What regulations apply to these programs?
369.4 What definitions apply to these programs?

Subpart B—[Reserved]

Subpart C—How Does One Apply For A Grant?

369.20 What are the application procedures for these programs?

Subpart D—How Does the Secretary Make A Grant?

369.30 How does the Secretary evaluate an application?
369.31 What general selection criteria does the Secretary use in reviewing an application?
369.32 What other factors does the Secretary consider in reviewing an application?

Subpart E—What Conditions Must Be Met By A Grantee?

369.40 [Reserved]
369.41 [Reserved]
369.42 What special requirements affect provision of services to handicapped individuals?
369.43 What are the affirmative action plan requirements affecting grantees?
369.44 What are the special requirements for projects that involve construction?
369.45 What wage and hour standards apply to workshops?
369.46 What are the special requirements pertaining to the membership of project advisory committees?
369.47 What are the special requirements pertaining to the protection, use, and release of personal information?
369.48 What are the special requirements affecting the collection of data from State agencies?

Authority: Sections 12(c), 112, 130, 305, 311(a)(1), 311(a)(3), 312, 316, and 621 of the Act; 29 U.S.C. 711(c), 732, 750, 775, 777(a)(1), 77a(a)(3), 777(b), 777f and 795g.

Subpart A—General

§ 369.1 What are the Vocational Rehabilitation Service Projects?

(a) These programs provide financial assistance for the support of special project activities for providing vocational rehabilitation services and related services to handicapped individuals and other persons.

(b) The Secretary awards financial assistance through the following programs—

(1) Client Assistance Projects (34 CFR Part 370).

(2) Handicapped American Indian Vocational Rehabilitation Service Projects (34 CFR Part 371).

(3) Comprehensive Rehabilitation Centers (34 CFR Part 372).

(4) Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Individuals (34 CFR Part 373).

(5) Special Projects and Demonstrations for Making Recreational Activities Accessible to Handicapped Individuals (34 CFR Part 374).

(6) Handicapped Migratory Agricultural and Seasonal Farmworker Vocational Rehabilitation Service Projects (34 CFR Part 375).

(7) Projects for Initiating Special Recreation Programs for Handicapped Individuals (34 CFR Part 378).

(8) Projects with Industry (34 CFR Part 379).

(Secs. 112, 130, 305, 306, 311a, 311(a)(3), 312, 316, 621 of the Act; 29 U.S.C. 732, 750, 775, 776, 777a(a)(1), 777a(a)(3), 777(b), 777f and 795g)

§ 369.2 Who is eligible for assistance under these programs?

(a) *Client Assistance Projects.* State vocational rehabilitation agencies are eligible for assistance to support client assistance projects.

(Sec. 112 of the Act; 29 U.S.C. 732)

(b) *Handicapped American Indian Vocational Rehabilitation Service Projects.* Governing bodies of Indian tribes located on Federal and State reservations are eligible for expanding or otherwise improving vocational rehabilitation services to handicapped individuals.

(Section 311(a)(1) of the Act; 29 U.S.C. 777(a)(1))

(e) *Special Projects and Demonstrations for Making Recreational Activities Accessible to Handicapped Individuals.* States and public and other nonprofit agencies and organizations are eligible for assistance to support projects for providing vocational rehabilitation services to handicapped American Indians.

(Section 130 of the Act; 29 U.S.C. 750)

(c) *Comprehensive Rehabilitation Centers.* State vocational rehabilitation units are eligible for assistance to support comprehensive rehabilitation center projects.

(Section 305 of the Act; 29 U.S.C. 775)

(d) *Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Individuals.* States and public and other nonprofit agencies and organizations are eligible for assistance to support special projects and demonstrations for making recreational activities accessible to handicapped individuals.

(Section 311(a)(3) of the Act; 29 U.S.C. 777(a)(3))

(f) *Handicapped Migratory Agricultural Worker and Seasonal Farmworker Vocational Rehabilitation Service Projects.* State vocational rehabilitation agencies or local agencies administering vocational rehabilitation programs under written agreements with State agencies are eligible for assistance to support projects for providing vocational rehabilitation services to handicapped migratory agricultural workers or seasonal farmworkers.

(Section 312 of the Act; 29 U.S.C. 777(b))

(g) *Projects for Initiating Special Recreation Programs for Handicapped Individuals.* State and public nonprofit agencies and organizations are eligible for assistance to support projects for initiating special recreation programs for handicapped individuals.

(Section 316 of the Act; 29 U.S.C. 777(f))

(h) *Projects with Industry.* Any industrial, business, or commercial enterprise; labor organization; employer; industrial, or community trade association; rehabilitation facility; or other agency or organization with the capacity to arrange, coordinate, or conduct training and other employment programs and provide supportive services and assistance for handicapped individuals in a realistic work setting is eligible for assistance to support a project with industry.

(Section 621 of the Act; 29 U.S.C. 795(g))

§ 369.3 What regulations apply to these programs?

The following regulations apply to the programs under Rehabilitation Services—

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs);

(b) The regulations in EDGAR 34 CFR Part 77 (General);

(c) The regulations in this Part 369; and

(d) The regulations in Parts 370, 371, 372, 373, 374, 375, 378 and 379, as appropriate.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 369.4 What definitions apply to these programs?

(a) The following definitions in 34 CFR Part 77 apply to the programs under Vocational Rehabilitation Service Projects—

Applicant	Nonprofit
Application	Profit
Award	Project Period
Budget Period	Public
Department	Secretary
EDGAR	Work of Art

(Section 12(c) of the Act; 29 U.S.C. 711(c))

(b) The following definitions also apply to programs under Vocational Rehabilitation Service Projects:

"Act" means the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) as amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602).

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Blind" or "blind individual" means a person who is blind within the meaning of the law relating to vocational rehabilitation in each State.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Construction of a rehabilitation facility" means:

(1) The construction of new buildings, the acquisition of existing buildings, or the expansion, remodeling, alteration or renovation of existing buildings which are to be utilized for rehabilitation facility purposes; or

(2) The acquisition of initial equipment of such new, newly acquired, newly expanded, newly remodeled, newly altered or newly renovated buildings.

(Section 7(1) of the Act; 29 U.S.C. 706(1))

"Handicapped individual" means an individual:

(1) Who has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment; and

(2) Who can reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services, or for whom an extended evaluation of vocational rehabilitation potential is necessary to determine whether he or she might reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services;

(Section 7(7)(A) of the Act; 29 U.S.C. 706(7)(A))

"Physical and mental restoration services" means:

(1) Medical or corrective surgical treatment;

(2) Diagnosis and treatment for mental or emotional disorders by a physician skilled in the diagnosis and treatment of such disorders or by a psychologist licensed or certified in accordance with State laws and regulations;

(c) Dentistry;

(d) Nursing services;

(e) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(f) Convalescent or nursing home care;

(g) Drugs and supplies;

(h) Prosthetic, orthotic or other assistive devices including hearing aids essential to obtaining or retaining employment;

(i) Eyeglasses and visual services, including visual training, and the

examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids, prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;

(j) Podiatry;

(k) Physical therapy;

(l) Occupational therapy;

(m) Speech and hearing therapy;

(n) Psychological services;

(o) Therapeutic recreation services;

(p) Medical or medically related social work services;

(q) Treatment of either acute or chronic medical complications and emergencies which are associated with or arise out of the provision of physical and mental restoration services; or which are inherent in the condition under treatment;

(r) Special services for the treatment of individuals suffering from end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

(s) Other medical or medically related rehabilitation services, including art therapy, dance therapy, music therapy and psychodrama.

(Section 103(a)(4) of the Act; 29 U.S.C. 723(a)(4))

"Physical or mental disability" means a physical or mental condition which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's employment activities or vocational functioning.

(Section 7(7) of the Act; 29 U.S.C. 706(7))

"Rehabilitation facility" means a facility which is operated for the primary purpose of providing vocational rehabilitation services to handicapped individuals, and which provides singly or in combination one or more of the following services for handicapped individuals:

(1) Vocational rehabilitation services, including under one management, medical, psychiatric, psychological, social, and vocational services;

(2) Testing, fitting, or training in the use of prosthetic and orthotic devices;

(3) Prevocational conditioning or recreational therapy;

(4) Physical and occupational therapy;

(5) Speech and hearing therapy;

(6) Psychological and social services;

(7) Evaluation of rehabilitation potential;

(8) Personal and work adjustment;

(9) Vocational training with a view toward career advancement (in combination with other rehabilitation services);

(10) Evaluation or control of specific disabilities;

(11) Orientation and mobility services and other adjustment services to blind individuals; and

(12) Transitional or extended employment for those handicapped individuals who cannot be readily absorbed in the competitive labor market.

(Section 7(11) of the Act; 29 U.S.C. 706(11))

"Reservation" means a Federal or State Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by incorporated Native groups, regional corporations and village corporations under the provisions of the Alaska Native Claims Settlement Act.

(Section 130(e) of the Act; 29 U.S.C. 750(e))

"Severely handicapped individual" means a handicapped individual:

(1) Who has a severe physical or mental disability which seriously limits one or more functional capacities (mobility, communication, self-care, self-direction, work tolerance, or work skills) in terms of employability; and

(2) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(3) Who has one or more physical or mental disabilities resulting from amputation, arthritis, blindness, cancer, cerebral palsy, cystic fibrosis, deafness, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, and end-stage renal disease, or another disability or combination of disabilities determined on the basis of an evaluation of rehabilitation potential to cause comparable substantial functional limitation.

(Section 7(13) of the Act; 29 U.S.C. 706(13))

"State agency" means the sole State agency designated to administer (or supervise local administration of) the State plan for vocational rehabilitation services. The term includes the State agency for the blind, if designated as the sole State agency with respect to that part of the plan relating to the vocational rehabilitation of blind individuals.

(Section 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

"State plan" means the State plan for vocational rehabilitation services. (34 CFR Part 361)

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"State unit," "State vocational rehabilitation unit" or "designated State unit" means either:

(1) The State agency vocational rehabilitation bureau, division, or other organizational unit which is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of handicapped individuals and which is responsible for the administration of the vocational rehabilitation program of the State agency; or

(2) The independent State commission, board, or other agency which has vocational rehabilitation, or vocational and other rehabilitation as its primary function.

(Section 7(3) of the Act 29; U.S.C. 706(3))

"Substantial handicap to employment" means that a physical or mental disability (in light of attendant medical, psychological, vocational, educational, and other related factors) impedes an individual's occupational performance by preventing his obtaining, retaining, or preparing for employment consistent with his capacities and abilities.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Vocational rehabilitation services" when provided to an individual, means:

(i) Evaluation of vocational rehabilitation potential, including diagnostic and related services incidental to the determination of eligibility for, and the nature and scope of services to be provided;

(ii) Counseling and guidance, including personal adjustment counseling, to maintain a counseling relationship throughout a handicapped individual's program of services, and referral necessary to help handicapped individuals secure needed services from other agencies;

(iii) Physical and mental restoration services, necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive;

(iv) Vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials;

(v) Maintenance;

(vi) Transportation;

(vii) Services to members of a handicapped individual's family when necessary to the vocational rehabilitation of the handicapped individual;

(viii) Interpreter services and note-taking services for the deaf, including

tactile interpreting for deaf-blind individuals;

(ix) Reader services, rehabilitation teaching services, note-taking services, and orientation and mobility services for the blind;

(x) Telecommunications, sensory and other technological aids and devices;

(xi) Recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement and other appropriate public service employment;

(xii) Placement in suitable employment;

(xiii) Post-employment services necessary to maintain suitable employment;

(xiv) Occupational licenses, including any license, permit or other written authorization from any governmental unit to be obtained in order to enter an occupation or enter a small business, tools, equipment, initial stocks (including livestock) and supplies; and

(xv) Other goods and services which can reasonably be expected to benefit a handicapped individual in terms of employability.

(Section 103(a) of the Act; 29 U.S.C. 723(a))

"Vocational rehabilitation services" when provided for the benefit of groups of individuals, also means:

(1) In the case of any type of small business enterprise operated by severely handicapped individuals under the supervision of the State unit, management services, and supervision and acquisition of vending facilities or other equipment, and initial stocks and supplies;

(2) The establishment of a rehabilitation facility;

(3) The construction of a rehabilitation facility;

(4) The provision of other facilities and services, including services provided at rehabilitation facilities, which promise to contribute substantially to the rehabilitation of a group of individuals but which are not related directly to the individualized written rehabilitation program of any one handicapped individual;

(5) The use of existing telecommunications systems; and

(6) The use of services providing recorded material for blind persons and captioned films or video cassettes for deaf persons.

(Section 103(b) of the Act; 29 U.S.C. 723(b).)

"Workshop" means a rehabilitation facility, or that part of a rehabilitation facility, engaged in production or service operation for the primary purpose of providing gainful employment as an interim step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market or during such time as employment opportunities for them in the competitive labor market do not exist.

(Sections 7(11) and 12(c) of the Act; 29 U.S.C. 706(11) and 711(c))

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant?

§ 369.20 What are the application procedures for these programs?

The Secretary gives the appropriate State vocational rehabilitation unit an opportunity to review and comment on applications submitted from within the State that it serves. The procedures to be followed by the applicant and the State are in EDGAR §§ 75.155–75.159.

(Section 12)(c) of the Act; 29 U.S.C. 711(c))

Subpart D—How Does the Secretary Make a Grant?

§ 369.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application on the basis of general selection criteria identified in § 369.31 and specific selection criteria identified in Parts 370, 371, 372, 373, 374, 375, 378 and 379. The maximum possible score for each complete criterion under each Vocational Rehabilitation Service Project category is stated in parentheses in § 370.30, § 371.30, § 372.30, § 373.30, § 374.30, § 375.30, § 378.30, and § 379.30. The number of points awarded each criterion depends on how well the application meets all the elements under that criterion.

(b) The Secretary awards up to 100 possible points for these selection criteria.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 369.31 What general selection criteria does the Secretary use in reviewing an application?

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Handicapped persons;

(B) The elderly;

(C) Women; and

(D) Members of racial or ethnic minority groups;

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of key personnel proposed for the project;

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this criterion will commit to the project; and

(iv) The extent to which the applicant, as part of its non-discriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Handicapped persons;

(B) The elderly;

(C) Women; and

(D) Members of racial or ethnic minority groups.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities;

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project, and to the extent possible, are objective, and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 369.32 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria listed in § 369.31 and Parts 370, 371, 372, 373, 374, 375, 378, and 379, the Secretary, in making awards under these programs, considers such factors as—

(a) The geographical distribution of projects in each program category throughout the country; and

(b) The past performance of the applicant in carrying out similar activities under previously awarded grants, as indicated by such factors as compliance with grant conditions, soundness of programmatic and financial management practices and attainment of established project objectives.

(Section 12(c) of the Act; 29 U.S.C. 711(a)).

Subpart E—What Conditions Must Be Met by a Grantee?

§ 369.40 [Reserved]

§ 369.41 [Reserved]

§ 369.42 What special requirements affect provision of services to handicapped individuals?

Vocational rehabilitation services provided in projects assisted under these programs must be provided in the same manner as services provided under the State plan for vocational rehabilitation services under 34 CFR Part 361.

(Section 306(h) of the Act; 29 U.S.C. 776(h))

§ 369.43. What are the affirmative action plan requirements affecting grantees?

A recipient of Federal assistance must develop and implement an affirmative action plan to employ and advance in employment qualified handicapped individuals. This plan must provide for specific action steps, timetables, and complaint and enforcement procedures necessary to assure affirmative action.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 369.44 What are the special requirements for projects that involve construction?

(a) A project which involves construction (the construction of new buildings and the acquisition, expansion, remodeling, alteration, and renovation of existing buildings) under these programs must meet the following requirements in addition to those requirements specified in 34 CFR 75.600–75.615—

(1) Plans and specifications must be approved by the Architectural and Transportation Barriers Compliance Board.

(2) The grantee must ensure that the facility will be used as a public or nonprofit facility for at least 20 years after completion of the project;

(3) The grantee must assure that Federal funds are used only for the purposes for which the funds were provided; and

(4) The grantee must operate and maintain the facility in accordance with applicable Federal, State, and local requirements for the maintenance and operation of rehabilitation facilities.

(b) The construction of a rehabilitation facility which is primarily a workshop may include the construction of residential accommodations for use in connection with the rehabilitation of handicapped individuals if it is necessary to the effective operation of the facility.

(c) Federal financial participation is not available for the costs of offsite improvements or for the construction of any facility used for religious worship or sectarian activity.

(Sections 12(c) and 306 of the Act; 29 U.S.C. 711(c) and 776)

§ 369.45 What wage and hour standards apply to workshops?

All applicable Federal and State wage and hour standards must be observed in projects carried out in workshops.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 369.46 What are the special requirements pertaining to the membership of project advisory committees?

When an advisory committee is established under a project, its membership must include handicapped persons or other representatives of handicapped individuals and other individuals to be assisted within the project, providers of services, and other appropriate individuals.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 369.47 What are the special requirements pertaining to the protection, use, and release of personal information?

(a) All personal information about individuals served by any project under this part, including lists of names, addresses, photographs, and records of evaluation, must be held confidential.

(b) The use of information and records concerning individuals must be limited only to purposes directly connected with the project, including project evaluation activities. This information may not be disclosed, directly or indirectly, other than in the administration of the project unless the consent of the agency providing the information and the individual to whom the information applies, or his or her representative, have been obtained in writing. The Secretary or other Federal or State officials responsible for enforcing legal requirements have access to this information without written consent being obtained. The final product of the project may not reveal any personal identifying information without written consent of the individual or his or her representative.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 369.48 What are the special requirements affecting the collection of data from State agencies?

When the collection of data is necessary either from handicapped individuals being served by two or more State agencies or from employees of two or more of these agencies, the project director must submit requests for the data to appropriate representatives of the affected agencies, as determined by the Secretary. This requirement also applies to employed project staff and individuals enrolled in courses of study supported under this part.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 362.45 [Redesignated as 34 CFR Part 370]

The Secretary amends Title 34 of the Code of Federal Regulations by redesignating § 362.45 as 34 CFR Part 370 and revises the regulations to read as follows:

PART 370—CLIENT ASSISTANCE PROJECTS

Subpart A—General

Sec.

370.1 What is the Client Assistance Projects Program?
370.2 Who is eligible for assistance under this program?
370.3 What regulations apply to this program?
370.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

370.10 What types of projects are authorized under this program?
370.11 What are the responsibilities of counselors employed in these projects?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

370.30 What selection criteria does the Secretary use under this program?
370.31 What other factors does the Secretary consider when awarding grants under this program?

Subpart E—What Conditions Must Be Met by a Grantee?

370.40 What are the matching requirements?
370.41 What are allowable costs?
370.42 Must the State agency directly administer each project?
370.43 What are the special requirements affecting project staff?
370.44 What are the special requirements affecting accessibility to service?
370.45 What are the special requirements affecting coordination with related programs?

Authority: Sections 12(c) and 112 of the Act; 29 U.S.C. 711(c) and 732.

Subpart A—General

§ 370.1 What is the Client Assistance Projects Program?

This program is designed to provide counselors to inform and advise all clients and client applicants in the project area of all available benefits and their rights in seeking these benefits under the Act.

(Section 112(a) of the Act; 29 U.S.C. 732)

§ 370.2 Who is eligible for assistance under this program?

Applications may be submitted only by State agencies.

§ 370.3 What regulations apply to this program?

The following regulations apply to this program—

(a) 34 CFR Part 369.

(b) The regulations in this Part 370.

(Section 112 of the Act; 29 U.S.C. 732)

§ 370.4 What definitions apply to this program?

(a) The definitions in 34 CFR Part 369 apply to this program.

(b) The following definitions also apply specifically under this program—

(1) "Client or client applicant" means an individual who—

(i) Is seeking vocational rehabilitation services from the State agency; or

(ii) Has been receiving vocational rehabilitation services from the State agency, but the services have been terminated and he or she is seeking assistance in connection with the termination of the services.

(Sections 12(c) and 112 of the Act; 29 U.S.C. 711(c) and 732)

(2) "Counselor" means a client assistance worker who functions as an ombudsman.

(Sections 12(c) and 112 of the Act; 29 U.S.C. 711(c) and 732)

(3) "Project area" means the geographical or administrative area served by project counselors and designed in a manner to facilitate client or client applicant accessibility to the project. A project area may be a rehabilitation facility, a State agency district office, or a special unit for a specific disability, and in some cases, may be Statewide.

(Sections 12(c) and 112 of the Act; 29 U.S.C. 711(c) and 732)

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 370.10 What types of projects are authorized under this program?

The Client Assistance Projects Program provides financial assistance for projects that make available counselors to assist clients and client applicants in their relationships with the projects, programs, and facilities providing services to them under the Act and to help them pursue legal, administrative, and other appropriate remedies available to ensure the protection of their rights under the Act.

(Section 112(a) of the Act; 29 U.S.C. 732(a))

§ 370.11 What are the responsibilities of counselors employed in these projects?

Counselors employed within projects under this part are responsible for:

(a) Helping clients or client applicants to understand the vocational rehabilitation services program;

(b) Advising clients or client applicants of benefits available to them under the vocational rehabilitation program and related Federal and State assistance programs, and their rights and responsibilities in connection with these benefits;

(c) Otherwise assisting clients and client applicants in their relationships with projects, programs, and facilities providing vocational rehabilitation services under the Act;

(d) Helping clients or client applicants primarily by referring them for assistance in pursuing legal, administrative and other available remedies when necessary to ensure the protection of their rights under the Act; and

(e) Advising State agencies of identified problem areas in the delivery of vocational rehabilitation services to handicapped individuals and suggesting methods and means of improving State agency performance.

(Sections 12(c) and 112 of the Act; 29 U.S.C. 711(c) and 732)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 370.30 What selection criteria does the Secretary use under this program?

(a) *Plan of operation* (25 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(a).

(b) *Quality of key personnel* (15 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(c).

(d) *Evaluation plan* (5 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(d).

(e) *Adequacy of resources* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(e).

(f) *Benefit to handicapped community* (35 points).

(1) The Secretary reviews each application for information that demonstrates that the project will be of substantial benefit to handicapped individuals in the project area.

(2) The Secretary looks for information that shows that—

(i) The project holds promise of increasing consumer satisfaction with vocational rehabilitation services within the project area; and

(ii) Handicapped persons or their representatives will be significantly involved in the planning and administration of the project.

(Sections 12(c) and 112 of the Act; 29 U.S.C. 711(c) and 732)

§ 370.31 What other factors does the Secretary consider when awarding grants under this program?

In awarding grants under this program, the Secretary also considers—

(a) Whether the applicant State agency has been awarded a Client Assistance Project in the past; and

(b) Whether the project will provide a Statewide network of service.

(Sections 12(c) and 112 of the Act; 29 U.S.C. 711(c) and 732)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 370.40 What are the matching requirements?

The grantee must contribute to the cost of a project under this program in an amount satisfactory to the Secretary. The part of the costs to be borne by the grantee is determined by the Secretary at the time of the award.

(Sections 12(c) and 112 of the Act; 29 U.S.C. 711(c) and 732)

§ 370.41 What are allowable costs?

In addition to those allowable costs established in EDGAR §§ 75.530–75.534, the costs of client, client applicant, or attendant travel in connection with the provision of assistance is also allowable under this program.

(Sections 12(c) and 112 of the Act; 29 U.S.C. 711(c) and 732)

§ 370.42 Must the State agency directly administer each project?

The State agency may directly administer the project or it may administer the project through a public or nonprofit agency or organization.

(Sections 12(c) and 112(b) of the Act; 29 U.S.C. 711(c) and 732(b))

§ 370.43 What are the special requirements affecting project staff?

(a) No project employee may be a person who is concurrently serving as staff or consultant, or who is receiving benefits of any kind directly or indirectly for any rehabilitation project, program or facility assisted under the Act in the project area, except for individuals receiving traineeships under the Rehabilitation Training Program under Section 304 of the Act.

(b) The project director must have direct access to the director of the designated State unit of the State agency and shall report directly to the director of his designate if the project is administered directly by the State agency. The project director is expected to participate in all policy and program development activities affecting the conduct of the project and shall be assured of access to personnel in any field office affected by the project. The project director must also have access to policy making and administration personnel in other State and local rehabilitation programs, projects and facilities.

(c) A counselor must be able to participate in any administrative review of agency action, or any fair hearing conducted in connection with a client or client applicant being assisted under this program.

(d) Maximum effort must be made to enter into cooperative arrangements with institutions of higher education to secure the services of graduate students who are undergoing clinical training in rehabilitation related fields, and in fields related to the protection and advocacy of handicapped persons except that no compensation with funds appropriated under the Act will be provided to such students in connection with their participation in a project under this program.

(Sections 12(c) and 112(b) of the Act; 29 U.S.C. 711(c) and 732(b))

§ 370.44 What are the special requirements affecting accessibility to service?

All clients or client applicants within the project area must have the opportunity to receive client assistance services under the project.

(Section 112(b) of the Act; 29 U.S.C. 732(b))

§ 370.45 What are the special requirements affecting coordination with related programs?

Project activities must be fully coordinated with other programs and activities carried out under this Act and under the Developmental Disabilities Assistance and Bill of Rights Act in the project area which are related to the protection and advocacy of the rights of handicapped persons and there must be agreements with these other programs in order to define the extent of the coordinated effort.

(Sections 12(c) and 112(b) of the Act; 29 U.S.C. 711(c) and 732(b))

The Secretary amends Title 34 of the Code of Federal Regulations by adding Part 371 to read as follows:

PART 371—HANDICAPPED AMERICAN INDIAN VOCATIONAL REHABILITATION SERVICE PROJECTS

Subpart A—General

Sec.

371.1 What is the Handicapped American Indian Vocational Rehabilitation Service Projects Program?
371.2 Who is eligible for assistance under this program?
371.3 What regulations apply to this program?
371.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

371.10 What types of projects are authorized under this program?

Subpart C—How Does One Apply for a Grant?

371.20 What are the application procedures under this program?
371.21 What are the special application requirements related to the State plan Program?

Subpart D—How Does the Secretary Make a Grant?

371.30 What selection criteria does the Secretary use under this program?
371.31 How are grants awarded?

Subpart E—What Conditions Must Be Met by a Grantee?

371.40 What are the matching requirements?
371.41 What are allowable costs?
371.42 How are services to be administered under this program?
371.43 What other special conditions apply to this program?

Authority: Sections 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750.

Subpart A—General

§ 371.1 What is the Handicapped American Indian Vocational Rehabilitation Service Projects Program?

This program is designed to provide vocational rehabilitation services to handicapped American Indians who reside on Federal or State reservations in order to prepare them for suitable employment.

(Section 130(a) of the Act; 29 U.S.C. 750(a))

§ 371.2 Who is eligible for assistance under this program?

Applications may be made only by the governing bodies of Indian tribes located on Federal and State reservations.

(Section 130(a) of the Act; 29 U.S.C. 750(a))

§ 371.3 What regulations apply to this program?

The following regulations apply to this program—

(a) 34 CFR Part 369;

(b) The regulations in this Part 371.

(Section 130 of the Act; 29 U.S.C. 750)

§ 371.4 What definitions apply to this program?

(a) The definitions in 34 CFR Part 369 apply to this program;

(b) The following definitions also apply specifically to this program—

(1) "American Indian" means a person who is a member of an Indian tribe.

(Sections 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

(2) "Governing bodies of Indian tribes" means those duly elected or appointed representatives of an Indian tribe or of an Alaskan native village. These representatives must have the authority to enter into contracts,

agreements, and grants on behalf of their constituency.

(Sections 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

(3) "Indian tribe" means any Federal or State Indian band, rancheria, pueblo, colony, and community, including any Alaskan native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act).

(Sections 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

(4) "Reservation" means a Federal or State Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by incorporated Native groups, regional corporations and village corporations under the provisions of the Alaska Native Claims Settlement Act.

(Sections 12(c) and 130(e) of the Act; 29 U.S.C. 711(c) and 750(e))

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 371.10 What types of projects are authorized under this program?

The Handicapped American Indian Vocational Rehabilitation Service Projects Program provides financial assistance for the establishment and operation of tribal vocational rehabilitation service programs for handicapped American Indians who reside on Federal or State reservations.

(Section 130(a) of the Act; 29 U.S.C. 750(a))

Subpart C—How Does One Apply for a Grant?

§ 371.20 What are the application procedures for this program?

In the development of an application, a governing body is required to consult with the designated State unit or the designated State units of the State or States in which vocational rehabilitation services are to be provided.

(Section 130(b) of the Act; 29 U.S.C. 750(b))

§ 371.21 What are the special application requirements related to the State plan program?

Each applicant under this program must provide evidence that—

(a) Effort will be made to provide a broad scope of vocational rehabilitation services in a manner and at a level of quality at least comparable to those services provided by the designated State unit under 34 CFR Part 361.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

(b) All decisions affecting eligibility for and the nature and scope of vocational rehabilitation services to be provided, and the provision of these services, will be made by the tribal vocational rehabilitation program through its vocational rehabilitation unit and will not be delegated to another agency or individual.

(Sections 12(c) and 101(a) of the Act; 29 U.S.C. 711(c) and 721(a))

(c) Priority in the delivery of vocational rehabilitation service will be given to those handicapped American Indians who are the most severely handicapped.

(Sections 12(c) and 101(a)(5) of the Act; 29 U.S.C. 711(c) and 721(a)(5))

(d) An order of selection of handicapped individuals to be served under the program will be specified if services cannot be provided to all eligible handicapped American Indians who apply.

(Sections 12(c) and 101(a)(5) of the Act; 29 U.S.C. 711(c) and 721(a)(5))

(e) All vocational rehabilitation services will be provided according to an individualized written rehabilitation program which has been developed jointly by the representative of the service providing organization and each handicapped American Indian being served.

(Sections 12(c) and 101(a)(9) of the Act; 29 U.S.C. 711(c) and 721(a)(9))

(f) Handicapped American Indians living on Federal or State reservations where service programs are being carried out under this Part will have an opportunity to participate in matters of general policy development and implementation affecting vocational rehabilitation service delivery on the reservation.

(Sections 12(c) and 101(a)(18) of the Act; 29 U.S.C. 711(c) and 721(a)(18))

(g) Cooperative working arrangements will be developed with the designated State unit, or designated State units, as appropriate, which are providing vocational rehabilitation services to other handicapped individuals who reside in the State or States being served.

(Sections 12(c) and 101(a)(11) of the Act; 29 U.S.C. 711(c) and 721(a)(11))

(h) Any similar benefits available to handicapped American Indians under any other program which might meet in whole or in part the cost of any vocational rehabilitation service will be fully considered in the provision of vocational rehabilitation services in accordance with 34 CFR Part 361.

(Sections 12(c) and 101(a)(8) of the Act; 29 U.S.C. 711(c) and 721(a)(8))

(i) Any handicapped American Indian applicant or recipient of services who is dissatisfied with any action with regard to the provision or denial of a vocational rehabilitation service under this program may file a request for an administrative review of the action by a member of the supervisory staff of the organization administering the program. If the client is still dissatisfied, he or she may request a fair hearing before the project administrator, or the next higher level in the administrative structure of the tribal organization.

(Sections 12(c) and 102(d) of the Act; 29 U.S.C. 711(c) and 722(d))

(j) Minimum standards will be established for facilities and providers of service which will be comparable to the standards set by the designated State unit or designated State units in the State or States in which the program is to be provided; and

(Sections 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(12))

(k) Maximum use will be made of public or other vocational or technical training facilities or other appropriate community resources.

(Sections 12(c) and 101(a)(12) of the Act; 29 U.S.C. 711(c) and 721(a)(12))

Subpart D—How Does the Secretary Make a Grant?

§ 371.30 What selection criteria does the Secretary use under this program?

(a) *Plan of operation* (30 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(a).

(b) *Quality of key personnel* (20 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(c).

(d) *Evaluation plan* (5 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(d).

(e) *Adequacy of resources* (10 Points) The Secretary reviews each application on the basis of the criterion in § 369.31(e).

(f) *Evidence of need for project* (25 Points).

(1) The Secretary reviews each application for information that shows that the need for the special project has been adequately justified.

(2) The Secretary looks for information that shows—

(i) The extent to which vocational rehabilitation services are provided by the State vocational rehabilitation unit to handicapped American Indians residing on reservations;

(ii) The extent to which the provision of vocational rehabilitation services through a tribal rehabilitation service program would expand or improve rehabilitation services for handicapped American Indians.

(Sections 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

§ 371.31 How are grants awarded?

To the extent that funds have been appropriated under this program, the Secretary approves all applications which meet acceptable standards of program quality. If any application is not approved because of deficiencies in proposed program standards, the Secretary provides technical assistance to the applicant Indian tribe with respect to any areas of the proposal which were judged to be deficient.

(Sections 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

Subpart E—What Conditions Apply to A Grantee Under This Program?

§ 371.40 What are the matching requirements?

The Federal share may not be more than 90 percent of the total cost of the project.

(Sections 12(c) and 130(a) of the Act; 29 U.S.C. 711(c) and 750(c))

§ 371.41 What are allowable costs?

(a) In addition to those allowable costs established in EDGAR §§ 75.530–75.534, the following items are allowable costs under this program—

(1) Expenditures for the provision of vocational rehabilitation services and for the administration, including staff development, of a program of vocational rehabilitation services.

(2) Expenditures for services reflecting the cultural background of the American Indians being served, including treatment provided by native healing practitioners who are recognized as such by the tribal vocational rehabilitation program when the services are necessary to assist the handicapped individual to achieve his or her vocational rehabilitation objective.

(b) Expenditures may not be made under this program to cover the costs of providing vocational rehabilitation services to handicapped individuals not residing on Federal or State reservations.

(Sections 12(c) and 130(a) of the Act; 29 U.S.C. 711(c) and 750(a))

§ 371.42 How are services to be administered under this program?

A governing body may provide the vocational rehabilitation services directly or it may contract or otherwise enter into an agreement with a designated State unit, a rehabilitation facility, or another agency to assist in the implementation of the vocational rehabilitation service program for handicapped American Indians. A governing body may also enter into an inter-tribal arrangement with governing bodies of other Indian tribes for carrying out a project which serves more than one Indian tribe. In any case, to the maximum extent feasible, the vocational rehabilitation service program must be comparable in type and quality to that provided by the State unit or units in the State or States in which the program is being carried out and each tribal program must be administered by a special tribal organizational unit for vocational rehabilitation.

(Sections 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

§ 371.43 What other special conditions apply to this program?

(a) Any handicapped American Indian who is eligible for service under this program but who wishes to be provided service by the designated State unit must be referred to the State unit for such services.

(b) Preference in employment in connection with the provision of vocational rehabilitation services under this section must be given to American Indians, with a special priority being given to handicapped American Indians.

(c) The provisions of Sections 5, 6, 7, and 102(a) of the Indian Self-Determination and Education Assistance Act also apply under this program. These provisions relate to grant reporting and audit requirements, maintenance of records, access to records, availability of required reports and information to Indian people served or represented, repayment of unexpended Federal funds, criminal activities involving grants, penalties, wage and labor standards, preference requirements for American Indians in the conduct and administration of the grant, and requirements affecting requests of tribal organizations to enter into contracts. For purposes of applying these requirements to this program, the Secretary carries out those responsibilities assigned to the Secretary of Interior.

(Sections 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

The Secretary amends Title 34 of the Code of Federal Regulations by adding 34 CFR Part 372 to read as follows:

PART 372—COMPREHENSIVE REHABILITATION CENTERS

Subpart A—General

Sec.

372.1 What is the Comprehensive Rehabilitation Centers Program?
372.2 Who is eligible for assistance under this program?
372.3 What regulatios apply to this program?
372.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

372.10 What types of projects are authorized under this program?

Subpart C—How Does One Apply for a Grant?

372.20 What are the application procedures for this program?

Subpart D—How Does the Secretary Make a Grant?

372.30 What selection criteria does the Secretary use under this program?

Subpart E—What Conditions Must Be Met by a Grantee?

372.40 What are the matching requirements?
372.41 What are allowable costs?
372.42 How are services to be administered under this program?
372.43 What special conditions apply under this program to projects that involve construction?

Authority: Sections 12(c) and 305 of the Act; 29 U.S.C. 711(c) and 775)

Subpart A—General

§ 372.1 What is the Comprehensive Rehabilitation Center Program?

This program is designed to establish or operate comprehensive rehabilitation centers which serve primarily as centers for the development, delivery, and coordination of vocational rehabilitation services and other services needed by handicapped persons in the community.

(Section 305(a) of the Act; 29 U.S.C. 775(a))

§ 372.2 Who is eligible for assistance under this program?

(a) Applications may be made by State vocational rehabilitation units.

(b) A State vocational rehabilitation unit which has been awarded a grant under this program may award a subgrant to a unit of general purpose local government or to any other public or nonprofit private agency or organization or enter into a contract with agencies or organizations in the community.

(Sections 305(a), (c) of the Act; 29 U.S.C. 775(a), (c))

§ 372.3 What regulations apply to this program?

The following regulations apply to this program—

(a) 34 CFR Part 369.

(b) The regulations in this Part 372.

(Section 305 of the Act; 29 U.S.C. 775)

§ 372.4 What definitions apply to this program?

(a) The definitions in 34 CFR Part 369 apply to this program.

(b) The following definitions also apply specifically to this program—

(1) "Comprehensive rehabilitation center" means a facility or group of facilities which serves as a focal point within a community for the development and delivery of services for handicapped persons and other persons.

(Sections 12(c) and 305 of the Act; 29 U.S.C. 711(c) and 775)

(2) "Handicapped person" means an individual of any age who has a physical or mental disability.

(Sections 12(c) and 305 of the Act; 29 U.S.C. 711(c) and 775)

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 372.10 What types of projects are authorized under this program?

A comprehensive rehabilitation center established or operated under this program may function as a community information and referral resources center for handicapped persons and for other public and other nonprofit agencies in the community which serve handicapped persons. A comprehensive rehabilitation center may, in addition, directly provide a broad range of vocational rehabilitation, health, educational, social, and recreational services to handicapped persons.

(Section 305(a) of the Act; 29 U.S.C. 775)

Subpart C—How Does One Apply for a Grant?

§ 372.20 What are the special application requirements for this program?

The need for the establishment of a comprehensive rehabilitation center must be identified by the State unit in the State planning for rehabilitation facilities required under 34 CFR Part 361 before an application may be submitted under this program.

(Sections 12(c), 101(a)(15) and 305 of the Act; 29 U.S.C. 711(c), 721(a)(15) and 775)

Subpart D—How Does the Secretary Make a Grant?

§ 372.30 What selection criteria does the Secretary use?

(a) *Plan of operation* (35 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(a).

(b) *Quality of key personnel* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (15 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(c).

(d) *Evaluation plan* (5 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(d).

(e) *Adequacy of resources* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(e).

(f) *Evidence of need* (25 Points).

(1) The Secretary reviews each application for information that shows that the need for the comprehensive rehabilitation center has been adequately justified.

(2) The Secretary looks for information that shows that the need for the comprehensive rehabilitation center has been established in terms of services already available in the community and includes an assessment of community information, referral and service delivery needs not being adequately met.

(Sections 12(c) and 305 of the Act; 29 U.S.C. 711(c) and 775)

§ 372.32 Is there a priority for the use of existing facilities?

The Secretary gives priority in awarding grants for establishing or operating comprehensive rehabilitation centers at facilities which are already in operation.

(Sections 12(c) and 305 of the Act; 29 U.S.C. 711(c) and 775).

Subpart E—What Conditions Must Be Met by a Grantee?

§ 372.40 What are the matching requirements?

(a) The Federal share of any grant awarded to a designated State unit may not be more than 80 percent of the total costs of the project.

(b) No subgrant or contract awarded by a State unit to a general purpose local government unit, a public or other nonprofit agency or organization, or other agencies or organizations may pay more than 80 percent of the total cost of establishing or operating a comprehensive rehabilitation center under this program.

(Sections 12(c) and 305 of the Act; 29 U.S.C. 711(c) and 775)

§ 372.41 What are allowable costs?

In addition to these allowable costs established in EDGAR §§ 75.530–75.534, the following items are allowable costs under this program—

(a) Salaries of additional professional and technical personnel required to operate a comprehensive rehabilitation center;

(b) Acquisition of equipment necessary for operating a center;

(c) Expansion, remodeling or alteration of an existing building when necessary to adapt it or increase its effectiveness for use as a comprehensive rehabilitation center;

(d) Leasing of a facility to serve as a comprehensive rehabilitation center; and

(e) Works of art in an amount not to exceed one percent of the total cost of the project when the expansion, remodeling or alteration of an existing building is involved.

(Sections 12(c), 305, and 306 of the Act; 29 U.S.C. 711(c), 775, and 776)

§ 372.42 How are services to be administered under this program?

(a) Services may be provided within the comprehensive rehabilitation center directly by the agency or organization or the group of agencies or organizations which is operating the center or they may be provided by other agencies or organizations using either their own facilities or the facilities of the center;

(b) The facilities of the center are expected to be made available for recreational activities for handicapped persons;

(c) To the maximum extent possible, the center must provide upon request to other public and other nonprofit agencies, organizations, facilities and other entities in the community information services and technical assistance necessary to assist them in complying with the requirements of this Act, with special reference to the requirements under Section 504 of the Act. Technical assistance includes both the maintenance of rosters of special support personnel available within the community such as interpreters for the deaf, readers for the blind, attendants, legal aid and advocacy personnel, and the coordination of referrals of these personnel;

(d) Any center established or operated under this program must be located in close proximity to the majority of the handicapped persons in the community to be served; and

(e) Information and referral services provided by a center must be fully

coordinated with information and referral services provided by the State unit under the State plan for vocational rehabilitation services under 34 CFR Part 361 or by any other public or other nonprofit agency or organization in the community.

(Sections 12(c) and 305 of the Act; 29 U.S.C. 711(c) and 775)

§ 372.43 What special conditions apply under this program to projects that involve construction?

New facilities are established through the expansion, remodeling, or alteration of an existing building only after it has been fully demonstrated that there are no existing facilities in the community with the potential for developing and delivering adequate services under this program. If the expansion, remodeling, or alteration of an existing building is involved, each facility must comply with the requirements specified under Part 369, and with any other requirements of the Department in effect concerning Federally assisted building design and construction activities.

(Sections 12(c), 305, and 306 of the Act; 29 U.S.C. 711(c), 775, and 776)

§ 362.40 [Redesignated as 34 CFR Part 373]

The Secretary amends Title 34 of the Code of Federal Regulations by redesignating § 362.40 as 34 CFR Part 373 and revises the regulations to read as follows:

PART 373—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING VOCATIONAL REHABILITATION SERVICES TO SEVERELY HANDICAPPED INDIVIDUALS

Subpart A—General

Sec.

373.1 What is the Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Handicapped Individuals?
373.2 Who is eligible for assistance under this program?
373.3 What regulations apply to this program?
373.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

373.10 What types of projects are authorized under this program?
373.11 What specific activities must be supported under this program to provide services to individuals with spinal cord injuries?
373.12 What specific activities must be supported under this program to provide services to blind individuals?
373.13 What specific activities must be supported under this program to provide services to deaf individuals?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

373.30 What selection criteria does the Secretary use under this program?

Subpart E—What conditions Must be Met by A Grantee?

373.40 What are the matching requirements?
373.41 What are allowable costs?
373.42 What special conditions apply under this program to projects that involve construction?

Authority: Sections 12(c) and 311(a)(1) of the Act; 29 U.S.C. 711(c) and 777(a)(1))

Subpart A—General

§ 373.1 What is the Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Handicapped Individuals?

This program is designed to provide financial assistance to projects for expanding or otherwise improving vocational rehabilitation services and other rehabilitation services for severely handicapped individuals.

(Section 311(a) of the Act; 29 U.S.C. 777(a).)

§ 373.2 Who is eligible for assistance under this program?

Applications may be made by States and public and other nonprofit agencies and organizations.

(Section 311(a) of the Act; 29 U.S.C. 777(a).)

§ 373.3 What regulations apply to the program?

The following regulations apply to this program—

(a) 34 CFR Part 369;

(b) The regulations in this Part 373.

(Section 311 of the Act; 29 U.S.C. 777(a))

§ 373.4 What definitions apply to this program?

The definitions in 34 CFR Part 369 apply to this program.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 373.10 What types of projects are authorized under this program?

Authorized activities under this program include carrying out special projects concerned with establishing programs and constructing facilities for expanding or otherwise improving vocational rehabilitation services and other rehabilitation services to handicapped individuals, especially those who are the most severely handicapped. Handicapped individuals served under this program include individuals with spinal cord injuries, blind individuals, deaf individuals, and other groups of severely handicapped individuals, irrespective of age or vocational potential, identified each year by the Secretary.

§ 373.11 What specific activities must be supported under this program to provide services to individuals with spinal cord injuries?

Projects in which vocational and other rehabilitation services are provided to individuals with spinal cord injuries, whether administered separately or in coordination with a larger program supported in part under Title II of the Act, must—

(a) Establish a multi-disciplinary system of providing rehabilitation services specifically designed to meet the special needs of individuals with spinal cord injuries, include acute care, vocational and other rehabilitation services, community and job placement, and long-term community follow-up and health maintenance. The system must be established on an appropriate geographical basis which reflects patterns of patient flow and must be administered in close coordination with similar programs of the National Institute of Handicapped Research, the Veterans Administration, the National Institute of Health, and other public and private agencies and institutions;

(b) Demonstrate and evaluate both the service and cost benefits of a regional service system to those individuals with spinal cord injuries who might be served within it;

(c) Establish within the system a rehabilitation research environment for the achievement of new knowledge leading to the reduction and treatment of complications arising from spinal cord injury and the development of new techniques of medical management and rehabilitation;

(d) Demonstrate and evaluate the development and application of improved methods and equipment essential to the care, management and rehabilitation of individuals with spinal cord injury; and

(e) Demonstrate methods of community outreach and education for individuals with spinal cord injury in areas such as housing, transportation, recreation, employment, and other community activities.

(Section 311(b) of the Act; 29 U.S.C. 77a(b))

§ 373.12 What specific activities must be supported under this program to provide services to blind individuals?

Projects in which services are provided to blind individuals must—

(a) Demonstrate innovative methods of providing intensive rehabilitation services needed to rehabilitate blind individuals; or

(b) Provide mobility training services or comprehensive counseling services not otherwise available in the locality in which individuals served by the project reside; or

(c) Conduct coordinated rehabilitation service activities with other public or nonprofit agencies serving blind individuals in the same area.

(Section 311(a) of the Act; 29 U.S.C. 777(a))

§ 373.13 What specific activities must be supported under this program to provide services to deaf individuals?

Projects in which services are provided to deaf individuals must—

(a) Demonstrate innovative methods of providing the specialized services needed to rehabilitate and make maximum use of the vocational potential of deaf individuals; or

(b) Conduct coordinated activities with other public and nonprofit agencies administering programs for deaf persons in the same area in order to expand or improve rehabilitation services for deaf individuals.

(Section 311(a) of the Act; 29 U.S.C. 777a)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 373.30 What selection criteria does the Secretary use under this program?

(a) *Plan of operation* (20 Points). The Secretary reviews each application in accordance with the criterion in § 369.31(a).

(b) *Quality of key personnel* (10 Points). The Secretary reviews each application in accordance with the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (10 Points). The Secretary reviews each application in accordance with the criterion in § 369.31(c).

(d) *Evaluation plan* (5 Points). The Secretary reviews each application in accordance with the criterion in § 369.31(d).

(e) *Adequacy of resources* (10 Points). The Secretary reviews each application in accordance with the criterion in § 369.31(e).

(f) *Service comprehensiveness* (20 Points).

(1) The Secretary reviews each application for information that shows that the services to be provided within the project are comprehensive in scope.

(2) The Secretary looks for information that shows that—

(i) A broad range of vocational rehabilitation services and other rehabilitation services will be available to severely handicapped individuals within the project;

(ii) Services will be coordinated with those services provided by other appropriate community resources;

(g) *Relevance to State-Federal rehabilitation service program* (10 Points).

(1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service program.

(2) The Secretary looks for information that shows that—

(i) The project will be designed primarily for severely handicapped individuals being provided vocational rehabilitation services by State vocational rehabilitation units;

(ii) The State vocational rehabilitation unit will be actively involved in the carrying out of project activities and project linkages will be adequate to ensure appropriate outreach and client referral;

(iii) Job development, placement, and achieving an optimal vocational adjustment will be primary project emphases;

(iv) All similar benefits for which project clients might be eligible will be utilized.

(h) *Innovativeness of approach* (5 Points).

(1) The Secretary reviews each application for information that shows the extent to which the project approach is innovative.

(2) The Secretary looks for information that shows that the approach to be used in providing vocational rehabilitation services and other rehabilitation services will be innovative and appropriate to the groups of severely handicapped individuals being served.

(i) *Utilization of project findings* (5 Points).

(1) The Secretary reviews each application for information that shows the extent to which project findings might be utilized within the State rehabilitation service system.

(2) The Secretary looks for information that shows—

(i) The potential for project findings to be effectively utilized within the State vocational rehabilitation service system; and

(ii) The likelihood of the project activities being successfully replicated in other locations;

(j) *Likelihood of sustaining program* (5 Points).

(1) The Secretary reviews each application for information that shows the likelihood of the service program being sustained after the termination of Federal grant support.

(2) The Secretary looks for information that shows that the applicant agency intends to continue to operate the service program after the termination of the project.

(Sections 12(c) and 311 of the Act; 29 U.S.C. 711(c) and 777(a))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 373.40 What are the matching requirements?

Grants may be made for paying all or part of the costs of activities covered under this program. Where part of the costs is to be borne by the grantee, the amount of grantee participation is determined at the time of the grant award and is generally not less than 10 percent of the total cost of the project.

(Sections 12(c) and 311 of the Act; 29 U.S.C. 711(c) and 777(a))

§ 373.41 What are allowable costs?

In addition to those allowable costs established in EDGAR §§ 75.530–75.534, the costs of the construction of a rehabilitation facility are also allowed under this program.

(Sections 12(c) and 311 of the Act; 29 U.S.C. 711(c) and 777(a))

§ 363.42 What special conditions apply under this program to projects that involve construction?

(a) Any construction of a rehabilitation facility undertaken under this program is subject to the requirements affecting construction under 34 CFR Part 369 and to any other requirements of the Department in effect concerning Federally assisted building design and construction activities.

(b) The acquisition, expansion, remodeling, alteration or renovation of an existing building in connection with a special project or demonstration may not be undertaken unless it has been demonstrated to be essential to expanding or otherwise improving rehabilitation services to handicapped individuals within the related special project or demonstration.

(Sections 12(c) and 311 of the Act; 29 U.S.C. 711(c) and 777(a))

The Secretary amends Title 34 of the Code of Federal Regulations by adding 34 CFR Part 374 to read as follows:

PART 374—SPECIAL PROJECTS AND DEMONSTRATIONS FOR MAKING RECREATIONAL ACTIVITIES ACCESSIBLE TO HANDICAPPED INDIVIDUALS

Subpart A—General

Sec.

374.1 What is the Program of Special Projects and Demonstrations for Making Recreational Activities Accessible to Handicapped Individuals?
374.2 Who is eligible for assistance under this program?
374.3 What regulations apply to this program?
374.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

374.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

374.30 What selection criteria does the Secretary use under this program?

Subpart E—What Conditions Must Be Met by a Grantee?

374.40 What are the matching requirements?
374.41 What are allowable costs?
374.42 What are the special requirements affecting the scheduling of recreational activities within a project?
374.43 What are the special requirements affecting the renovation or construction of facilities?

Authority: Sections 12(c) and 311(a)(3) of the Act; 29 U.S.C. 711(c) and 777a(a)(3).

Subpart A—General

§ 374.1 What is the program of special projects and demonstrations for making recreational activities accessible to handicapped individuals?

This program is designed to operate programs and, where appropriate, to renovate and construct facilities to demonstrate methods of making recreational activities fully accessible to handicapped individuals.

(Section 311(a)(3) of the Act; 29 U.S.C. 777a(a)(3))

§ 374.2 Who is eligible for assistance under this program?

State and public and other nonprofit agencies and organizations are eligible for assistance under this program.

(Section 311(a) of the Act; 29 U.S.C. 777a(a)(3))

§ 374.3 What regulations apply to this program?

The following regulations apply to this program—

(a) 34 CFR Part 369;

(b) The regulations in this Part 734.

(Section 311(a) of the Act; 29 U.S.C. 777a(a)(31))

§ 374.4 What definitions apply to this program?

The definitions in 34 CFR Part 369 apply to this program.

(Section 12(c) of the Act; 29 U.S.C. 771(c))

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 374.10 What types of projects are authorized under this program?

(a) This program provides financial assistance for the support of the special projects and demonstrations, and related research and evaluation concerned with operating programs to demonstrate methods of making recreation activities fully accessible to handicapped individuals, including the renovation and construction of facilities where appropriate.

(b) Activities carried out under this program must focus on as broad a range of recreation activities as is appropriate to the geographical area, including indoor and outdoor recreation activities; competitive, active, and quiet recreation activities; social activities; and recreation activities related to the fine arts. These activities may include but are not limited to, arts, camping, dance, drama, fitness, 4–H, scouting, sports, swimming, travel and other related recreation activities;

(c) Projects must demonstrate innovative ways in which recreation services and activities can be made fully accessible to handicapped individuals, with special emphasis on those who are the most severely handicapped;

(Section 311(a)(3) of the Act; 29 U.S.C. 777a(a)(3))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 374.30 What selection criteria does the Secretary use under this program?

(a) *Plan of operation* (30 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(a).

(b) *Quality of key personnel* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (15 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(c).

(d) *Evaluation plan* (5 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(d).

(e) *Adequacy of resources* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(e).

(f) *Relevance to State-Federal rehabilitation service program* (10 Points). The Secretary reviews each application for information that shows—

(1) The project will be designed primarily for handicapped individuals being provided vocational rehabilitation services by State vocational rehabilitation units; and

(2) Recreation services provided under this program will be provided in a manner consistent with the provision of similar services under the State vocational rehabilitation service program under Title I of the Act.

(g) *Impact of the project* (20 Points).

(1) The Secretary reviews each application for information that shows the expected impact of the project on improving the quality of life of the handicapped individuals to be served.

(2) The Secretary looks for information that shows—

(i) The numbers of handicapped individuals expected to be served;

(ii) The types of handicapped individuals expected to be served;

(iii) The types of recreation activities expected to be available;

(iv) The extent to which the full range of resources at the facility will be accessible and can be expected to be utilized by handicapped individuals in the service area; and

(v) The extent to which there is evidence of support for the project from community agencies with an interest in recreational activities for handicapped individuals.

(Sections 12(c) and 311(a)(3) of the Act; 29 U.S.C. 711(c) and 777a(a)(3))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 374.40 What are the matching requirements?

Grants may be made for paying all or part of the costs of activities covered under this program. Where part of the costs is to be borne by the grantee, the amount of grantee participation is determined at the time of the grant award and is generally not less than 10 percent of the total cost of the project.

(Sections 12(c) and 311(a)(3) of the Act; 29 U.S.C. 711(c) and 777a(a)(3))

§ 374.41 What are allowable costs?

In addition to those allowable costs estabilished in EDGAR §§ 75.530–75.534, the following costs are also allowable in the case of any project which involves the renovation or construction of a facility:

(a) Acquisition of land in connection with construction of a rehabilitation facility;

(b) Acquisition of existing buildings;

(c) Remodeling, alteration, renovation, or expansion of existing buildings;

(d) Construction of new buildings;

(e) Architect's services;

(f) Site survey and soil investigation;

(g) Fixed or movable equipment;

(h) Works of art in an amount not to exceed one percent of the total cost of the project; and

(i) Other activities specifically provided for in the application.

(Sections 12(c) and 311(a)(3) of the Act; 29 U.S.C. 711(c) and 777a(a)(3))

§ 374.42 What are the special requirements affecting the scheduling of recreational activities within a project?

The schedule of recreational activities must be arranged so as not to interfere with a handicapped individual's attendance at work or school.

(Sections 12(c) and 311(a)(3) of the Act; 29 U.S.C. 711(c) and 777a(a)(3))

§ 374.43 What are the special requirements affecting the renovation or construction of facilities?

(a) To the greatest extent possible, existing facilities for the provision of recreational activities are expected to be utilized so that the need for the renovation or construction of facilities can be avoided.

(b) When renovation or construction of a facility is demonstrated to be necessary under this program, it must conform with the requirements specified under Part 369 and with any other requirements of the Department in effect concerning Federally assisted building design and construction activities.

(Sections 12(c) and 311(a) of the Act; 29 U.S.C. 711(c) and 777a(a)(3))

§ 362.46 [Redesignated as 34 CFR Part 375]

The Secretary amends Title 34 of the Code of Federal Regulations by redesignating § 362.42 as 34 CFR Part 375 and revises the regulations to read as follows—

PART 375—HANDICAPPED MIGRATORY AGRICULTURAL AND SEASONAL FARMWORKER VOCATIONAL REHABILITATION SERVICE PROJECTS

Subpart A—General

Sec.

375.1 What is the Handicapped Migratory Agricultural and Seasonal Farmworker Vocational Rehabilitation Service Projects Program?
375.2 Who is eligible for assistance under this program?
375.3 What regulations apply to this program?
375.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

375.10 What activities are eligible for assistance?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make A Grant?

375.30 What selection criteria does the Secretary use under this program?

Subpart E—What Conditions Must Be Met by A Grantee?

375.40 What are the matching requirements?
375.41 What are allowable costs?
375.42 What are the special requirements affecting coordination with related programs?

Authority: Sections 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777b.

Subpart A—General

§ 375.1 What is the Handicapped Migratory Agricultural and Seasonal Farmworkers Service Projects Program?

This program is designed to provide financial assistance to projects for providing vocational rehabilitation services to handicapped migratory agricultural workers or handicapped seasonal farmworkers.

(Section 321 of the Act; 29 U.S.C. 777b)

§ 375.2 Who is eligible for assistance under this program?

(a) Applications may be made by State vocational rehabilitation agencies or local agencies administering a vocational rehabilitation program under written agreements with State agencies.

(b) A State agency may, if it chooses, enter into an agreement with the State vocational rehabilitation agencies of one or more other States to develop a cooperative program for the provision of vocational rehabilitation services under this program.

(Sections 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777b)

§ 375.3 What regulations apply to this program?

The following regulations apply to this program—

(a) 34 Part 369;

(b) The regulations in this Part 375.

(Section 312 of the Act; 29 U.S.C. 777b)

§ 375.4 What definitions apply to this program?

(a) The definitions in 34 CFR Part 369 apply to this program.

(b) The following definitions also apply to this program—

(1) "Family members" or "members of the family" means any relative by blood or marriage of a handicapped migratory agricultural worker or seasonal farmworker and other individuals living in the same household with whom the handicapped migratory agricultural worker or the seasonal farmworker has a close interpersonal relationship, and who are with the worker, or have accompanied the worker on his migratory tour to the point in time at which the State agency comes into contact with him.

(Secs. 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777b)

(2) "Migratory agricultural worker" means a person who occasionally or habitually leaves his place of residence on a seasonal or other temporary basis to engage in ordinary agricultural operations or in services incident to the preparation of farm commodities for the market in another locality in which he resides during the period of such employment.

(Secs. 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777b)

(3) "Seasonal farmworker" means a person who on a seasonal or other temporary basis engages in ordinary agricultural operations or in services incident to the preparation of farm commodities for the market within daily commuting distance from his place of normal residence.

(Secs. 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777b)

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 375.10 What activities are eligible for assistance?

Project activities include the development and implementation of special arrangements for providing vocational rehabilitation services to handicapped individuals who are migratory agricultural workers or seasonal farmworkers and to members of their families (whether or not handicapped) who are with them, where these services are necessary to the vocational rehabilitation of the handicapped migratory agricultural worker or seasonal farmworker.

(Sec. 312 of the Act; 29 U.S.C. 777b)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make A Grant?

§ 375.30 What selection criteria does the Secretary use under this program?

(a) *Plan of operation* (35 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(a).

(b) *Quality of key personnel* (15 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (15 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(c).

(d) *Evaluation plan* (5 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(d).

(e) *Adequacy of resources* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(e).

(f) *Liaison with the State vocational rehabilitation service program* (15 Points).

(1) The Secretary reviews each application for information that shows the adequacy of the liaison with the State vocational rehabilitation service program.

(2) The Secretary looks for information that shows project linkages with the State vocational rehabilitation agency and community agencies adequate to ensure client referrals, outreach and utilization of project results.

(g) *Likelihood of sustaining program* (5 Points).

(1) The Secretary reviews each application for information that shows the likelihood of the service program being sustained after the termination of Federal grant support.

(2) The Secretary looks for information that shows that the State or local agency intends to continue to operate the service program after the termination of the project.

(Sections 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777(b))

§ 375.40 What are the matching requirements?

The Federal share may not be more than 90 percent of the total cost of a project under this program.

(Sections 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777(b))

§ 375.41 What are allowable costs?

In addition to those allowable costs established in EDGAR §§ 75.530–75.534, the following items are allowable under this program—

(a) Staff training necessary to improve the capacity of the State or local agency to serve handicapped migratory agricultural workers or seasonal farmworkers and members of their families when the training is included within a program of services; and

(b) Maintenance payments which must be provided at rates consistent with rates paid to handicapped individuals under the State plan for vocational rehabilitation services under 34 CFR Part 361.

(Sections 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777(b))

§ 375.42 What are the special requirements affecting coordination with related programs?

Each project must be administered in close cooperation with other public and nonprofit agencies and organizations having special skills and experience in the provision of services to migratory agricultural workers, seasonal farmworkers, or their families, including programs authorized under Title I of the Elementary and Secondary Education Act of 1964, the Migrant Health Act and the Farm Labor Contractor Registration Act of 1963.

(Sections 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777(b))

§ 375.43 [Reserved]

The Secretary amends Title 34 of the Code of Federal Regulations by adding 34 CFR Part 378 to read as follows:

PART 378—PROJECTS FOR INITIATING SPECIAL RECREATION PROGRAMS FOR HANDICAPPED INDIVIDUALS

Subpart A—General

Sec.

378.1 What is the Program of Projects for Initiating Special Recreation Programs for Handicapped Individuals?
378.2 Who is eligible for assistance under this program?
378.3 What regulations apply to this program?
378.4 What definitions apply to this program?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

378.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

378.30 [Reserved]
378.31 What selection criteria does the Secretary use under this program?

Subpart E—What Conditions Must Be Met by a Grantee?

378.40 What are the matching requirements?
378.41 [Reserved]
378.42 What are the special requirements affecting the scheduling of recreation activities within a project?
378.43 What are the special requirements affecting coordination with related programs?

Authority: Sections 12(c) and 316 of the Act; (29 U.S.C. 711(c) and 777(f))

Subpart A—General

§ 378.1 What is the program of projects for initiating special recreation programs for handicapped individuals?

This program is designed to initiate special programs to provide handicapped individuals with recreational activities which can be expected to aid in their mobility and socialization.

(Section 316 of the Act; 29 U.S.C. 711(c) and 777(f))

§ 378.2 Who is eligible for assistance under this program?

Applications may be made by State and public and other nonprofit agencies and organizations.

(Sections 12(c) and 316 of the Act; 29 U.S.C. 711(c) and 777(f))

§ 378.3 What regulations apply to this program?

The following regulations apply to this program—

(a) 34 CFR Part 369.

(b) The regulations in this Part 378.

(Section 316 of the Act; 29 U.S.C. 777(f))

§ 378.4 What definitions apply to this program?

The definitions in 34 CFR Part 369 apply to this program.

(Section 12(c) of the Act; 29 U.S.C. 777(c))

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 378.10 What types of projects are authorized under this program?

(a) This program supports projects which initiate programs of recreational services for handicapped individuals.

(b) Activities carried out under this program must include as broad a range of recreational activities as is appropriate to the geographical area, including indoor and outdoor recreational activities; competitive, active, and quiet recreational activities; social activities; and recreational activities related to the fine arts. These activities may include, but are not limited to, arts, camping, dance, drama, 4–H, fitness, scouting, sports, swimming,

travel and related recreational activities designed—

(1) To promote personal satisfaction;

(2) To provide equal recreational opportunity;

(3) To provide normalization experiences;

(4) To foster social interaction and physical and mental health; and

(5) To provide individualized rehabilitation and therapeutic activities to alleviate the effects of disabilities.

(Section 316 of the Act; 29 U.S.C. 777(f))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 378.30 [Reserved]

§ 378.31 What selection criteria does the Secretary use under this program?

(a) *Plan of operation* (30 Points).

The Secretary reviews each application on the basis of the criterion in § 369.31(a).

(b) *Quality of key personnel* (10 Points).

The Secretary reviews each application on the basis of the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (10 Points).

The Secretary reviews each application on the basis of the criterion in § 369.31(c).

(d) *Evaluation plan* (5 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(d).

(e) *Adequacy of resources* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(e).

(f) *Relevance to State-Federal rehabilitation services program* (10 Points).

(1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation services program.

(2) The Secretary looks for information that shows—

(i) The project will be designed primarily for handicapped individuals being provided vocational rehabilitation services by State vocational rehabilitation units; and

(ii) Recreational services provided under this program will be provided in a manner consistent with the provision of similar services under the State vocational rehabilitation services program under Title I of the Act.

(g) *Impact of the project* (20 Points).

(1) The Secretary reviews each application for information that shows the expected impact of the project on improving the quality of life of the handicapped individuals to be served.

(2) The Secretary looks for information that shows—

(i) The number of handicapped individuals expected to be served;

(ii) The types of handicapped individuals expected to be served;

(iii) The types of recreational activities expected to be available; and

(iv) The extent to which the full range of resources can be expected to be utilized by the handicapped individuals in the service area.

(h) *Likelihood of sustaining the service program* (5 Points).

(1) The Secretary reviews each application for information that shows the likelihood of the service program being sustained after the termination of Federal grant support.

(2) The Secretary looks for information that shows that the applicant intends to continue to operate the recreational activities after the termination of the project.

(Sections 12(c) and 316 of the Act; 29 U.S.C. 711(c) and 777f)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 378.40 What are the matching requirements?

Grants may be made for paying all or part of the costs of activities covered under this program. Where part of the costs is to be borne by the grantee, the amount of grantee participation is determined at the time of the grant award and is generally not less than 10 percent of the total project costs.

(Sections 12(c) and 316 of the Act; 29 U.S.C. 711(c))

§ 378.41 [Reserved]

§ 378.42 What are the special requirements affecting the scheduling of recreational activities within a project?

The schedule of recreational activities must be arranged so as not to interfere with a handicapped individual's attendance at work or school.

(Section 316 of the Act; 29 U.S.C. 777f)

§ 378.43 What are the special requirements affecting coordination with related programs?

To the greatest extent possible, existing facilities and resources must be used to provide the recreational activities. The grantee must also utilize existing community recreation programs or service resources available under any related programs in the geographical area which are supported or authorized under the Developmental Disabilities Assistance and Bill of Rights Act, The Education for All Handicapped Children Act, the National Endowment of the Arts and Humanities Act of 1965, Title XX of the Social Security Act, the Community Education Act, and the Historic Preservation Fund and Land and Water Conservation Fund.

(Sections 12(c) and 316 of the Act; 29 U.S.C. 711(c) and 777f)

§ 362.43 [Redesignated at 34 CFR Part 379]

The Secretary amends Title 34 of the Code of Federal Regulations by redesignating § 362.43 as 34 CFR Part 379 and revises the regulations to read as follows—

PART 379—PROJECTS WITH INDUSTRY

Subpart A—General

Sec.

379.1 What is the Projects with Industry program?
379.2 Who is eligible for assistance under this program?
379.3 What regulations apply to this program?
379.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

379.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

379.30 What selection criteria does the Secretary use under this program?
379.31 How does the Secretary enter into an agreement?

Subpart E—What Conditions Must Be Met by A Grantee?

379.40 What are the matching requirements?
379.41 What are allowable costs?
379.42 What prior assurances are required for agreements?
379.43 What general provisions are required in agreements?
379.44 What wage rates are required under agreements?
379.45 What on-the-job training is required?

Authority: Sections 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 759g.

Subpart A—General

§ 379.1 What is the projects with industry program?

This program is designed to provide handicapped individuals with training, employment, and supportive services and assistance within business, industry, or other realistic work settings in order to prepare them for competitive employment and permit them to maintain their employment.

(Section 621(a) of the Act; 29 U.S.C. 759g(a))

§ 379.2 Who is eligible for assistance under this program?

Employers and profit making and nonprofit organizations with whom the Secretary may enter into an agreement include any industrial, business or commercial enterprise; labor organization; employer, industrial, or community trade association; rehabilitation facility; or other agency or organization with the capacity to arrange, coordinate, or conduct training and other employment programs and provide supportive services and assistance for handicapped individuals in a realistic work setting.

§ 379.3 What regulations apply to this program?

The following regulations apply to this program:

(a) 34 CFR Part 369; and

(b) The regulations in this Part 379.

(Section 621 of the Act; 29 U.S.C. 795g)

§ 379.4 What definitions apply to this program?

The definitions in 34 CFR Part 369 apply to this program.

(Section 12(c) of the Act; 29 U.S.C. 711(c)).

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 379.10 What types of projects are authorized under this program?

The Projects with Industry program provides financial assistance for the following types of activities:

(9) Providing handicapped individuals with training and employment in a realistic work setting in order to prepare them for employment in the competitive market, including a planned and systematic sequence of training and instruction in occupational and employment skills, and providing reasonable assurance of gainful employment at the successful termination of the training and instruction;

(b) Providing handicapped individuals with supportive services that are necessary to permit them to continue to engage in the employment or a related type of employment for which they have received training under this program; and

(c) To the extent appropriate, expanding job opportunities for handicapped individuals by analyzing job demands and capabilities of the handicapped individuals and providing for:

(1) The development and modification of jobs to accommodate the special needs of the handicapped individuals being trained and employed under this program;

(2) The purchase and distribution of special aids, appliances, or equipment adapted to the needs of a handicapped individual for use at a job site;

(3) The modification of any facilities or equipment of the employer which are to be used by handicapped individuals under this program; and

(4) The establishment of appropriate job placement services.

(Section 621(a) of the Act; 29 U.S.C. 795g)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 379.30 What selection criteria does the Secretary use under this program?

(a) *Plan of operation* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(a).

(b) *Quality of key personnel* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (5 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(c).

(d) *Evaluation plan* (5 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(d).

(e) *Adequacy of resources* (5 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(e).

(f) *Achievement of competitive employment objectives* (35 Points). (1) The Secretary reviews each application for information that shows that competitive employment objectives will be achieved for handicapped individuals being served under a project.

(2) The Secretary looks for information that shows that—

(i) The project has the capacity for placing a substantial number of handicapped individuals in competitive employment on a cost-effective basis;

(ii) Handicapped individuals will be trained in occupations for which there is a realistic demand in the competitive labor market and, where appropriate, adequate consideration is given to labor union requirements in the development of training programs; and

(iii) The project has the capacity for creating jobs which offer career development and advancement opportunities for handicapped individuals.

(g) *Coordination with service agencies* (20 Points).

(1) The Secretary reviews each application for information that shows an adequate level of coordination with appropriate service agencies in the community.

(2) The Secretary looks for information that shows—

(i) Coordination of project activities with the State vocational rehabilitation unit and with other appropriate community resources in order to ensure an adequate number of referrals and a maximum use of similar benefits; and

(ii) Establishment of linkages with business, industry, trade associations, labor unions, and other concerned organizations, as demonstrated by the establishment of an advisory committee with representation from these groups to share in policy and decisionmaking functions.

(h) *Innovativeness of approach* (10 Points).

(1) The Secretary reviews each application for information that shows an innovativeness of approach in preparing handicapped individuals for competitive employment.

(2) The Secretary looks for information that shows creativity and an innovative approach in the methodology for achieving project objectives.

(Sections 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g)

§ 379.31 How does the Secretary enter into an agreement?

The Secretary enters into an agreement in consultation with the Secretary of Labor and the Secretary of Commerce and with the State vocational rehabilitation unit in the State in which the project is to be carried out, except where the scope of the proposed project extends beyond a single State.

(Section 621 of the Act; 29 U.S.C. 795g)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 379.40 What are the matching requirements?

The Federal share may not be more than 80% of the total cost of a project under this program.

(Section 621(c) of the Act; 29 U.S.C. 795g(c))

§ 379.41 What are allowable costs?

In addition to those allowable costs established in EDGAR §§ 75.530–75.534, the following items are allowable costs under this program:

(a) The costs of job training and related vocational rehabilitation services and supportive rehabilitation services;

(b) Instruction and supervision of trainees;

(c) Training materials and supplies, including consumable materials;

(d) Instructional aids;

(e) Bonding fees, liability and insurance premiums;

(f) The purchase or modification of equipment or facilities adapted for the use of handicapped individuals and special aids and appliances; and

(g) Alteration and renovation appropriate and necessary to ensure access to and utilization of buildings by handicapped persons.

(Sections 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g)

§ 379.42 What prior assurances are required for agreements?

Before entering into an agreement under this program, the Secretary consults with the prospective employer or other entity sponsoring the project, and, to the extent possible, with the State vocational rehabilitation unit and the handicapped individuals to be trained and employed under the project. On the basis of this consultation, it must be determined that:

(a) The State vocational rehabilitation unit will, to the maximum extent practicable, maintain a continuing relationship with the handicapped individuals to be served in the project and will either provide necessary vocational rehabilitation services and related supportive services directly or will otherwise ensure their availability;

(b) The bargaining agent under any applicable collective bargaining agreement concurs with the project;

(c) The trainee wage rates will not tend to create unfair competitive labor cost advantages nor have the effect of impairing or depressing wage or working standards established for experienced workers for work of a comparable character; and

(d) No abnormal labor condition such as a strike, a lockout, or other similar condition exists with respect to the applicant.

§ 379.43 What general provisions are required in agreements?

Any agreement entered into must, in addition to standard provisions—

(a) Provide for adherence to the terms or conditions of employment prescribed by any applicable Federal, State, or local law;

(b) Provide that a determination by competent authority of failure to adhere to the terms or conditions required by paragraph (a) of this section will constitute cause for termination of the contract or agreement;

(c) Provide that the Federal share of the costs will cover only a part of the total costs of the project;

(d) Provide that the recruitment, examination, appointment, training, promotion, retention, or any other personnel action with respect to any handicapped individual receiving training or employment, will be without regard to race, sex, color, creed, age, or national origin, and that violation will constitute grounds for termination of the contract or arrangement and that the United States will have a right to seek judicial enforcement of this provision;

(e) Provide that trainees will be compensated for hours spent in production of any goods or services;

(f) Provide that those individuals to receive training or employment services under the contract or arrangement will be individuals determined by the appropriate State vocational rehabilitation unit to be handicapped individuals suitable for these services;

(g) Provide reasonable assurance that handicapped individuals successfully completing the training program will be employed by the employer or within a similar enterprise;

(h) Specify the duration of the project;

(i) Provide that when funds are given directly to an employer, the Secretary, together with the State vocational rehabilitation unit, has the right to review any termination of employment. In the event that that termination occurs less than three years after the handicapped individual began his or her employment, the Secretary is entitled to require the repayment of a portion of the funds made available to the employer, if the Secretary in consultation with the State unit determines that there was not a reasonable cause for the termination;

(j) Provide that any handicapped individual placed with an employer under this program will be given terms and benefits of employment equal to those which are given other employees of the employer;

(k) Provide that handicapped employees will not be unreasonably segregated from other employees; and

(l) Contain an agreement to make reports and to keep any records and accounts required by the Secretary and to make records and accounts available for audit purposes.

(Sections 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g)

§ 379.44 What wage rates are required under agreements?

(a) The agreement must include the rate of compensation to be paid to trainees engaged in the production of any goods or services. The wage rate paid a trainee must be the higher of the following:

(1) the minimum entrance rate for inexperienced workers in the same occupation, or if the occupation is new to the establishment, the prevailing entrance rate for the occupation among other establishments in the community or area; or

(2) The minimum rate required under the Fair Labor Standards Act or the Walsh-Healy Public Contracts Act, to the extent that these Acts are applicable to the trainee.

(b) The agreement must further provide for an increasing rate of payment to trainees if the training program is of such duration that periodic increases are reasonable and if the proficiency of the trainee merits the increases.

(Sections 12(c) and 621b; 29 U.S.C. 711(c) and 795g)

§ 379.45 What on-the-job training is required?

The agreement must—

(a) Provide for methods of instruction, progression of trainees, and size of the training group, including individualized or group training, comparable in duration to other training programs for the particular occupation, and adequate in content to qualify trainees for employment;

(b) Provide adequate and safe facilities and equipment; and

(c) Require that suitable records of attendance, performance and progress of trainees be maintained and that these records be made available to the Secretary when requested.

(Section 621 of the Act; 29 U.S.C. 795g)

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

Appendix A—Summary of Comments and Responses to Notice of Proposed Rulemaking published in Federal Register of November 29, 1979—Part 370—Client Assistance Projects

§ 370.2 Who is eligible for assistance under this program? (Formerly § 1362.103(c)).

Comment. Additional comments related to the identification of the State agency as the only eligible applicant for grant funds. Two comments suggested that the "designated State unit" should be the only appropriate applicant while another comment suggested that the designation of the protection and advocacy agency under the Developmental Disabilities Assistance and Bill of Rights was a more efficient approach.

Response. No change has been made in this section in this regard. Section 112 of the Act requires that client assistance projects be "administered and operated" by the State agency and there does not appear to be latitude for designating any other applicants for grants under this program. It is furthermore noted that the Developmental Disabilities Assistance

and Bill of Rights Act requires that the protection and advocacy agency "be independent of any agency which provides * * * rehabilitation services" and this requirement would preclude a joint administration of these projects.

§ 370.11 What are the responsibilities of counselors employed in these projects? (Formerly § 1362.103(f)).

Comment. Concern was expressed about the apparent regulatory intent to limit the role of client assistance project staff to referring clients and client applicants to other agencies for more direct assistance with problems requiring legal, administrative and other remedies. It was pointed out that the section focused on the referral responsibility, but that the Act itself implied a more direct assistance by client assistance prject staff in pursuing legal and other remedies.It was further suggested that the proposed definition of "counselor" was not fully adequate because it did not appear to support the more active role of project personnel authorized under the Act.

Response. A change has been made in this section. It is noted that the proposed regulation did in fact appear more limiting than the statutory authority and the section has therefore been revised to reflect the broader scope of activity possible under this program. It is recognized that a number of different client assistance service models will be employed by projects throughout the country, but that project personnel will be functioning primarily in most projects as referral resources. The definition of "counselor" has not been revised to reflect this potentially more active role, however, since the definition, as proposed, is broad enough to cover all patterns of service which might be developed under the Act.

§ 370.45 What are the special requirements affecting coordination with related programs? (Formerly § 1362.103(g)).

Comment. Some objection was raised about the requirement that all client assistance projects maintain written agreements with related programs and activities carried out in the project area. It was suggested that the requirement that all such agreements be written would be placing an excessive burden on client assistance project staff.

Response. A change has been made in this section. It seems apparent that coordination of project activities is essential, but the requirement that all agreements be formal written agreements is in fact unnecessarily burdensome. This section has been revised therefore to eliminate the requirement that all agreements be written.

Part 379—Projects with Industry

§ 379.43 What general provisions are required in agreements? (Formerly § 1362.43(g)).

Comment. It was pointed out that the general provisions for agreements required under paragraph (g) contained some safeguards against discrimination, but did not include protection against discrimination on the basis of type of physical or mental disability.

Response. No change has been made in this section. No handicapped individual participating in a Project with Industry may be discriminated against on the basis of the type of physical or mental disability but it is possible to establish a Project with Industry activity which serves a single disability group.

Comment. A comment was received which objected to the requirement in paragraph (g)(9) imposing a role for both the Secretary and the designated State unit in the review of matters relating to the termination of employment of a handicapped individual within a project and the repayment of funds when it has been determined that there had not been reasonable cause for the termination of the handicapped employee. This role was believed to be an improper role for the designated State unit to be assuming and one which would interfere with its other responsibilities.

Response. No change has been made in this section in this regard. It is recognized that the role of the State unit in paragraph (g)(9) is somewhat different from its other responsibilities in the Projects with Industry program. The responsibility for participating in matters relating to the termination of a handicapped employee is required under Section 621(b)(2) of the Act, however, and this provision of the section therefore cannot be changed.

Comment. It was also suggested that the section be revised to require that the State unit maintain a continuing relationship with each of its clients for a period of not less than six months and either directly provide or ensure the availability of necessary vocational rehabilitation services.

Response. No change has been made in this section in this regard. Under the Projects with Industry program participants are expected to be "handicapped individuals" eligible for vocational rehabilitation services. Since participants within projects are already clients of State vocational rehabilitation units, those State vocational rehabilitation units maintain continuing relationships with them. It is also noted that the length of time which a handicapped individual spends in a Project with Industry varies greatly and a six-month service requirement limitation may be inadequate for many project participants. This suggestion has therefore also not been adopted. Projects with Industry are entered into by the Secretary only after consultation with the designated State unit and the scope of vocational rehabilitation services to be provided is an area of project activity to be covered in the agreements controlling project activity.

[FR Doc. 81-1677 Filed 1-16-81; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

34 CFR Parts 369, 370, 371, 372, 373, 374, 375, 378, and 379

Vocational Rehabilitation Service Projects

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking: Cross-reference.

SUMMARY: The Secretary proposes regulations for the Vocational Rehabilitation Service Projects in Title 34 of the Code of Federal Regulations:

(a) Vocational Rehabilitation Service Projects—General (Part 369).

(b) Client Assistance Projects (Part 370).

(c) Handicapped American Indian Vocational Rehabilitation Service Projects (Part 371).

(d) Comprehensive Rehabilitation Centers (Part 372).

(e) Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Handicapped Individuals (Part 373).

(f) Special Projects and Demonstrations for Making Recreational Activities Accessible to Handicapped Individuals (Part 374).

(g) Handicapped Migratory Agricultural and Seasonal Farmworker Vocational Rehabilitation Service Projects (Part 378).

(h) Projects for Initiating Special Recreation Programs for Handicapped Individuals (Part 378).

(i) Projects with Industry (Part 379).

The Secretary invites comments on these proposed regulations.

The texts of the regulations on which the Secretary invites comments are published in the Rules and Regulations section of this issue of the **Federal Register**. They have been adopted as final regulations and will govern these programs until the Secretary issues new regulations based on public comment.

DATES: All comments suggestions, or objections must be received on or before March 20, 1981.

ADDRESSES: Comments should be addressed to: Mr. Harold F. Shay, Director, Division of Manpower Development, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, Room 3321, Mary E. Switzer Building, 330 C Street SW., Washington, D.C. 20201

FOR FURTHER INFORMATION CONTACT: Mr. Harold F. Shay, Telephone: (202) 245–0079.

Invitation to Comment

For additional details on how to comment, see the Preamble of the final regulations for these programs published in this issue of the **Federal Register.**

Dated: January 13, 1981.

(Catalog of Federal Domestic Assistance Number 84.128 Rehabilitation Services—Special Projects)

Shirley M. Hufstedler,

Secretary of Education.

[FR Doc. 81–1684 Filed 1–16–81; 8:45 am]

BILLING CODE 4000–01–M

federal register

Monday
January 19, 1981

Part XI

Department of Transportation

Office of the Secretary

Adoption of Guidelines on Citizen Participation in Local Transportation Planning

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice No. 81-1]

Adoption of Guidelines on Citizen Participation in Local Transportation Planning

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Final Guidelines.

SUMMARY: This notice contains DOT Guidelines on Citizen Participation in Local Transportation Planning. On October 30, 1980, DOT prepared these Guidelines for public review and comment and issued a Policy Statement on Citizen Participation as well (45 FR 71938). The Policy Statement is reprinted in Appendix A of this document. These Guidelines are issued in support of the Policy Statement and serve to identify and explain key elements of active citizen participation. The Policy and Guidelines apply to all DOT requirements for citizen participation in the local transportation planning process. A list of these requirements originally appeared in the **Federal Register** on October 30, 1980 and are reprinted here as Appendixes B and C. Appendix B lists Federal-aid programs which contain laws and regulations requiring State and local agencies using DOT funds to provide for public involvement in transportation planning and project development. Appendix B also includes brief explanations of how Federal-aid programs are administered by various DOT operating administrations. Appendix C lists other DOT requirements for citizen participation which are not specific to particular Federal-aid programs. Appendix D describes actions, also initially announced in the **Federal Register** on October 30, 1980, to be taken within DOT in support of the Policy Statement.

DATES: The Guidelines take effect on January 19, 1981; the Policy became effective on October 30, 1980.

FOR FURTHER INFORMATION CONTACT: Gail Boyle, Office of Consumer Liaison, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590; (202) 426-4520. For specific information about DOT operating administrations' requirements for citizen participation, refer to the operating administrations' contacts listed in Appendix B and Appendix C of this notice.

SUPPLEMENTARY INFORMATION: On August 9, 1979, DOT published an Advance Notice of Proposed Policy (ANPP) in the **Federal Register** (44 FR 46971). The ANPP announced that DOT planned to develop an overall policy statement on citizen participation in transportation planning and requested public comment. In the Fall of 1979, DOT conducted field interviews with 193 people across the country concerning the ANPP. DOT received 390 written comments on the ANPP. DOT closely considered concerns and experiences of those commenters and interviewees in developing its Policy Statement and proposed Guidelines (45 FR 71938). Comments received on and changes made to the proposed Guidelines are summarized in Section (2) below.

Table of Contents

Section and Title

(1) Background.
(2) Summary of Public Comments on Proposed DOT Guidelines on Citizen Participation in Local Transportation Planning.
(3) DOT Guidelines on Citizen Participation in Local Transportation Planning.
(4) Appendixes.
Appendix A: DOT Policy Statement on Citizen Participation in Local Transportation Planning
Appendix B: Federal-Aid Requirements for Citizen Participation in Local Transportation Planning
Part 1. Charts.
Part 2. How Federal-Aid Programs are Administered.
Appendix C: General Requirements for Citizen Participation in Local Transportation Planning
Appendix D: Actions Taken by DOT and its Operating Administrations in Support of the Policy Statement

(1) Background

The need to clarify DOT's position on citizen participation in local transportation planning became apparent at a DOT conference on Transportation and the Consumer held in Washington, D.C., in May 1979. During informal discussion sessions, citizen conferees drafted recommendations which centered on requests for DOT to expand and improve opportunities for citizens to participate in local transportation planning. While the Department's position was to encourage effective citizen participation in the planning process, DOT had never issued a comprehensive policy statement which applied to all operating administrations in the Department and addressed specific aspects of how citizens should be involved when communities make transportation decisions. The Department agreed that such a statement was necessary.

In June 1979, the Department set up the DOT Work Group on Citizen Participation, charged with developing recommendations to the Secretary concerning DOT policy on citizen participation in local transportation planning. All appropriate elements within DOT were represented on the Work Group. As a first step, the group developed an Advance Notice of Proposed Policy (ANPP), discussed above.

An extensive outreach plan was developed for stimulating comments on the ANPP. Working with the Department's Office of Consumer Liaison, the Work Group identified the affected segments of the public as the following: Individual citizens and representatives of national, State, and local citizens' organizations concerned with transportation issues; groups dealing with environmental issues, with needs of the handicapped, and with minorities' concerns; officials and staffs of State transportation agencies, State and local government officials, regional and local planning agencies, transit operators; agencies serving minorities and low-income citizens; and officials and staffs of DOT headquarters and field offices. A total of 18,000 persons in these categories received a mailing about the ANPP. In addition, the Work Group organized field trips to 20 cities in order to interview people representing the concerned segments of the public already identified; 193 people were interviewed.

After analyzing the 390 written comments and the 193 interview reports, the Work Group identified the issues of concern to the affected publics; a summary of these comments and interviews was included in the October 30, 1980 **Federal Register** notice. The Work Group examined a broad gamut of options available to the Department on each issue; draft recommendations for Departmental review were developed and were discussed with officials throughout DOT. During this process of developing and discussing options and recommendations, an emphasis was placed on giving consideration to the concerns and opinions of the various publics that had commented and been interviewed during the ANPP process.

The Work Group's final recommendations to the Secretary represented a comprehensive position on citizen participation that all elements of the Department accept. This comprehensive position includes a DOT policy statement, DOT guidelines, and supportive actions by the Department and its operating administrations, originally announced in the October 30, 1980 **Federal Register** notice.

DOT Policy Statement

The DOT Policy Statement on Citizen Participation in Local Transportation Planning (Appendix A) clarifies and strengthens DOT's existing position of encouraging citizen participation. This Departmentwide Policy calls for active citizen involvement in all aspects of local transportation planning and reflects comments received from all affected publics that responded to the ANPP.

DOT Guidelines

The Guidelines (see Section (3), below) support and amplify the Policy Statement by identifying and explaining key elements of active citizen participation. The Department gave serious consideration to divergent options—the possibility of taking no action; the possibility of issuing regulations; the possibility of issuing guidelines. In examining these possibilities, DOT took note of certain issues that were apparent from the public comments. In many communities, citizens are dissatisfied with lack of opportunities to participate in transportation planning decisions. Further, various State, regional, and local transportation planning agencies are uncomfortable with existing requirements for citizen participation. Additional regulations would clearly place an undue burden on these agencies; there is, however, need for further guidance on how to provide improved opportunities for citizens to be involved. In view of these issues, DOT recognized the clear need to provide guidance within a flexible framework. The decision was made that guidelines, rather than regulations are called for. The proposed Guidelines published by the Department in the **Federal Register** on October 30, 1980 (45 FR 71938) addressed areas of citizen participation which elicited significant comments on the earlier ANPP: informing and involving the public; planning and holding public meetings; utilizing advisory committees; and incorporating public comments when decisions are made. After a 60-day comment period, DOT received 65 written comments on the proposed Guidelines. A summary of these comments is contained in Section (2) below. In revising the Guidelines, an effort was made to be as responsive as possible to the substantive concerns and suggestions raised in these comments.

Supportive Actions Taken by DOT and its Operating Administrations

Each operating administration in DOT is supporting the Policy Statement by: (1) Issuing its own guidelines on citizen participation; (2) revising its existing regulations, as needed to comply with the Policy Statement; and (3) designing its own development project on ways to provide technical and financial assistance to stimulate citizen participation. Further discussion of the rationale and scope of these supportive actions originally appeared in the **Federal Register** notice of October 30, 1980, and is reprinted here as Appendix D. Also included in Appendix D is a discussion of the role to be played by the Office of the Secretary, through its Office of Consumer Liaison (OCL) in overseeing the implementation of the Policy Statement and Guidelines, in coordinating the operating administrations' development projects, in providing technical assistance to affected segments of the public, and in coordinating Departmental training and outreach programs for citizen participation. This section on OCL's role also was contained in the October 30, 1980 notice.

(2) Summary of Public Comments on Proposed DOT Guidelines on Citizen Participation in Local Transportation Planning

DOT received 65 written comments on its proposed Guidelines on Citizen Participation in Local Transportation Planning. These comments reflected a broad range of interests and differing perspectives across 28 States, in addition to the District of Columbia, Guam, and Puerto Rico. The following list summarizes the sources of comments addressed to the Docket:

Individuals	13
State agencies	14
Regional or local planning agencies	20
Citizen/consumer/environmental groups	12
Organizations representing particular interests	3
Miscellaneous (e.g., engineer, business)	3
Total	65

In addition to the above comments, four written comments submitted to FHWA Docket 80-24 (Notice of Proposed Rulemaking on the Urban Transportation Process)[1] addressed, in part, the proposed Guidelines. Relevant portions of these comments have been considered and addressed in reviewing and revising the proposed Guidelines. The Department has made an effort to be as responsive as possible to the substantive concerns of those submitting comments on the proposed Guidelines.

[1] The sources of these comments were an MPO, a State DOT, a Federal agency, and a national special interest organization.

A. General Comments

Support For Guidelines

Comments: While a majority of commenters expressed general support for the DOT Guidelines, a few thought that such guidance leaves too much to the discretion of transportation planning agencies and encouraged DOT to require certain citizen participation activities. They mentioned the difficulty of achieving DOT's stated goals without more detailed requirements.

Several commenters mistakenly referred to DOT's Guidelines as regulations. Three commenters believed that the Guidelines were good as long as they remain as guidelines and do not become regulations. Three other commenters asked DOT to make it clear that not every element of the Guidelines is required in every planning situation.

Five commenters viewed the Guidelines as unnecessary and questioned whether they should be issued. They feared additional paperwork, had concerns over how the Guidelines might be interpreted and believed that citizen participation approaches should be decided locally.

One commenter asked DOT to issue performance standards rather than guidelines and urged DOT to delay publication of the Guidelines until the U.S. Office of Management and Budget issues its governmentwide study on standardizing citizen participation requirements applied to State and local governments by Federal agencies.

Response: DOT's Guidelines are *not* regulations. They do not prescribe specific actions to be taken in every planning situation; rather they suggest ways of ensuring effective citizen participation and provide planning agencies with guidance on how DOT will monitor the adequacy of citizen participation in local transportation planning activities.

DOT rejected a Departmentwide regulatory approach as being too cumbersome and not allowing enough flexibility to tailor programs to local needs. However, DOT disagrees with those who claim that no further guidance on citizen participation is necessary or warranted. Citizens have voiced serious and legitimate concerns over citizen participation processes in many areas, and some planning agencies have asked for clearer and more consistent guidance. It is DOT's responsibility to address such concerns when they involve the use of DOT funds. The Department has done this in the most flexible way possible, to the dismay of many concerned citizens who had asked for the stronger support that regulations provide.

Most effective citizen participation programs already employ most, if not all, of the techniques described in the Guidelines and some go even further. These Guidelines will cause no additional burdens on agencies which have effective citizen participation programs. However, some lead planning agencies clearly need to take additional steps to make their citizen participation programs more effective. The Guidelines suggest ways they can do that.

Obviously, local judgments need to be made concerning the Guidelines; not every activity described in the Guidelines is applicable to every local planning situation, and there are many other citizen participation techniques which have not been described in the Guidelines.

DOT believes that performance standards would be extremely difficult to develop and might be inappropriate if indeed they could be developed. Thus, the Department is convinced that the Guidelines are the best approach at this time.

DOT staff has been in contact with the Office of Management and Budget and understands that their citizen participation study has been postponed indefinitely. Consequently, DOT will proceed with the publication of its Guidelines at this time.

Funding

Comments: Seven Metropolitan Planning Organizations (MPOs) and State Department of Transportation (DOTs) expressed concern that the current level of DOT planning assistance funds is insufficient and may hamper agencies' efforts to stimulate citizen participation. In addition, one State DOT questioned whether resources devoted to citizen participation would be diverted from other highway development activities to the detriment of the whole transportation planning process.

Response: DOT is very much aware that planning assistance funds may not be adequate to support ambitious citizen participation efforts by planning agencies. In light of the many pressing national transportation needs and priorities, it is unclear at this time whether increased DOT funding for citizen participation activities will be forthcoming.

However, while the problem is formidable, it is not intractable. Although the Department appreciates agencies' concern with incorporating the Policy Statement and Guidelines in their planning efforts in the face of competing demands on the use of scarce resources, it does not view costs associated with citizen involvement efforts as necessarily prohibitive. The Guidelines suggest many effective and non-costly means for obtaining adequate citizen involvement. Indeed, one individual citizen providing comments recounted personal efforts to distribute notices of an upcoming public meeting quickly and at little expense after the agency had indicated that such notification would be too costly.

The Department is aware that not all citizen participation techniques suggested in the Guidelines involve little cost and/or agency staff time. However, a principal underlying both the Department's Policy Statement and Guidelines is that, in many instances, planners have been confronted with delays in the project development process or even abandonment of a project where citizens' concerns and involvement were not considered at an early stage. All too often, planners have come to recognize that early involvement of concerned citizens in the planning process would have avoided substantial added costs and delays while contributing to sensible and sound transportation investments. Thus, DOT remains convinced that planning agencies can meet the spirit of the Guidelines in a cost-effective manner.

Comments: One MPO and one county manager raised questions concerning the eligibility of highway planning funds and Urban Mass Transportation Act funds, respectively, for use by agencies in conducting citizen participation. In addition, eight commenters expressed differing opinions on the appropriateness of providing funds or reimbursing citizens for participation in the planning process.

Response: DOT permits the use of Federal planning funds, consistent with Federal and State requirements or limitations, for citizen participation activities. In addition, the Department recognizes that the issue of providing financial assistance for citizens participation in local planning is highly controversial. DOT has decided, therefore, to launch development projects to identify innovative approaches and to gather further data on ways to provide technical and financial assistance for activities that could stimulate effective and representative citizen participation at the local level. Despite the reluctance of many agencies to provide financial assistance to citizens, some agencies do contract with citizens and citizen and community organizations to conduct research and otherwise provide needed assistance in the planning process. The Department also encourages the use of funds for procuring the services of citizens and their organizations during the planning process.

Policy Statement

Comments: Three commenters expressed concern that the Department adopted its Policy Statement in Local Transportation Planning without affording an opportunity for public review and comment. This action, they claim, is inconsistent with the overall thrust of the Department's Guidelines.

Response: In light of DOT's extensive efforts to inform and obtain the views of all interested segments of the public, as described in Section (1) Background, above, the Department saw little added benefit in issuing a Notice of Proposed Policy (NPP) prior to publishing a final Policy Statement. In addition, any benefit that might result from issuing an NPP and obtaining additional public comment was clearly outweighed by the delay that would result in issuing this needed document.

The Department's widely-publicized and distributed Advance Notice of Proposed Policy and follow-up interviews across the country in 1979 stimulated a wealth of viewpoints, interests, and concerns about citizen involvement in local transportation planning in a variety of settings. Extensive use was made of these comments by DOT in developing the final Policy Statement, and it appeared unlikely that issuance of an NPP would provide the Department with additional points of view not already considered. While the Department did not specifically invite comment on the Policy Statement, it should be pointed out that a majority of commenters expressed support for this document.

Decisionmaking

Comments: A few commenters voiced concern that DOT's Policy Statement and Guidelines did not sufficiently stress the decisionmaking responsibilities of State and local officials. One commenter questioned whether the Federal Government could provide assurances that local public wishes would not be overruled in the Federal review of local transportation decisions.

Response: DOT agrees with the commenters that it is the responsibility of local officials to make local decisions and a sentence to that effect has been added to the Guidelines. However, it should be noted that what DOT has said in the Policy Statement and in the Guidelines is that citizens have a right to influence local decisions and that local officials have the responsibility to seriously consider and to respond to public comments on local planning

decisions. DOT does not accept the ballot box as the *only* means of citizen participation.

Just as local officials cannot guarantee that the public wishes on local transportation decisions will always be followed; neither can the U.S. Department of Transportation. There are times when national policy and priorities may require a second look at local transportation projects. DOT recognizes the importance of working with State and local officials in these situations.

B. Specific Comments on DOT Guidelines

Introduction (Section I)

Comments: Two commenters requested clarification of the term "lead planning agency". The transportation director of a local citizens' organization sought assurances that DOT intended for local and regional transit authorities to pay heed to the Guidelines. A transit authority indicated that in the case of urban transportation planning under FHWA and UMTA programs, more than one agency may be responsible for citizen participation activities during the planning process.

Response: The DOT Guidelines apply to a broad range of transportation planning agencies, including publicly-owned operators of mass transportation services. By way of illustration, the following types of agencies may also be considered as "lead planning agencies": State DOT's, State highway departments, MPO's, airport authorities, local planning offices, and bureaus of public works. DOT urges that a pragmatic approach be taken by planning agencies in assigning citizen participation responsibilities consistent with the urban transportation planning regulations.

Developing a Plan for Participation (Section IV)

Comments: Seven regional planning agencies feared that the guideline which calls for developing a plan for participation (Section IV of the Guidelines) implies the development of a separate plan which would impose additional paperwork burdens or be duplicative of other planning documents, such as Highway Action Plans or Urban Work Planning Programs. Two commenters believed that this should be changed to developing a process for participation because a process is less rigid and more flexible than a plan. One commenter believed that public participation plans should be submitted to DOT regional offices for approval and questioned how an agency could objectively evaluate its own citizen participation program.

Response: Based on these comments, DOT believes that it is necessary to clarify what is meant by this guideline and to change some of the wording of the guideline. The gist of the guideline is that agencies should plan for effective citizen participation and that citizen participation should be an integral part of all planning activities. This should include some type of outline (DOT is not suggesting voluminous paperwork) on the planning activity, the type of citizen participation effects which are planned and the approximate timing of such efforts. DOT views a citizen participation plan as a management tool as well as a tool for citizens who wish to be involved in particular planning activities.

In some cases the plan might cover only one planning activity, but in other cases, when individual planning activities are closely related, the citizen participation plan might cover a number of planning activities. This plan does not have to be a separate document nor is it meant to be cast in concrete. In fact, the guideline recommends that planning agencies periodically evaluate their citizen participation programs so that changes can be made as the need arises. Citizens can certainly be helpful to planning agencies in this review. This plan is really an extension of the processes that most communities have now in their State Action Plans and Unified Planning Work Programs. As a result, DOT does not contemplate a separate formal review of citizen participation plans at this time.

Identifying Public Participants (Section V)

Comments: The League of American Wheelmen (LAW) and one local bicycling group among the broad range of individuals and groups to be notified of transportation planning activities. The LAW asked DOT to include the notification of bicycling groups as an evaluation factor in DOT's monitoring efforts. LAW also offered to provide current addresses of its local affiliated groups to planning agencies who may not know of bicycling groups in their areas. (Requests should be addressed to Administrative Director, League of American Wheelmen, P.O. Box 988, Baltimore, MD 21203).

Response: DOT has added bicycling groups to the list of potential groups to be contacted regarding local planning activities. Identifying a broad range of public participants is certainly one of the elements to be considered in DOT's monitoring of citizen partipation efforts.

Comments: Two commenters questioned the value of the list of groups who might be consulted in local transportation planning activities stating that the process should be open to any member of the public.

Response: DOT certainly agrees with the commenters that the transportation planning process should be open to any member of the public. DOT suggested the potential list of participants only as a starting point in getting people involved.

Comment: One regional planning agency official did not agree that special efforts should be made to personally notify individuals living in potential transportation corrdiors when planning activities are proposed. Because he believed that such notification would be "unduly burdensome" when the entire regional system plan is being proposed, he stated that the appropriate place for personal notification is in the EIS phase of project planning.

Response: Some commenters on DOT's ANPP indicated that they had learned of planned transportation projects adjacent to their property only after a decision had been reached. The Guidelines address this problem by recommending early notification of individuals who might be affected by various transportation alternatives while there is still time to influence the choice of alternatives. The timing of such notification may vary according to local situations and the scope of the projects under consideration. In many situations, it may be highly advisable to notify potentially affected individuals before the environmental assessment process begins. Citizens can help planners to identify environmental and social effects of potential action which should be considered in the environmental assessment process and in the final decisions concerning the project. DOT believes that those who might be affected by a transportation planning project should have the opportunity to influence a decision.

Informing the Public (Section VI)

Comment: One commenter asked DOT to require publication of a road plan in the local paper early enough so that everyone would understand the implications of a proposed transportation project. This commenter also recommended that it be a serious offense for a local official to deliberately hide the implications of a planned project.

Response: Although DOT has not required a specific format for doing so, DOT's Guidelines do call for planning agencies to make the implications of various alternatives clear to the public.

DOT believes that early discussion of the implications of a potential project can lead to less confrontation and disagreement at the end of a planning project. In general, the implications of a planning proposal should be a matter of public record.

Comment: One commenter indicated that FHWA and the joint planning regulations do not require an annual report to the public and that methods of informing the public already exist in the Prospectus and Unified Planning Work Program. (These documents discuss policy and planning issues and activities.)

Response: DOT is not requiring an annual report; it is only asking agencies to consider it as one way of communicating with the community. As an alternative, agencies might want to create greater public awareness of the Prospectus or the Unified Work Planning Program.

Comment: One commenter indicated that his planning agency could be faced with significant delays or missed opportunities if citizens are obligated to receive information too far in advance.

Response: DOT believes that timely information to the public is very important and should be strived for. While there are sometimes limitations in the extent to which agencies can meet this goal, DOT asks planning agencies to be mindful that a brief delay in the planning process (to allow for full public consideration) can often lead to better information and avoid delays in the implementation phase (because the public disagrees with the chosen plan).

Comment: One commenter indicated a problem in learning about planned activities before an EIS is prepared and also in projects where no EIS is required.

Response: DOT has stressed throughout its Guidelines (and in its new urban planning regulations) the importance of early involvement. Interested citizens can also aid their own efforts by asking to be placed on the citizen mailing list maintained by State transportation agencies and metropolitan planning organizations.

Comment: One commenter asked DOT to develop standards for the length and layout of its fact sheets.

Response: This type of standard would be too restrictive, although the commenter's suggestion is worthwhile.

Comments: Two commenters expressed concern over the cost of paid advertisements as a method of reaching people.

Response: DOT is only asking planning agencies to consider paid advertisements as a way of reaching more people. In some cases, and in some localities, the cost will be worth the increased exposure; in others, it may not.

Comments: Three commenters stressed the need for citizen access to key technical documents developed by the agency and by independent consultants which concern planned projects. Two of these commenters emphasized that these documents should be available in area libraries for public review. Comments from two MPO technical committees argue that citizens have adequate access to technical documents and reports under the State open records law.

Response: The DOT Guidelines already address the issue of citizen access to technical documents and urge that opportunities for public inspection be provided at locations such as public libraries, city halls, neighborhood centers, project site field offices, and planning agency offices. With respect to State open record requirements, although in many instances these laws confer a right of access, citizens may be frustrated by procedures (and delays) for requesting documents. As the Guidelines indicate, planning agencies should make reasonable efforts to allow for public access to documents as a matter of policy.

Working with the Public (Section VII)

Comments: One State rehabilitation services agency criticized the proposed Guidelines for not containing more stringent requirements for ensuring participation by handicapped and sensory impaired individuals. The agency stressed that all locations chosen by planners for a public meeting conform with the American National Standards Institute, Inc. (ANSI) accessibility standards and that alternative media must be employed in notifying sensory impaired individuals of meeting dates and the availability of documents for public review. The agency also urged that the section of the Guidelines dealing with advisory groups be amended to require appointment of handicapped representatives. In addition, two MPO's stressed the need for agency flexibility in providing for special accommodations to meet handicapped participants' needs.

Response: The Department is committed to ensuring that handicapped individuals not be excluded from participation in, or be subjected to discrimination under, any program or activity receiving DOT financial assistance and questions whether effective project development to meet the transportation needs of handicapped users could occur without the involvement of such persons in the planning process.

Comment: One MPO questioned the proposed Guidelines' emphasis on evening meetings to facilitate a larger public turnout. The agency indicated that in its experience, many otherwise interested participants work during evening hours or are reluctant to attend evening meetings. The commenter proposed that daytime meetings or two meeting sessions (daytime/evening) might be more convenient.

Response: DOT agrees that, depending on local circumstances, daytime meetings may be conducive to a larger public attendance. In addition, several planning agencies have conducted both daytime and evening sessions to ensure maximum opportunities for participation at meetings. While the Guidelines already indicate that a public participation mechanism (such as a meeting) should occur "at times and places convenient to the public," it ultimately rests with the planning agency to determine local citizens' preferences and personal schedules in setting meeting particulars. However, an item has been added to the Guidelines which indicates that planners should consider scheduling both daytime and evening sessions for a meeting.

Comment: One commenter favored user panels as an additional mechanism for public involvement.

Response: DOT considers this suggestion worthwhile and has included this mechanism in the Guidelines as an additional example.

Advisory Groups (Section VIII)

Comments: Three commenters criticized the aspect of this guideline which calls for advisory groups to have a representative cross-section of citizens with a mix of people according to age, race, sex, and geographic distribution. One of these commenters claimed such wide representation does not necessarily mean that an individual will be representative of his/her group. One commenter objected to the recommendation that appointments be made on a staggered basis.

Two commenters objected to the recommendation that policy boards have an ex officio citizen member with one of these commenters stating that his agency does provide for an interrelationship between citizen advisory groups and policy boards. One commenter wanted a reference in the Guidelines to explain that State and local laws often determine the makeup of metropolitan planning organizations and transit boards. One commenter asked that citizen representatives with

voting powers be required on such boards. One commenter stated that representation of individuals with handicaps should be mandatory. Another commenter urged that advisory groups not be the only means of citizen participation.

Response: In its Guidelines, DOT is not attempting to apply rules to every situation, but it is suggesting that membership on advisory groups be balanced and not stacked so as to choose only those favorable to the agency. The degree to which a group can be balanced in the terms suggested by DOT might vary according to the size of the Group, the scope of the issues under consideration, and the geographic areas affected. The suggestion that appointments to long-term committees be on a staggered basis is to help ensure some type of continuity.

DOT acknowledges that some advisory group members may not always represent their segment of the community. This can happen on any advisory group whether it be a citizen advisory group, technical or policy group. This is why DOT recommends the use of several participation mechanisms, not just advisory groups.

Previous commenters to DOT's Advance Notice of Proposed Policy indicated that there has not been sufficient interrelationship between policy and transit bodies and citizen advisory groups; and many decisions have not reflected citizen or advisory group recommendations. DOT's guideline on advisory groups is intended to provide for a better working relationship between citizen advisory groups and policymaking bodies and to open the process to free it from many of the suspicions which now cast doubt on the integrity of the local transportation planning process. If planning agencies know of better ways to do this, DOT encourages them to take the necessary action. Naturally, all actions should be in accordance with State and local laws.

Comments: Two commenters were against giving any decision-making powers to advisory groups and did not believe that elected officials or planning agencies needed to justify their decisions to advisory group members.

Response: DOT's Guidelines do not confer decisionmaking powers to advisory groups, although planning agencies are free to do so if they wish. However, this guideline does ask that the lead planning agency clearly define the goal, role, and objectives of advisory groups to avoid any misunderstandings. Advisory group members often spend a good deal of time and effort analyzing issues and coming to meetings in hopes that their recommendations will be helpful and seriously considered. Without some type of response to advisory group members, they naturally doubt whether an agency has even considered their recommendations and questioned whether their efforts are worth their time and energy. This is not to imply that agencies always do need to consider the recommendations and let the advisory group know how their recommendations were used.

Comments: Three commenters expressed concern over the guideline calling for technical assistance to advisory groups. One of these commenters believed that such assistance would take the planning agency away from its primary mission and that providing technical assistance on any issue an advisory group wanted to pursue could perhaps be illegal. A number of commenters favored assistance to advisory groups. One commenter asked that agencies provide minutes of meetings soon after the meeting rather than waiting until the next meeting and that the chairperson of the advisory group verify minutes for accuracy.

Response: If a planning agency really takes a citizen advisory group seriously and wants the group's informed judgments to aid in the decisionmaking process, then the planning agency should provide the group with sufficient information and technical assistance. The types of information and technical assistance required will vary according to the issues. Naturally, all planning activities should be conducted in accordance with State and local laws.

While DOT agrees that minutes should be provided to advisory groups in a timely fashion and that the chairperson should review the minutes for accuracy, this level of detail should be left to local planning agencies and advisory group members.

Considering and Responding to Public Comment (Section IX)

Comments: Two commenters stated that sending summaries of public comments would be too expensive and time consuming. One of these commenters hoped that DOT did not mean that an agency would have to send an answer to a single question to all segments of the community. The commenters believed that having a summary available in a public place would meet the purpose of DOT's guideline. One commenter believed that planning agencies and local officials shouldn't have to explain their decisions.

One commenter believed that much of the public input which occurs early in the process cannot be documented since it involves informal sharing of ideas between citizens and planners and that this guideline seems to focus on public comments at the end of the process.

One commenter asked that DOT require that citizen comments have as much weight as that of businessmen and developers. One commenter asked that planning agencies be required to send DOT a copy of transcripts and tapes.

Response: DOT is not recommending that a planning agency send a response to a single question to all segments of the community. What this proposed guideline says is that decisionmakers should carefully consider public comments and that the public deserves a response to significant suggestions. How the responses are distributed and to whom they are distributed naturally depends on the importance and the nature of the issues and the degree of controversy. However, merely having summaries available in a public place would mean that most citizen participants will never know how these comments were used. The lack of response from planning agencies and the feeling that public comments were not even considered represented one of the most signficiant areas of public frustration in the citizen comments received on DOT's Advance Notice of Proposed Policy. DOT believes that this is an important area for all public agencies to address and that public understanding, and perhaps acceptance, of transportation decisions can be enhanced if citizen participants have evidence that their comments were seriously considered and why certain courses of action were deemed most advisable. If the public does not see the results of their involvement, even if those results are negative, they are likely to lose confidence in the local planning process.

While DOT agrees that informal participation is often difficult to document, it is important to summarize and let the public know how it was used. For example, when planners and citizens have worked together sharing ideas which resulted in certain courses of action or certain changes, this is important for the public to know because it demonstrates that the planning agency has been receptive and responsive to public participants.

In many instances, DOT rules do require transcripts of public meetings and hearings and that such transcripts or tapes be available to DOT. However, DOT does not wish to expand already existing requirements in this area because it would be expensive and burdensome for planning agencies, and DOT does not have the staff to read a transcript of every local meeting.

Miscellaneous Comments

Comment: One commenter requested that DOT prohibit local elected officials with a financial stake in a project's completion from participating in further decisions concerning the project.

Response: Situations involving alleged fraud and abuse in the decisionmaking process are beyond the purview of these Guidelines. However, the Department's Inspector General is authorized to conduct investigations and audits in order to detect and prevent fraud and abuse in all programs administered or financed by DOT. In addition, many States and localities have financial disclosure laws as well as codes of ethics for legislators which prohibit such practices.

Comments: Two commenters believed that the implementation of the Guidelines should be led by DOT's operating administrations, as in the past, and not by the Office of Consumer Liaison. One individual favored OCL's having the oversight responsibility.

Response: DOT's Office of Consumer Liaison is charged with overseeing the implementation of the Policy Statement and Guidelines. However, DOT's operating administrations will have responsibility for the day-to-day implementation of the Policy Statement and Guidelines and their own specific guidelines and regulations. By oversight, DOT means watching over the implementation, intervening when problems develop, and providing necessary Departmental coordination.

C. Comments on DOT Actions in Support of Policy Statement

Monitoring

Comments: Several commenters encouraged DOT to strengthen its monitoring efforts and one commenter asked that DOT's Office of Consumer Liaison play a greater role in monitoring efforts. One commenter asked that DOT make it clear where citizens can file complaints about alleged violation in local planning processes and problems regarding citizen participation.

Response: DOT believes that the issuance of its Guidelines will make it clear to planning agencies and to those monitoring State and local programs what is expected in the area of citizen participation. DOT recognizes that additional training of monitoring staff may be required to give them a better understanding of citizen participation problems and ways of avoiding them. DOT believes that the regional and field offices are the most logical places for monitoring responsibilities. However, the Office of Consumer Liaison may serve as a facilitator in this area when problems are brought to its attention. Appendix B, Part II, indicates where violations in citizen participation requirements in DOT financial assistance programs may be reported.

Operating Administrations' Guidelines

Comments: Eleven commenters focused attention on the guidelines to be developed by each DOT operating administration dealing with citizen participation in local transportation planning. While one MPO affirmed the need for such guidelines, another MPO, as a mayor of a Midwest city indicated, that separate guidelines would lead to increased local paperwork burdens, unnecessary complication, and greater confusion due to conflicting requirements. Three MPO's urged FHWA and UMTA to prepare joint guidelines to ensure consistency; similarly, a State DOT expressed concern that guidelines be consistent and avoid duplication. One State DOT and a national citizen's organization requested that the Department's operating administrations provide an opportunity for public review and comment on proposed guidelines prior to issuing final guidelines. One State DOT urged the various operating administrations to consult with State agencies prior to developing guidelines and proposed that DOT establish a coordinating committee to include State agencies that would assist in the guidelines development process.

Response: DOT's operating administrations are charged with the management of a broad array of programs affecting different modes of transportation and reflecting varying objectives, mandates, and approaches. Thus, in developing Departmental Guidelines, DOT was cognizant of the need to provide flexible, yet meaningful, guidance across the whole spectrum of transportation planning efforts. It was agreed that each operating administration, possessing detailed knowledge of programs it administers, would be in the best position to offer guidance for citizen participation in local transportation planning under these programs. This approach enables each operating administration to emphasize those citizen participation elements which are most effective given the particular program and mode of transportation.

It is important to reassure transportation planning entities that operating administrations' guidelines to be developed are not intended to create paperwork requirements or other compliance burdens. In addition, these guidelines will be developed with a view toward consistency with the Departmental Guidelines and, thus, it is highly unlikely that conflicting statements will be issued by the various operating administrations. The Office of Consumer Liaison, as part of its oversight responsibilities, will work closely with each operating administraton to ensure the development of adequate, workable, and consistent guidelines. In addition, although DOT does not see the need for publication of proposed Guidelines for public review and comment in all cases, efforts will be taken to publish operating administrations' proposed guidelines where they differ significantly from the Departmental Guidelines. Similarly, a committment by DOT and its operating administrations to work with State agencies in the early stages of development of operating administrations' guidelines cannot be provided at this time.

As suggested by two commenters, consideration will be given to the joint issuance of FHWA–UMTA guidelines. However, while unification of guidelines may appear attractive at first blush, DOT will further consider whether those agencies affected by Federal programs administered by these two operating administrations—including MPOs, State DOTs, and transit authorities—will be better served by this approach.

Training and Technical Assistance

Comment: One commenter asked that DOT include all metropolitan planning organizations on its mailing list to receive DOT's transportation consumer newsletter.

Response: Approximately 150 State, local and regional transportation agencies now receive DOT's consumer newsletter, and DOT would be happy to add others to this list. However, the Office of Consumer Liaison only has authority to print 6,000 copies of each issue. If many metropolitan planning organizations are interested in receiving the newsletter, DOT will seek permission to print additional quantities. Free subscriptions can be obtained from Office of Consumer Liaison, I–50, DOT, Washington, DC 20590, 202/426–4518.

Comments: Two commenters urged DOT to play a greater role in providing technical assistance. One of these commenters discussed the need for informing local agency officials about various Federal programs and the availability of funds under these programs. The second commenter proposed that DOT's operating administrations provide technical assistance and consultations to citizens when needed.

Response: The U.S. Office of Management and Budget's *Catalog of*

Federal Domestic Assistance provides descriptions of Federal-aid programs of Federal departments and agencies in a single publication. The Catalog also provides information on applicant eligibility, grant application procedures and proposal writing, and administrative requirements of Federal circulars. The Office of Management and Budget distributes free copies of the *Catalog* to numerous State and local offices and agencies, including planning agencies. DOT's operating administrations can be contacted for more specific information concerning DOT financial assistance programs. Specific information concerning DOT-funded R&D programs and other technical assistance can be obtained from DOT's Office of Technology Sharing (I–40, DOT, Washington, DC 20590, 202/426–4208).

It is anticipated that the guidelines to be issued by each DOT operating administration will address the role of their regional and division offices in the citizen participation process. OCL, as part of its function to oversee and coordinate the development of operating administrations' guidelines, will also ask each agency to address the role of these offices in providing technical assistance to citizens.

Development Projects

Comments: A few commenters were against DOT's planned development projects; one of these commenters believed that such projects were unnecessary because other Federal agencies have already conducted demonstration projects on innovative citizen participation techniques. This commenter also did not want planning funds now available to metropolitan planning organizations to be used for the development projects. A few commenters supported the development projects.

Response: DOT appreciates the concerns expressed by metropolitan planning organizations on this issue. However, DOT cannot provide a conclusive answer on the source of funds until the Office of Consumer Liaison and DOT's operating administrations fully explore the possible range of development projects and the available sources of funding. However, funding for these projects is likely to come from a variety of sources and DOT does not envision the size or cost of its devlopment projects to be so large as to dilute seriously the pool of planning organizations. The fact that other Federal agencies have conducted demonstration programs on citizen participation does not reduce the necessity for DOT to find ways to improve citizen participation in local transportation planning through the use of its planned development projects. DOT is looking at some of the things that have been done by other Federal agencies to make sure that mistakes are not repeated; however, DOT does not mind duplicating successful approaches.

Summary of Major Changes

In response to public comment on its proposed Guidelines, DOT has made the following major clarifications and changes (noted by brackets) in its final Guidelines.

Section I—Introduction

3rd paragraph

"These Guidelines are written to allow transportation planning agencies considerable flexibility, yet at the same time let these agencies know what is expected of them." (The Guidelines are not all-inclusive and they may not be applicable to every planning situation. However, they do illustrate the kind of planning and care that is necessary for effective citizen participation programs.)

"DOT's operating administrations * * *."

Section IV—Developing a Plan for Participation

1st paragraph

"* * * Citizen and community leaders can be helpful and should participate in developing a plan for citizen involvement and in identifying community transportation goals." (A plan need not be a separate document; and when issues are closely related, a plan may cover more than one planning activity. While such plans will vary according to the issues under consideration, a citizen participation plan for most activities should include:)

Section VII—Working with the Public

3rd paragraph

"Any public participation mechanisms should be used at times and places convenient to the public. (*Delete:* Whenever possible, public meetings should be held generally during non-work hours, such as evenings and weekends. *Add:* This could mean holding sessions both in the afternoon and evening or on weekends to facilitate greater public involvement. Whenever possible, meetings should be held) at locations which are accessible to public transportation before and after meeting times * * *."

Section IX—Considering and Responding to Public Comments

Beginning of 1st paragraph: *Add*

(Decisionmaking is the responsibility of State and local officials. However, this responsibility carries with it the duty to listen and carefully consider public views and recommendations.) "People are apt to * * *"

(Department of Transportation Act, 49 U.S.C. 1651 *et seq.)*

In consideration of the foregoing, the following Guidelines are issued.

Issued in Washington, D.C. on January 13, 1981.

Neil Goldschmidt,

Secretary of Transportation.

(3) DOT Guidelines on Citizen Participation in Local Transportation Planning [1]

I. Introduction

When examining the best way to implement its policy on citizen participation, DOT balanced two important priorities:

(1) To ensure that citizens in every community have the opportunity to be involved actively in local transportation planning efforts in their area; and

(2) To allow the implementors of this policy—Federal, State, local, and regional transportation planning agencies—sufficient flexibility to tailor citizen participation programs to their communities and to the specific transportation plans being developed.

What evolved are Guidelines which identify and describe key elements which should be part of an active citizen participation effort. In the Guidelines, DOT describes certain citizen participation principles and provides suggestions on how these principles might be applied to specific citizen participation techniques.

---

[1] DOT operating administrations which do not have mandated Federal-aid programs for local transportation planning have the following interests in these Guidelines.

For purposes of implementing by the National Highway Traffic Safety Administration and the Research and Special Programs Administration, the phrase "local transportation planning" shall be construed to mean "projects and programs which use Department of Transportation funds and which are planned with the involvement of local governments."

The Coast Guard has no programs that can be described specifically as local transportation planning projects, but does have rulemaking programs concerned with marine navigation and safety, and marine environmental protection, that can affect local communities or local marine transportation. Techniques and procedures to improve citizen participation in these programs will be provided for under the Coast Guard Final Consumer Affairs Plan. The Coast Guard also has ongoing procedures in the area of recreational boating, aids to navigation, and marine environment where citizen concerns will continue to be addressed consistent with the spirit and intent of these Guidelines.

In the case of the St. Lawrence Seaway Development Corporation, these Guidelines shall apply to any proposed major Federal action significantly affecting the environment.

These Guidelines are written to allow transportation planning agencies considerable flexibility, yet at the same time let these agencies know what is expected of them. They are not all-inclusive, and they may not be applicable to every planning situation. However, they do illustrate the kind of planning and care that is necessary for effective citizen participation programs.

DOT's operating administrations will issue more specific guidance relating to their own programs. DOT's operating administrations will also be responsible for ensuring that DOT's Policy Statement is followed and that the Guidelines are implemented to the fullest extent in their program areas.

These Guidelines apply to all transportation planning and development programs which involve the use of DOT funds (see Appendixes A and B). The term "lead planning agency" means the Federal, State, local, or regional body which has primary responsibility for a transportation planning activity.

II. Characteristics of Citizen Participation

Citizen participation is an open process which seeks out and encourages early and continuous public involvement throughtout the development of transportation plans and projects. It is not a single event or even a series of events, but part of a coordinated effort to develop a transportation plan which responds to community needs and has a wide degree of public acceptance. Citizen participation is an integral part of the overall transportation planning process and is most effective during the early planning stages before concepts/directions have been set and while the larges number of alternatives are under consideration. Citizen participation provides the mechanism whereby planning staff and citizen participants can freely exchange information, ideas, and values.

Citizen participation does not eliminate conflict, but it allows conflict to surface early enough in the process so that alternatives can be explored in a spirit of cooperation rather than confrontation. A transportation plan which is developed "with" the public is apt to have greater public support than one that is designed "for" the public.

III. Commitment

Agency commitment to the principles of citizen participation is at the heart of any successful citizen involvement program. Such commitment recognizes that a planning agency may not have all the answers, that the public has the right to participate in the planning process, and that the planning agency has the duty to inform and involve the public and to respond to public concerns on transportation planning issues.

Admittedly, commitment is not something which can be regulated because commitment to a large extent involves personal attitudes of planners and decisionmakers. However, commitment does have certain visible measuring sticks such as the openness of the process, the adequacy of information prepared for the public on the planning effort, the degree to which citizen participation is integrated into the overall transportation planning process, the level of staffing and funding devoted to citizen participation, and the extent to which an agency responds to public suggestions.

IV. Developing a Plan for Participation

Just as architects and engineers draw up blueprints and plans for the construction of a subway or roadway, so too should a lead planning agency, working with its community, develop a plan for how and when citizens will be involved in each transportation planning and project development activity. Withot such plans, agency citizen participation efforts can become too haphazard and can run the risk of allowing too little time for public understanding of the issues. Citizen and community leaders can be helpful and should participate in developing a plan for citizen involvement and in identifying community transportation goals. A plan need not be a separate document; and, when issues are closely related, a plan may cover more than one planning activity. While such plans will vary according to the issues under consideration, a citizen participation plan for most activities should:

Clearly define agency transportation goals and objectives;
Be integrated fully into the overall planning process;
Identify legal requirements and constraints which influence the scope of citizen participation;
Identify key issues and decision points and how they relate to citizen participation activities;
Describe citizen participation mechanisms to be used and the timing of such efforts; including efforts to notify the public and informational materials which will be prepared for the public;
Establish procedures for considering public comments and responding to those comments;
Commit adequate resources, including staff, money for printing, meeting rooms, transcripts and minutes, announcements, graphics and technical assistance, where needed;
Provide for periodic evaluation of effectiveness of the citizen participation program in order to identify weaknesses and modify participation efforts when necessary.

Identifying Public Participants

It is important to identify those groups and individuals who may be interested in and/or affected by transportation planning programs or projects. A list of people to be informed about a planning activity should be developed at the beginning of the planning process and expanded regularly during the process as new groups and individuals are identified and new alternatives considered. This list should also include people who have been involved in past transportation planning activities. Depending on the scope of the particular planning effort, the affected community may range from a neighborhood to a large region. Care should be taken to identify a broad range of participants representing different sectors of the community. Certainly, special efforts should be made to notify personally those who might be affected directly by specific transportation alternatives, such as people living in potential transportation corridors.

Depending on the nature of the transportation planning activity, planning agencies might want to consult with various groups and organizations including but not limited to the following:

Other government and public service agencies, including agencies serving the handicapped, elderly, low income, disadvantaged and minority communities;
Civic and neighborhood associations;
Consumer and public interest groups;
Bicycling groups;
Environmental groups;
Religious and ethnic groups;
Business groups;
Civil rights organizations;
Labor organizations;
Groups represnting elderly and handicapped citizens;
Merchants and small business organizations.

VI. Informing the Public

The public can contribute most effectively in the local transporation planning process when they are provided with accurate, understandable, timely, and relevant information on transportation planning issues. Information efforts should be an on-going part of the citizen participation process from the exploration of transportation alternatives through the

implementation stage of a project. The lead agency should make sure that the information reaches the public early enough in the process to permit their active participation. The planning agency should make the implications of the various alternatives clear to the public so that they may make informed decisions on whether or not to participate.

Because many information activities take time to prepare and to arrange, lead planning agencies should build the necessary time requirements into the public participation plan. All public information documents or announcements should identify a person to contact for further information.

In addition to providing the public with information on specific planning activities, lead planning agencies might also consider providing the public with an overview of all transportation planning activities on a regular basis, perhaps once a year through an annual report.

Notifying the Public. The public should be notified well in advance of specific planning and citizen participation activities so that they may have enough time to respond to agency questions and proposals. Background information on planning issues should be made available and advertised well in advance of decision points and public participation activities. It is important to make announcements concerning planned activities relevant to the public and to avoid the use of technical jargon wherever possible. Agencies should use a variety of mechanisms for getting the word out to the public, for example:

Direct mailings
Public service announcements
Display ads in newspapers
Announcements on public transit vehicles and at transit stops
Community bulletin boards
Radio and TV talk shows
Agency and community newspapers
Flyers
Inserts in local papers

Keeping the Public Informed. One way to maintain the interest and involvement of the general public is to provide regular updates on planning activities and problems. This is especially important for long-term planning efforts in which the public may lose interest or confidence in the agency if they are not kept apprised of on-going activities. Planning agencies can do this with the various mechanism mentioned above.

Types of Information. Different public sectors have different information needs. For instance, residents who might be affected by a transportation proposal will want to know what the project will do to their neighborhood, or how it will affect their own transportation. A mere description of the proposal will not necessarily provide them with enough information to form opinions and judgments. Merchants will also have special needs. Those involved in environmental, social, and transportation issues may need more technical data and assistance to help them in exploring and assessing various transportation alternatives.

Agencies might consider a variety of mechanisms to meet these different information needs, such as simple fact sheets for a general audience and more detailed brochures and technical reports for individuals and businesses who might be affected by a proposed transportation alternative.

Background papers on how the planning process works, how the public can participate, a description of specific issues, key decision points and sources to contact for further information can be very helpful to citizen participants. Such papers might describe the social, economic, and environmental implications on each alternative. Any information which an agency produces should be written to solicit public input, not to sell a particular proposal.

Packaging Information. Agencies should be careful to prepare information with the general public in mind. Information should contain as little technical jargon as possible. When technical terms have to be used, they should be defined as clearly as possible. The use of maps and other graphics can aid considerably in public understanding of the alternatives.

Making Effective Use of the Media. Establishing working relationships with people both in print and broadcast media can be an invaluable resource for transmitting information to the public. In many ways, the press shares some of the same information needs as the general public. For example, planning agencies should be prepared to explain to editors and broadcasters in clear, concise language what impact certain proposals might have on the community.

Planning agencies can deal more easily with the press by learning their deadlines and procedures and working with them. A press briefing should not be planned for 3:00 when the paper's deadline is 3:30. Also be mindful of the deadlines for weekly and community papers.

Lead planning agencies can provide information to the press in a variety of ways—letters, informal telephone contact, press releases, press briefings. Planning agencies should keep press releases brief (no more than two double-spaced typed pages), but have additional background information available. Planning agencies should be open in their dealings with the press and be careful to avoid misunderstandings. Agencies should also be careful not to overcontact the media with insignificant items, or else the big issues may not receive the attention they deserve. Cover all aspects of the issues when they are controversial or could cause problems. Agencies might also work with editors in developing a calendar of public meetings and hearings.

Radio and TV talk shows can help to air the issues especially if an agency official can respond to questions on the air or to subsequent inquiries in the office. Public television is also opening new opportunities for getting information to the public. Planning agency officials might get involved in structured panels, single presentations, or even some type of polling situation via public TV. Public TV might also be interested in televising public meetings. Whenever possible, let the public know in advance when agency officials will discuss issues on radio or TV.

Paid Advertisements. Because the public often does not take note of legal notices in the classified section of the newspaper, agencies might consider paying for a display ad on important planning activities. Radio and TV stations sometimes provide public service announcements on planned meetings. Here, again, agencies should keep in mind copy deadlines.

Access. The planning process should be open. This means that citizens should have the opportunity to review appropriate technical documents, including technical memorandums/assumptions on the various alternatives while a project is still under consideration and before decisions have been made. To the extent possible, major documents such as draft environmental impact statements, technical memorandums, narrative reports, position papers, and alternative analysis documents should be open for public viewing at various locations in the community such as public libraries, city halls, neighborhood centers, project site field offices, planning agency offices, etc. Local agencies should make the public feel at ease in reviewing such documents and should provide staff assistance to answer technical questions. Citizens should be made aware of the availability of such materials.

Fees for Copying. Wherever possible, lead planning agencies should make copies of relevant documents available to the public free of charge. If charges

must be made, they should be set as low as possible.

Conferences. When the lead planning agency sponsors conferences/activities which impact the general citizenry of the area, it should invite the public and try to make provisions for waiving any conference fee.

VII. Working with the Public

Public information is a means of generating public understanding of the issues and notifying them of participation opportunities. Participation occurs when the agency starts working with the community to explore the issues, exchange views, and select alternatives.

While involvement efforts may include public hearings and advisory groups, they should not be limited to such formal mechanisms. In fact, public hearings, though often required by law, when used alone may not be the most effective means of influencing planning decisions. The agency should use mechanisms tailored to the existing community and which will involve the widest range of the interested public. These efforts may and should take several forms such as using existing community resources (neighborhood councils, meetings of local groups), town meetings, public meetings and workshops, surveys, user panels, telephone hotlines, speakers' bureaus, citizen advocates, and ombudsmen. Lead planning agencies should examine existing citizen participation literature to help them decide the best participation mechanisms for their communities.

Any public participation mechanism should be used at times and places convenient to the public. This could mean holding sessions both in the afternoon and evening or on weekends to facilitate greater public involvement. Whenever possible, meetings should be held at locations which are accessible to public transportation before and after the meeting times. Meeting places should be accessible to elderly and handicapped persons; special arrangements should also be made for those with hearing and sight impairments. Agencies should provide appropriate security arrangements and they might consider providing transportation and nursery services to make it easier for citizens to participate.

Effective involvement activities occur early enough in the process to ensure that the public's options are not limited and to permit agency response to the public before decisions are made. The public should be notified well in advance so they have time to study the issues.

Agencies should inform participants about special meeting procedures and tell the public how it intends to respond to public suggestions.

These activities should be conducted in a fashion which promotes the exchange of ideas and should specifically avoid a defensive posture on the part of the agency. Technical staff should be available to answer questions about specific proposals and to explore alternatives suggested by citizens.

When participation activities are announced, notices should identify matters to be discussed, the format of the discussion, what printed information is available, and how to obtain it. When an agency has reached tentative conclusions, they should be stated in the notice. The agency should identify any significant areas in which they are most desirous of public comment.

VIII. Advisory Groups

Planning agencies now use a variety of task forces, committees and boards to assist them in making planning decisions. When used effectively, such groups can be an important element of the citizen participation process. While the scope and purposes of these groups may vary, certain basic procedures should be followed. Care should be taken to achieve a balanced membership in terms of socio-economic, racial, sexual and geographic distribution. For permanent or long term committees, appointments to the advisory groups should be made on a staggered basis to provide for continuity. The goals, role, and limitations of such groups should be clearly defined to avoid confusion and frustration. If the life expectancy of the group is short, this should be clearly stated. Planning agencies should provide adequate staff support to enable advisory group members to analyze fully pending issues. Information should be presented to advisory groups early and throughout the process so that the agencies can have the benefit of group views in making decisions. Agencies should not expect advisory groups to approve automatically or "rubber stamp" agency recommendations; nor should advisory groups expect to make final decisions. However, agencies should seriously consider group recommendations and respond to advisory group suggestions and let members know why certain suggestions were or were not used. Meetings of advisory groups should be held at convenient times and places for group members, and these meetings should be advertised and open to the public.

In selecting advisory group members, lead planning agencies should consult with community leaders and advertise openings on the advisory group. General advisory groups should have a balanced representation including elected officials, business interests, public interest groups, technical advisors, and citizen representatives.

Citizen advisory groups should be composed of representative cross-section of citizens, with a mix of people according to age, race, sex, and geographic distribution. Low-income and handicapped people should be represented on such groups. In addition to advising the planning agency, citizen advisory groups might also be used for community outreach efforts. Planning agencies and transit boards might also consider using advisory groups members to serve as ex-officio members of policy committees and boards. Such formal groups could benefit from having the views of transit users and other representative citizens.

IX. Considering and Responding to Public Comments

Decisionmaking is the responsibility of State and local officials. However, this responsibility carries with it the duty to listen and carefully consider public views and recommendations.

People are apt to have different views on how to meet transportation needs and how to solve specific transportation problems. While planning agencies cannot always mesh conflicting views, they should demonstrate, in their decisions and in their actions, that they have fully understood and considered public concerns. Agencies should establish procedures for collecting, analyzing, considering, and responding to public comments.

Planning agencies receive public comments from various sources—including telephone conversations, letters, public meetings and workshops, informal contacts with citizens, surveys, and public hearings. Data from all these sources should be collated and analyzed so that public suggestions may be considered by transportation planning staff and decisionmakers. Such analysis should identify segments of the community which participated (e.g., affected residents, citizen groups, business, other government agencies), summarize meaningful public comments (both majority and minority points of view), and explain how they relate to the decisions to be made. Such a summary can serve as a valuable tool for decisionmakers in gauging possible public reaction and/or acceptance to pending decisions. Such summaries should be prepared during each major planning phase, and perhaps more often when the process extends over a long

period of time. Public comments and the analysis of the comments should be filed in a central location and be available for public inspection on request.

Agencies should also respond to those who participated in planning efforts and indicate how public suggestions were used or why their suggestions could not be accommodated. This can be done by personal letter when there are a small number of participants. However, when there are a large number of participants, agencies may find it easiest to send a summary of comments and responses to all those who participated. The key is letting participants see the results of their involvement. Citizens still may not agree with all planning decisions, but they may understand the decisions better if they know why certain options were or were not chosen. Citizens will also be more apt to participate in future planning activities if they know that their recommendations are given serious consideration. Such summaries may also be helpful to DOT in reviewing transportation planning efforts.

Appendix A: Policy Statement on Citizen Participation in Local Transportation Planning

U.S. Department of Transportation policy actively supports and strongly encourages citizen participation in the development of Federal, State, regional, and local transportation plans and programs.

Citizens' righs to know about public issues and to participate in the decisionmaking process are inherent in our system of government. To ensure that transportation systems and projects are in the best overall public interest, and that all concerns are adequately addressed, citizens' voices should be heard when a community makes its transportation plans.

This DOT policy, therefore, recognizes and reaffirms the right and the need for citizens to take an active part in transportation decisions affecting their lives and their communities.

DOT views citizen participation in local planning as:

- An essential element in the development of transportation programs and decisions;
- A resource that improves decisions by broadening the base of information which is considered by public officials;
- A tool for influencing agency decisions so that they respond to public needs and protect the rights of all to be heard.

Citizen participation is useful and effective when citizens are brought into the planning process during the earliest stages and when planners and officials continue to inform citizens and to ask for their views during all stages of the planning and development process.

It is through the combined and continuing efforts of officials, citizens, and planners that a community produces rational, workable, and satisfying transportation plans, thus assuring the fullest benefits from the use of public funds.

Goal of This Policy

The goal of this policy is to help communities plan transportation systems that are safe, efficient, cost-effective, energy-efficient, environmentally satisfactory, and responsive to the needs of the broadest range of citizens. DOT firmly believes that the people who use a transportation system, or are affected by it, should have a voice in deciding the "where," the "what," and the "when" of the modes that move in their communiy.

Roles in the Planning Process

In communities where transportation planning is most effective and satisfactory, active citizen participation is part of the planning process. Active citizen participation exists where officials, citizens, and agency staffs work together, with each group playing its specific role in the planning process.

The role of officials includes:

* Assuring that citizens will receive adequate opportunity to participate;
* Assuring that information presented to citizens is clear, complete, and timely;
* Listening attentively to citizens's views;
* Giving full consideration and response to citizens's concerns, comments, and recommendations.

The role of citizens includes:

* Devoting time and effort to participate;
* Learning about the planning process and the needs of all sectors in the community;
* Contributing from their special knowledge of the community;
* Identifying problems;
* Reviewing plans and proposing alternatives.

The role of agency staffs includes:

* Expending time and effort necessary to work with citizens;
* Keeping citizens informed;
* Providing adequate technical support;
* Involving citizens at all stages throughout the planning process;
* Making a conscientious effort to get needed information from citizens.

To achieve active citizen participation in local planning, these roles should be incorporated fully into the planning process by every Federal, State, regional, and local agency that used DOT funds in providing transportation facilities or services. (Key elements of an active citizen participation effort are identified and explained in the Proposed Guidelines which are being issued with this Policy Statement.)

Implementation of This Policy

In implementing this policy, DOT and its operating administrations will—

*Promote an atmosphere within government which encourages citizen participation in local planning by providing training, technical assistance, and technology sharing for officials and staff members of DOT and State, regional, and local transportation agencies;

*Assist citizens and their organizations by sponsoring outreach, information/education, technical assistance and, where appropriate, financial assistance to help citizens participate in local planning and project development;

*Support this Policy Statement by monitoring the progress of required citizen participation in State and local transportation planning and project development;

*Assure full compliance with citizen participation requirements.

Appendix B: Federal-Aid Requirements for Citizen Participation in Local Transportation Planning

Introduction

Part I of Appendix B [1] lists those DOT Federal-aid programs which have statutory and/or regulatory requirements for citizen participation. These programs are listed by DOT operating element and each program is designated by the title and number assigned to it in the "Catalog of Federal Domestic Assistance" (CFDA), a volume which includes all domestic programs involving Federal grants and financial assistance, published by the Office of Management and Budget. Part II of Appendix A gives brief explanations of how Federal-aid programs are administered in various DOT operating administrations.

[1] This Appendix originally appeared in the **Federal Register** on October 30, 1980. Several revisions have been made to reflect changes in the FHWA-UMTA urban transportation planning regulations.

Appendix B.—*Federal-Aid Requirements for Citizen Participation (CP) in Local Transportation Planning*

Part I.—*Office of the Secretary (OST)*

Program, CFDA number authorization	Statutory CP requirements	Monitoring/evaluation of statutory requirements	Regulatory CP requirements	Monitoring/evaluation of regulatory requirements	Funding
None	None	None	None	None	None.

Part I.—*Federal Aviation Administration (FAA)*

1. Airport Development Aid Program,* No. 20.102, Pub. L. 91-258, as amended, 49 U.S.C. 1701 *et seq.*	Public hearings or an opportunity for public hearings to consider economic, social, and environmental effects of an airport location, an airport runway, or a runway extension. 49 U.S.C. 1716(b)(1).	When requested, project sponsor shall submit a copy of hearing transcript to the Secretary. 49 U.S.C. 1716(d)(2).	a. Before submitting a request for aid, the sponsor must afford an opportunity for a public hearing. 14 CFR 152.117 (45 FR 34789, 5/22/80). See also Airport Environmental Handbook (FAA Order 5050.4, Chapters 2.18, 5.49 (45 FR 56627, 56646, 8/25/80. b. FAA Order 1050.1C. "Policies and Procedures for Considering Environmental Impacts," Appendix 6, incorporates requirements of 49 U.S.C. 1716(d)(1) (45 FR 2269, 1/10/80). Compliance with FAA Order 5050.4 above, assures compliance with FAA Order 1050.1C. (See Appendix B, under section for Ferderal Aviation Administration for a description of FAA Order 1050.1C).	If a hearing is held, sponsor must provide to the Administrator a summary of issues raised, alternatives considered, conclusions reached and stated reasons. Upon request, a verbatim transcript must be furnished to the Administrator. 49 CFR 152.117(e). If a hearing required by 49 U.S.C. 1716(d)(1) is not held the sponsor must certify that notice of opportunity for a hearing was provided but no request for a hearing was received (49 U.S.C. 416(f).	a. No specific provisions. b. No specific provisions.
2. Airport Planning Grant Program,* No. 20.103, Pub. L. 91-258, as amended, 49 U.S.C. 1713.	Projects grants to planning agencies to develop airport master plans and systems plans. Citizen participation not mandatory but strongly encouraged.	Citizen participation aspects of the plan are evaluated in the same context as other elements that were funded under the grant, engineering, traffic forecasting, financial planning, etc.	.....	.....	Funding is available as integral part of the planning process if proposed by the sponsor.

*Authorization expired 9/30/80.

Part I.—Federal Highway Administration (FHWA)

Federal-Aid Highway Planning Research and Development Pub. L. 85-767, as amended (Federal-Aid Highway Program), No. 20.205, 23 U.S.C. 101 *et seq.*.	a. State highway department submitting plans for certain Federal-aid highway projects shall afford the opportunity for public hearings.	Copy of hearing transcript to be submitted to FHWA. 23 U.S.C. 128(b).	a. Planning process must include provisions to ensure public involvement. 23 CFR 450.120(a)(3); Appendix B, Advisory Information on Planning for Elderly and Handicapped Persons, emphasizes that elderly and handicapped persons are to be included in the planning process.	Each State highway agency has developed an "Action Plan" which outlines procedures and responsibilities for the involvement of other agencies and the public. FHWA reviews and monitors States' implementation of Action Plans at appropriate intervals. In addition, FHWA personnel attend as observers and sometimes participate in the meetings or public hearings.	Funds are authorized by 23 U.S.C. 104 and 307(c) as amended. Administrative limitation on project-related public participation expenses prohibits reimbursement with Federal-aid funds for personnel expenses of individuals and groups. 49 CFR 790.
	b. State highway department submitting plans for an Interstate system project shall afford the opportunity for hearings for affected rural area residents to object. 23 U.S.C. 128(a).	.....	b. Regulations on Process Guidelines require public participation in the development of State environmental action plans and as part of those plans the establishment of public involvement procedures covering the entire highway development process. 23 CFR 795.10. c. Public notification and, in appropriate instances, opportunity instances, opportunity for public participation in the assessment of environmental impacts of highway projects. 23 CFR 771. d. Public hearings or an opportunity for public hearings required during the consideration of highway location and design proposals. 49 CFR 790. Corridor public hearings also required. (Applies to highway agencies which have not developed approved Actions Plans, pursuant to 49 CFR 795.10).	Several types of courses and workshops which have been conducted by FHWA throughout the country in order to improve highway agencies' public involvement activities. Evaluation of citizen participation in the transportation process is made through the certification reviews. Citizen participation is currently receiving major emphasis in these reviews.	

Appendix B.—*Federal-Aid Requirements for Citizen Participation (CP) in Local Transportation Planning*—Continued

Part I.—*Federal Railroad Administration (FRA)*

Program, CFDA number authorization	Statutory CP requirements	Monitoring/evaluation of statutory requirements	Regulatory CP requirements	Monitoring/evaluation of regulatory requirements	Funding
1. Local Rail Service Assistance (National Rail Service Continuation Grants), No. 20.308, Pub. L. 89–760, as amended, 49 U.S.C. 1654.	a. State is eligible to receive rail service assistance if it has established an adequate plan for rail services as part of an overall planning process for all transportation services. 49 U.S.C. 1654(j)(1).	No direct monitoring/evaluation; each recipient to keep records which disclose amounts spent. 49 U.S.C. 1654(m)(1).	a. State planning process shall provide for an opportunity for participation by persons interested in rail activity in the State and adjacent States, where approprite. At a minimum, public hearings with adequate notice are required. 49 CFR 266.15(a).	State Rail Plans submitted to FRA for review and approval. 49 CFR 266(e).	Rail planning funds may be used by citizen participation.
	b. To be eligible to receive assistance, State must maintain adequate programs of investigation,research, promotion and development with provisions for public participation. 49 U.S.C. 1654(j)(3)(c).	.....	b. Each State rail plan shall describe its planning process which includes participation of the general public. 49 CFR 266.15(c)(10). c. States eligible for rail service continuation assistance under the Region Rail Reorganization Act of 1973.* Pub. L. 93–236, 45 U.S.C. 701 et seq., are required to afford interested persons, such as users of rail transportation, labor organizations, environmental groups, and the public generally timely opportunity to express their views in the development of the State Rail Plan. 49 CFR 255.9(a).	.....	
2. Railroad Rehabilitation and Improvement a. Guarantee of Obligations, No. 20.309, Pub. L. 94–210, § 511. 45 U.S.C. 821 *et seq.*	.....	.....	Applicants for assistance under § 511 must provide FRA with a discussion of problems and objections raised by other Federal, State, or local agencies, and citizens with respect to the impact of a proposed project on the environment. 49 CFR 258, Appendix, Part II, F.	No specific provision.....	No specific provision.
b. Redeemable Preference Shares, No. 20.310, Pub. L 94–210, § 505, 45 U.S.C. 821 *et seq.*	.....	.....	Applicants for asistance under § 505 must provide FRA with a discussion of problems and objections raised by other Federal, State, or local agencies, and citizens with respect to the impact of a proposed project on the environment. 49 CFR 260, Subpart A, Appendix, Part II, F.	*No specific provision.....	No specific provision.

*Continued under the 4R Act of 1976, Pub. L. 94-210, Title VIII.

Part I.—*National Highway Traffic Safety Administration (NHTSA)*

None.....	None.....	None.....	None.....	None.....	None.

Part I.—*Research and Special Programs Administration (RSPA)*

None.....	None.....	None.....	None.....	None.....	None.

Part I.—*St. Lawrence Seaway Development Corporation (SLSDC)*

None.....	None.....	None.....	None.....	None.....	None.

Part I.—*U.S. Coast Guard (USCG)**

None.....	None.....	None.....	None.....	None.....	None.

*No current grant or loan programs involving citizen participation elements exist. The funding authority for Boating Safety Financial Assistance Program (CFDA No. 20.001) expired at the end of FY-80.

Part I.—*Urban Mass Transportation Administration*

1. Capital Improvement Grants, No. 20.500, Pub. L. 88–365, § 3, as amended, 49 U.S.C. 1602.	Certification by applicant of adequate public notice and opportunity for public hearings concerning projects which will substantially affect a community or its mass transportation services. 49 U.S.C. § 1602(d).	a. Hearing transcript to be submitted with application.	To receive Federal assistance, urbanized areas must have a transportation planning process which ensures public involvement, 23 CFR 450.120(a)(3), also incorporation in 49 CFR 613.100.	Annual review and evaluation of planning process, 23 CFR 450.122(a).	No specific provisions, administrative limitation requires all funds to be dispensed through duly elected or appointed body

Appendix B.—*Federal-Aid Requirements for Citizen Participation (CP) in Local Transportation Planning*—Continued

Part I.—*Urban Mass Transportation Administration*—Continued

Program, CFDA number, authorization	Statutory CP requirements	Monitoring/evaluation of statutory requirements	Regulatory CP requirements	Monitoring/evaluation of regulatory requirements	Funding
		b. Administration shall determine that consideration has been given at public hearing to environmental effects of proposed project. 49 U.SD.C. 161 (b) and (c).	.....	.....	
2. Capital Improvement Loans, No. 20.501, Pub. L. 88-365, § 3, as amended, 49 U.S.C. 1602.	See 1, above	See 1, above	See 1, above	See 1, above	See 1, above.
3. Formula Grant Program, No. 20.507, Pub. L. 88-365, § 5, as amended, 49 U.S.C. 1604.	a. Certification by recipient of adequate public notice and opportunity for public hearng and submission of report.	a. A copy of transcript of hearings to be furnished upon Administrator's request.	a. See 1, above	a. See 1, above	See 1, above.
	b. Assurances to be provided to Secretary that any public mass transportation system will not change fares or substantially change any service except after holding a public hearing or providing an opportunity for such a hearing. 49 U.S.C. § 1604(i).	b. UMTA reviews on a case-by-case basis, as needed.	b. Implements statutory requirements that public hearings be held prior to fare change or substantial service change. 49 CFR 635 (45 FR 26301, 4/17/80).	b. UMTA Administrator may impose sanctions for noncompliance. 49 CFR 635.11 (45 FR 26301, 4/17/80).	

Part II.—How Federal-Aid Programs Are Administered in Operating Administrations of the Department of Transportation

Federal Aviation Administration

The objectives of the Federal Aviation Administration's (FAA) Planning Grant Program (PGP) are to improve airport planning, to promote the effective location and development of airports, and to develop an adequate National Airport System Plan (NASP). PGP grants are available to planning agencies and public agencies which act as sponsors for airport system planning and airport master planning studies, respectively.

PGP funds may be used by these sponsors for citizen participation activities in support of their airport planning. These citizen participation activities include public hearings, public information sessions, coordination meetings, and other communication conducted for the purpose of ensuring that the affected public (planning agencies, community organizations, interested individuals, affected local governments, and airport users) is informed about the planning study and have opportunities to be involved in its development. The responsible local FAA Airports field office or regional office will assist sponsors in incorporating appropriate participation activities, such as those described above, into the design of the study. In the event that an individual or community organization should feel that adequate coordination with the public has not been provided and that direct communications with the sponsor have not satisfactorily corrected the situation, the local FAA Airports field office or regional office monitoring the study should be contacted.

For more information, contact Robert B. Hixson, Community Planner, Division of Community and Environmental Needs, Office of Airport Planning and Programming, APP-600, Federal Aviation Administration, Washington, DC 20591; (202) 426-8434.

Federal Highway Administration

Under the Federal-aid highway program, the States and the Federal Government operate in a partnership. State highway agencies initiate, plan, design, build, and operate highway projects. The Federal Highway Administration (FHWA) in turn provides guidance and financial assistance, and is responsible for approvals at key stages of highway development.

Federal-aid procedures provide for public involvement during the planning and development of a project. Federal regulations require each State highway agency to spell out the steps it will follow to involve other agencies and the public in the planning, location, and design of a highway. These procedures are detailed in a State's Action Plan. A copy of a State's Action Plan may be viewed at the State highway agency in the State capitol, or at the FHWA Division Office, generally located in the State capitol (exceptions: Maryland's FHWA division office is in Baltimore; Iowa's FHWA division office is in Ames). Concerns about an alleged failure to provide for public involvement should be directed to the Division Administrator in the appropriate FHWA Division Office.

For further information, contact Stephen J. Kimlicko, Chief, Environmental Process Branch, HEV-12, Room 3232, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590; (202) 426-0303.

Federal Railroad Administration

The Local Rail Service Assistance Program has as its primary goal the strengthening of branchline rail services of importance to State and local enconomies. As administered by the Federal Railroad Administration's (FRA) Office of Federal Assistance, the program provides grants to State agencies designated by the governors of each State. These grants may be used for State rail planning and rail projects, i.e., branchline operating assistance, acquisition, rehabilitation, rail facility construction, or substitute service.

As a prerequisite for project funding, each State must develop a State Rail Plan, to be updated annually, which includes the procedures and mechanism used by the State to provide for public participation. At a minimum, this information must indicate: (1) the groups involved in the planning process, both at the level of broad goal setting and at community level where the impacts of branchline abandonment are most personally felt; (2) the involvement of these groups in the setting of goals and criteria for project selection, priority setting, and resource allocation; (3) those points in the planning process where the different groups have been involved; and (4) the mechanisms the State uses to involve and inform the public of its rail planning activities.

The public participation mechanism is reviewed annually by the FRA's Office of Federal Assistance, as part of the annual update of the State Rail Plan. Any questions or complaints concerning the public participation mechanism or its implementation should be addressed to the State agency designated by the governor of the State.

To identify the title and location of the State agency, contact the governor's office or write or call Garold Thomas, Acting Director of State Assistance, Federal Railroad Administration, Washington, DC 20590; (202) 426-1567. Mr. Thomas may also be contacted for other information about the program.

Urban Mass Transportation Administration

The objective of the Federal transit program is to improve public transportation by providing financial assistance to local governments for the purchase and operation of transit equipment and facilities and to assure that projects funded with Urban Mass Transportation Administration (UMTA) grants are developed in a manner consistent with national energy, environmental, social, and economic goals.

UMTA grants are available to public, non-profit agencies which meet eligibility criteria stated in the Urban Mass Transportation Act. Citizen participation required by UMTA regulations is monitored by UMTA regional offices at several stages of planning or project development, utilizing hearing transcripts, environmental impact comments, and public complaints and grievances. The enforcement mechanism for noncompliance with UMTA regulations is the withholding of financial assistance.

UMTA grant recipients are encouraged to employ whatever citizen participation activities are necessary and appropriate. Formal complaints about alleged failures to comply with UMTA regulations should be filed with the appropriate UMTA regional office. A complaint charging inadequate opportunity for citizen participation should be addressed to the civil rights officer in the appropriate UMTA regional office.

For further information, contact Irv Chor, Office of Public Affairs, Urban Mass Transportation Administration, Washington, DC 20590; (202) 426–4043.

Appendix C: General Requirements for Citizen Participation in Local Transportation Planning

Introduction

Appendix C lists those requirements which are not specific to particular Federal-aid programs. This Appendix, however, does not include opportunities for public involvement such as notice and comment and public hearing requirements under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, petitions for the promulgation of a rule, private citizens' suits to compel agency compliance with a statutory requirements, and public representation on Federal advisory committees.

Appendix C.—*General Requirements for Citizen Participation (CP) in Local Transportation Planning*

Title	CP requirement	Monitoring/evaluation of CP requirement	Funding
Office of the Secretary (OST)			
1. "Procedures for Considering Environmental Impacts," DOT Order 5610.1C, 44 FR 56420 (10/1/79).	Encourages citizen participation at the earliest practical time and at each appropriate stage of development of the proposed action. Administrations are encouraged to develop lists of interested parties at the national, State, and local levels. DOT Order 5610.1C. Par. 14a, c.	A summary of citizen involvement shall be documented in the EIS DOT Order 5610.1C. Par. 14.	No specific provision.
2. U.S. Environmental Protection Agency—Department of Transportation Expanded Guidelines on Public Participation in the State Implementation Plan. 45 FR 42023 (6/23/80).	Joint Guidelines cover the essential elements and procedures of an effective public participation program in developing the transportation component of State Implementation Plans (SIP's) funded by EPA with grants authorized by Section 175 of the Clean Air Act in urban areas requiring an extension beyond 1982 for attainment of national ambient air quality standards.	EPA evaluates performance of planning agencies. Applicants for Section 175 funds must submit a work program for public information/involvement. Sections F and H.	EPA "encourages the passthrough of Section 175 (EPA) funds to a broad base of affected constituencies to achieve * * * effective participation in the planning process." Section E.7.
3. "Implementation of the Department of Transportation Title VI Program." DOT Order 1000.12.	a. Requires action to ensure that non-elected boards, advisory councils, or committees which are in integral part of planning the program or activity reasonably reflect the racial/ethnic composition of the affected community. DOT Order 1000.12. Chapter 1–4(b)(2)(a).	Enforced by Civil Rights Offices in DOT operating element, monitored by Departmental Office of Civil Rights.	No specific provision.
	b. Where the program or activity requires public hearings, appropriate action should be taken to ensure that notice of such hearings reaches all segments of the affected community. The Title VI program shall also require the direct contract will be made with racial/ethnic community organizations and/or leaders in communities affected by the program or activity. DOT Order 1000.12. Chapter 1–4(b)(2)(a).	.....	
Federal Aviation Administration (FAA)			
"Policies and Procedures for Considering Environmental Impacts." FAA Order 1050.1C (45 FR 2244, 1/10/80).	a. Sets forth criteria in deciding whether a public hearing is appropriate, although not statutorily mandated, for a broad range of FAA programs and projects. FAA Order 1050.1C, Chapter 2, Section 2.213b.	a. Records of public hearing maintained in the docket of the General Counsel's office. FAA Order 1050.1C, Chapter 2, Section 2.213(g).	No specific provision.
	b. Encourages citizen participation at the earliest practical time and throughout the development of the proposed project. FAA Order 1050.1C, Chapter 2, Section 2.214.	b. A summary of citizen involvement shall be documented where practicable in the EIS or Finding of No Significant Impact (FONSI). FAA Order 1050.1C, Chapter 2, Section 2.214.	
Federal Highway Administration (FHWA)			
None	None	None	None.
Federal Railroad Administration (FRA)			
FRA Procedures for Considering Environmental Impacts, 45 FR 40855 (6/6/80).	Sets forth a policy which encourages citizen involvement at every stage of the environmental assessment of a proposed FRA action and requires appropriate FRA program office to develop, in cooperation with the FRA Public Affairs Office, a list of interested parties including environmental groups, individuals and business, public service, education, labor, and community organizations. The FRA program office, in coordination with the FRA Public Affairs Officer, shall publicize the availability of draft EIS's. FRA Procedures, Section 9(a), (b)(i), (4), 45 FR 40855 (6/6/80).	No specific provision	No specific provision.

Appendix C.—*General Requirements for Citizen Participation (CP) in Local Transportation Planning*—Continued

Title	CP requirement	Monitoring/evaluation of CP requirement	Funding
National Highway Traffic Safety Administration (NHTSA)			
NHTSA Procedures for Considering Environmental Impacts. 49 CFR 520.	a. The Office of Public Affairs and Consumer Participation shall maintain a list of interested groups to notify directly of the availability of Draft Environmental Impact Statements (DEIS's). 49 CFR 520.25(b)(iv)(3)(i).	No specific provision	No specific provision.
	b. In deciding whether a public hearing on a proposed or ongoing action covered by a DEIS is appropriate, the responsible official should consider, among other things, the extent to which public involvement has already been achieved through other means, such as earlier public hearings, meetings with citizen representatives, and/or written comments on the proposed action. 49 CFR 520.26(a)(4).		
	c. Final environmental statement shall include a discussion of problems and objections raised by other Federal agencies, State and local entities, and citizens in the review process, and the disposition of the issues involved and the reasons therefore: The draft and final environmental statements should document issues raised through consultations with Federal, State, and local agencies and with citizens, of actions taken in response to comments, public hearings, and other citizens invovlement proceedings. 49 CFR 520, Attachment 1, § 3(i).		
Research and Special Programs Administration (RSPA)			
None	None	None	None.
SLSDC Procedures for Considering Enviromental Impacts (Draft). 45 FR 46601 (7/10/80).	Chief Engineer shall solicit citizen comments where an Environmental Statement is to be prepared by any or all of the following means: conducting hearings, making personal contact with interested parties, issuing press releases, placing notices in newspapers, and publishing a notice of intent in the FEDERAL REGISTER, Chief Engineer shall develop lists of interested parties at the national, State, arid local levels. Order SLS 10-5610.1C (Draft), Par. 10, 45 FR 46601 (7/10/80).	Citizen involvement and environmental issues raised in the public commenting process will be documented in the environmental statement.	No specific provision.
U.S. Coast Guard (USCG)*			
1. Ports and Waterways Safety act, 33 U.S.C. 1221 as amended by Port and Tanker Safety Act of 1978, Pub. L. 95-474, § 2.	a. Statement of Policy Congressional finding that advance planning is critical in determining proper and adequate protective measures for the Nation's ports and waterways and the marine environment, with continuing consultation with other agencies, affected users, and the general public in the development of such measures. 33 U.S.C. 1221(d).		
	b. In issuing operating requirements, the Coast Guard must consult with representatives of the maritime community, port and harbor associations, environmental groups and others who may be affected by the proposed action. 33 U.S.C. 1224(b).	No specific provision	No specific provision.
2. Tank Vessel Act, 46 U.S.C. 391a, as amended by Port and Tankers Safety Act of 1978, Pub. L. 95-474, § 5.	In exercising regulatory authority under the Act, the Coast Guard shall establish procedures for consulting with agencies, representatives of environmental groups or other interested parties with experience with problems involving vessel safety port and waterways safety, and protection of the marine environment. 46 U.S.C. 391a(6)(C) (v), (vi).	No specific provision	No specific provision.
3. Bridges	a. Upon a determination that a bridge obstructs navigation, a public hearing must be held. 33 U.S.C. 513, 33 CFR 116.20.	a. District Commander who holds public hearing must submit transcript and report to the Chief, Office of Navigation.	No specific provision
	b. Public hearing to be held where there are substantial issues relevant to the effect that a proposed bridge will have on the reasonable needs of navigation. 33 CFR 115.60.	b. See 3a. above	No specific provision.
Urban Mass Transportation Administration (UMTA)			
1. Accessibility of mass transportation to handicapped and elderly persons.	Agencies shall use "adequate citizen participation mechanisms or procedures," Public hearings with adequate notice to be held. 49 CFR 27.107.	Recipients required to file report on compliance with requirements of handicapped access regulation; Department investigations and enforcement procedures authorized. 49 CFR 27.121-27.129.	No specific provision.
2. Statement of Policy—Major Urban Mass Transportation Investments. 41 FR 41513 (9/22/76).	1. "Alternative analyses" studies shall include development of a "citizen involvement mechanism".	No specific provision	No specific provision
	2. After completion of a draft EIS, a formal public hearing shall be held, covering both the analysis of alternatives and the draft EIS. (See also 49 U.S.C. 1602(d).		

*While the United States Coast Guard has no programs that can be described specifically as local transportation efforts, the programs listed in the Appendix concerning marine navigation and safety, and marine environmental protection, can affect local communities or local marine transportation. Techniques and procedures to improve citizen participation in these programs is provided for under the Coast Guard Final Consumer Affairs Plan (45 FR 79634, 12/1/80).

For information about each DOT operating administration's general requirements for citizen participation in local transportation planning, contact:

Federal Aviation Administration: Robert B. Hixson, Community Planner, Division of Community and Environmental Needs, Office of Airport Planning and Programming, Federal Aviation Administration, Washington, D.C. 20591; (202) 426–8434.

Federal Highway Administration: Stephen J. Kimlico, Chief, Environmental Process Branch, Federal Highway Administration, Washington, D.C. 20590; (202) 426–0303.

Federal Railroad Administration: Eric Hanson, Consumer Affairs Officer, Office of Public Affairs, Federal Railroad Administration, Washington, D.C. 20590; (202) 426–0681.

National Highway Traffic Safety Administration: Ann Mitchell, Office of Consumer Participation, National Highway Traffic Safety Administration, Washington, D.C. 20590; (202) 426–0670.

Research and Special Programs Administration: Jacqueline S. Gillan, Director, Office of Consumer and Public Affairs, Research and Special Programs Administration, Washington, D.C. 20590; (202) 426–9676.

St. Lawrence Seaway Development Corporation: Dennis Deuschl, Director, Office of Communications and Consumer Affairs, St. Lawrence Seaway Development Corporation, Washington, D.C. 20591; (202) 426–3574.

United States Coast Guard: Cdr. Neal Mahan, Chief, Consumer Affairs and Administrative Staff, U.S. Coast Guard, Washington, D.C. 20593; (202) 426–1080.

Urban Mass Transportation Administration: Irv Chor, Office of Public Affairs, Urban Mass Transportation Administration, Washington, D.C. 20590; (202) 426–4043.

Appendix D: Actions Taken by DOT and Its Operating Administrations in Support of the Policy Statement

In addition to issuing a Policy Statement and DOT Guidelines on Citizen Participation in Local Transportation Planning, the Department has made the following decisions and is taking the following actions:

* *Each operating administration in DOT will be supporting the Policy Statement by: (1) Issuing its own guidelines on citizen participation in local planning; (2) revising its existing regulations, as needed to comply with the Policy Statement; and (3) designing and implementing its own development project on ways to provide technical and financial assistance to stimulate citizen participation in local planning.*

(1) *Operating Administrations' Guidelines:* In developing Departmental Guidelines, DOT was keenly aware of the need to provide effective guidance that is also flexible enough to apply to the citizen participation requirements in a broad range of programs with varying objectives, mandates, structures, and approaches. Examination of the requirements listed in the Appendixes B and C to this notice will show the extent of this variety. It was agreed, therefore, that once the Department issues final guidelines, each operating administration will issue its own guidelines, consistent with the Department's final guidelines, to provide guidance on citizen participation in local planning which is specific to its own programs.

(2) *Operating Administrations' Regulations:* Publication of the DOT Policy Statement on Citizen Participation in Local Transportation Planning may create the need for operating administrations to revise their existing regulations and internal procedures in order to comply with the Policy Statement. All DOT operating administrations will review their regulations in light of the Policy Statement, to determine whether a need for revision exists. If a need exists, the operating administration will draft revised regulations which will be published as proposals, with a request for public comment. The administrations' reviews of their regulations will be completed no later than April 1, 1981; and any needed revised regulations will be published as proposals no later than October 1, 1981.

(3) *Operating Administrations' Development Projects:* The major objective of the development projects is to identify innovative approaches for providing technical assistance and financial assistance for activities that stimulate effective and representative citizen participation at the local level. Each project selected will relate to a program mandated by that particular operating administration's laws and regulations, and will be carried out in cooperation with appropriate planning agencies. The goal of each project will be to explore, test, and evaluate the most effective ways to use the existing resources available for citizen participation in local planning, under each administration's particular programs.

Much discussion and analysis went into this decision to launch development projects. The issue of providing financial assistance for citizen participation in local planning was clearly the most controversial question facing the Department during the development of this policy. The options examined by DOT ran the gamut from the possiblity of taking no action to the possibility of setting aside a Department fund for a comprehensive program under which the Department would disburse money to citizens' groups qualified to participate in local planning. The latter option was examined because it was specifically proposed to DOT by various citizens' groups. DOT has decided that it would be neither appropriate nor feasible for the Department to provide direct funding to citizens' groups participating in local planning. DOT did, however, examine and discuss other methods whereby financial and technical assistance might be provided to help citizens participate in local planning. Specific and challenging questions arose during these discussions.

A few of these questions: Is participation in local planning noticeably enhanced if a local or regional planning agency reimburses citizens for certain expenses, such as baby-sitting services, transportation to meetings, or clerical costs? Or is participation equally effective if the planning agency provides the needed services, which is usually a less costly approach? Could planning agencies and citizens' groups work together to circulate information to the community, combining the agency's resources for printing, mailing, and so on, with the citizens' access to the residents of the community? Could planning agencies effectively work through neighborhood boards and grassroots activits' groups to stimulate citizen participation in local planning? Would planning agencies be willing to provide serives and technical assistance to citizens' groups? Should planning agencies provide direct financial assistance to citizens' groups so that these groups can obtain professional and technical advice on key issues of importance to them? Would direct financial assistance enhance the quality of public participation in local transportation planning? Would direct financial assistance enhance the public acceptability of planning agencies' decisions? Is the effectiveness of a citizens' advisory group markedly increased if the members are provided with such specific resources as

advocacy training, staff assistance, and financial assistance?

Since there are no ready answers to these questions, the Department has decided to launch development projects to test innovative approaches and to gather needed data on ways to provide technical and financial assistance to stimulate citizen participation in local planning. The development projects will be lodged in the operating administrations because each administration must work within the limits of its own programs, procedures, mandates, and requirements for citizen participation in local planning. Each operating administration will fund its project through existing resources. In order to avoid costly duplication, coordination among the administrations' development projects will be the responsibility of the Office of Consumer Liaison (OCL), in the Office of the Secretary. Each operating administration's development project will be implemented no later than October 1, 1981.

The Office of the Secretary, through its Office of Consumer Liaison, will be responsible for: (1) Overseeing the implementation of the Policy Statement and the final guidelines; (2) coordinating the operating administrations' development projects; (3) providing technical assistance and educational materials to affected segments of the public; and (4) coordinating Departmental training programs and outreach efforts for citizen participation.

(1) *Overseeing implementation of the Policy Statement and the final guidelines:* The DOT Work Group on Citizen Participation has successfully completed its charge to develop a comprehensive DOT policy, as well as recommending implementation actions to support the policy. With the group's mission thus accomplished, the Department believes that good management practice requires that this ad hoc committee disband. It will, therefore, be the responsibility of the Office of Consumer Liaison (OCL) in the Office of the Secretary, to oversee implementation of the Policy Statement and the ensuing DOT Guidelines. In discharging this responsibility, OCL will utilize the resources of the ad hoc work group, as needed, to facilitie contacts with various offices having responsibilities for local transportation planning.

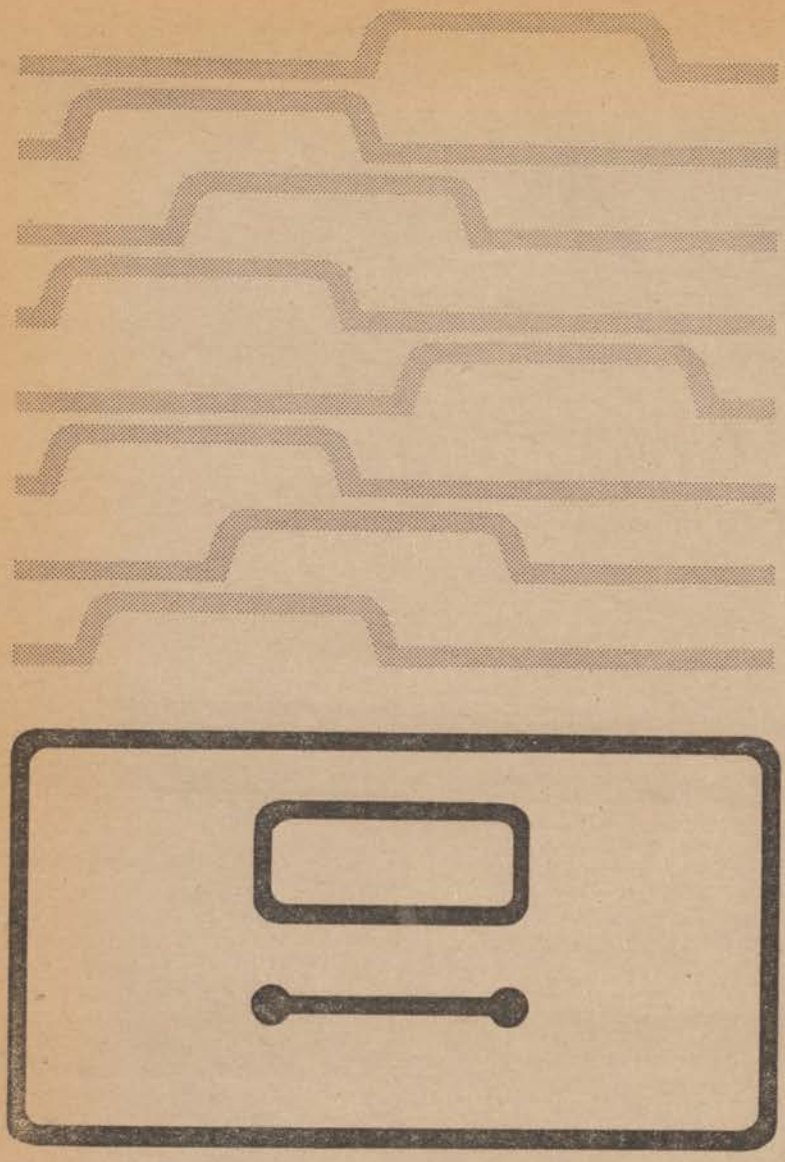
In dealing with overall Departmental issues bearing on citizen participation, OCL will utilize the permanent mechanism of the DOT Consumer Policy Coordinating Council, established in July 1980 under the DOT Consumer Program, in response to Executive Order 12160.

(2) *Coordinating the operating administrations' development projects:* In order to provide for efficient coordination among the operating administrations' projects, the Office of Consumer Liaison (OCL) will oversee the designs of the development projects and will monitor the progress of these projects. It will be OCL's responsibility to establish criteria assuring that the project designs are valid, that they address pertinent issues on which data are needed, and that they avoid costly duplication.

(3) *Providing technical assistance to affected segments of the public:* The Office of Consumer Liaison will oversee implementation of the Department's responsibility for providing technical assistance to various persons, groups, and agencies affected by the Policy Statement and the ensuing Departmental Guidelines. This responsibility will include such actions as preparing information for State, regional, and local transportation agencies, describing noteworthy examples of citizen participation in local transportation planning; and also preparing educational materials for citizens, with explanations of DOT's requirements for public involvement opportunities.

(4) *Coordinating Departmental training and outreach programs for citizen participation:* Several DOT operating administrations have already produced training projects to assist their headquarters and field staffs, as well as State and local transportation planners, in better utilization of citizen involvement techniques and outreach efforts. The Office of Consumer Liaison will be responsible for working with the operating administrations to coordinate and enhance these existing programs, with a view to making them available to more people in the Department and the transportation community.

[FR Doc. 81-1804 Filed 1-16-81; 8:45 am]
BILLING CODE 4910-62-M



Announcing the latest edition . . .

Guide to Record Retention Requirements

Revised as of January 1,1980

This useful reference tool, compiled from agency regulations and U.S. Statutes, is designed to assist industry and the public with their Federal record-keeping obligations.

The various digests in the "Guide" tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

In addition, the "Guide" contains the names, addresses, and phone numbers of contact persons within each agency who can answer substantive questions about the requirements.

Each digest also carries a reference to the full text of the basis law or regulation providing for such retention.

The booklet's index lists for ready reference the categories of persons, groups, and products affected by Federal record retention requirements.

Compiled by Office of the Federal Register, National Archives and Records Service, General Services Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Price $4.00

ORDER FORM Mail To: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed is $_____ ☐ check, ☐ money order, or charge to my Deposit Account No.

☐☐☐☐☐☐☐–☐

Order No._____

VISA® MasterCard

Credit Card Orders Only

Total charges $_____ Fill in the boxes below.

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Please send me_____copies of **Guide to Record Retention Requirements,** at $4.00 per copy. Stock No. 022-003-01050-5

Name—First, Last

Street address

Company name or additional address line

City State ZIP Code

(or Country)

PLEASE PRINT OR TYPE

For Office Use Only.

	Quantity	Charges
Enclosed		
To be mailed		
Subscriptions		
Postage		
Foreign handling		
MMOB		
OPNR		
UPNS		
Discount		
Refund		

339-996
22-V6

1-19-81
Vol. 46—No. 12
BOOK 3:
Pages
5457-5850

federal register

Book 3 of 3 Books
Monday, January 19, 1981

5460 **Part XII—ED:**
Assistance to States for Education of Handicapped Children; Interpretation of the Individualized Education Program (IEP)

5476 **Part XIII—DOT/UMTA:**
Service Changes and Fare Changes; Public Hearing Requirements

5480 **Part XIV—DOT/UMTA:**
Emergency Stockpiling of Buses

5484 **Part XV—DOT/FAA:**
Operations Review Program; Notice No. 11

5500 **Part XVI—DOT/FAA:**
Elimination of Duties and Activities of Flight Crewmembers Not Required for the Safe Operation of Aircraft

5506 **Part XVII—DOT/FAA:**
Access to Flight Data Recorder and Cockpit Voice Recorder Tapes

5514 **Part XVIII—DOE/Office of Minority Economic Impact:**
Loans for Bid or Proposal Preparation by Minority Business Enterprises Seeking DOE Contracts and Assistance; Proposed Rulemaking

5522 **Part XIX—DOE:**
State Vocational Rehabilitation and Independent Living Rehabilitation Programs; Final Regulations

5566 **Part XX—Interior/HCRS:**
Archaeological Resources Protection Act of 1979; Proposed Uniform Rulemaking and Notice of Public Hearings

5578 Part XXI—ACHP:
Historic Preservation Requirement of the Urban Development Action Grant Program, Proposed Regulations

5588 Part XXII—DOT:
Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Implementation of Title VI of the Civil Rights Act of 1964; Proposed Rulemaking

5616 Part XXIII—EPA:
State Hazardous Waste Programs; Requirements for Public Participation in State Enforcement Process During Interim Authorization

5620 Part XXIV—CSA:
Civil Rights Regulations; Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Financial Assistance Provided by CSA; Implementation of Section 504 of the Rehabilitation Act, as Amended, and Executive Order 12250

5642 Part XXV—Interior/NPS:
National Park System Units in Alaska

5668 Part XXVI—Interior/FWS:
Alaska National Wildlife Refuges

5686 Part XXVII—EPA:
Intent to Issue Revised Minority Business Enterprise Policy for the Construction Grants Program, Technical Amendments to Women's Business Enterprise Policy for the Construction Grants Program, and Procedures for Implementation of Minority Business Enterprise and Women's Business Enterprise Policies

5696 Part XXVIII—EPA:
Regulations for the Enforcement of the Federal Insecticide, Fungicide and Rodenticide Act; Classification of Uses of Active Ingredients for Restricted Use—will consist of approximately 6 pages

5702 Part XXIX—DOT:
Federal Highway Administration—Urban Mass Transportation—Urban Mass Transportation Administration—will consist of approximately 20 pages

5722 Part XXX—DOE/ERA:
Puerto Rican Naptha Entitlements—will consist of approximately 8 pages

5730 Part XXXI—Interior:
Endangered and Threatened Plants; Determination of Two New Mexico Plants, Eriogonum gysophilum (Gypsum Wild Buckwheat), and Hedeoma todsenii (Todsens Pennyroyal), to be Threatened and Endangered Species, with Critical Habitat—will consist of approximately 6 pages.

5736 Part XXXII—EPA:
Responsiveness Summary and Preamble on Public Participation Policy—will consist of approximately 14 pages

5748 Part XXXIII—DOT/FAA:
Energy Conservation in the National Aviation System—will consist of approximately 12 pages

5772 Part XXXIV—Interior:
Leases, Permits, and Easements; Land Use Authorizations Under the Federal Land Policy and Management Act—will consist of approximately 10 pages

5784 Part XXXV—Interior:
Grazing Administration and Trespass on Public Lands; Amendments to Grazing Regulations—will consist of approximately 10 pages

5794 Part XXXVI—Interior:
Federal Land Withdrawals; Amendment to Withdrawal Procedures; Final Reulemaking—will consist of approximately 14 pages

5808 Part XXXVII—DOT/UMTA:
Urban Mass Transportation Administration—Buy America Requirements—will consist of approximately 14 pages

5820 Part XXXVIII—DOT/UMTA:
Urban Initiatives Program; Final Rules

5832 Part XXXIX—DOT/UMTA:
Technology Introduction Program; Proposed Rulemaking

5838 Part XL—EPA:
Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Gaseous Emission Regulations for 1985 and Later Model Year Light-Duty Trucks and 1986 and Later Model Year Heavy-Duty Engines

federal register

Monday
January 19, 1981

Part XII

Department of Education

Assistance to States for Education of Handicapped Children; Interpretation of the Individualized Education Program (IEP)

DEPARTMENT OF EDUCATION

Office of Special Education

34 CFR Part 300

Assistance to States for Education of Handicapped Children; Interpretation

AGENCY: Department of Education.

ACTION: Notice of interpretation.

SUMMARY: The Secretary of Education issues an interpretation of the individualized education program (IEP) requirements under Part B of the Education of the Handicapped Act, as amended by Pub. L. 94–142. This interpretation is issued in response to public inquiries requesting Department policy and guidance on this matter.

EFFECTIVE DATE: This interpretation is expected to take effect 45 days after it is transmitted to Congress. Interpretations are usually transmitted to Congress several days before they are published in the **Federal Register**. The effective date is changed by statute if Congress takes certain adjournments. If you want to know the effective date of this interpretation, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas B. Irvin, Office of Special Education, Department of Education, Donohoe Building, Room 4046, 400 Maryland Avenue, SW., Washington, D.C. 20202, telephone: (202) 472–4825.

SUPPLEMENTARY INFORMATION:

A. Background

Under Part B of the Education of the Handicapped Act (EHA–B or "the Act") (20 U.S.C. 1411–1420), as amended by Pub. L. 94–142, the Department of Education makes Federal funds available to States to assist them in the provision of special education and related services to handicapped children. In order to receive assistance under this grant program, a State must demonstrate to the Secretary that various provisions of the Act are met, including the requirement that all handicapped children within the State have available a free appropriate public education. The Act defines a "free appropriate public education" as "special education and related services which * * * are provided in conformity with the individualized education program required" by the Act (20 U.S.C. 1401(18)(D)).

An "individualized education program" (IEP) is defined by the Act as

> a written statement for each handicapped child developed in any meeting by a representative of the local educational agency or an intermediate educational unit who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children, the teacher, the parents or guardian of such child, and, whenever appropriate, such child, which statement shall include (A) a statement of the present levels of educational performance of such child, (B) a statement of annual goals, including short-term instructional objectives, (C) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs, (D) the projected date for initiation and anticipated duration of such services, and (E) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved. 20 U.S.C. 1401(19)

Section 614(a)(5) of the Act (20 U.S.C. 1414(a)(5)) provides that the IEP for each handicapped child must be reviewed and, if necessary, revised at least annually.

A detailed set of regulations was issued under EHA–B on August 23, 1977 (42 FR 42474), and codified in the Code of Federal Regulations (CFR) at 45 CFR Part 121a. Included in those regulations are several sections on IEPs, published as 45 CFR 121a.340–121a.349. (See also the summary of, and responses to, the public comments on the proposed version of those sections, 42 FR 42507–08 (August 23, 1977).) These regulations became effective on October 1, 1977.

B. Purpose of Document

Over the past three years, numerous questions have arisen concerning the meaning of the IEP provisions of the statute and regulations. Some of those provisions have been interpreted differently by various State and local agencies. Other questions have been raised concerning various IEP matters that are not explicitly addressed in the regulations. Finally, numerous inquiries have been received concerning how to most effectively carry out the IEP requirements.

For these reasons, the Secretary has determined that it would be appropriate to publish a comprehensive document that clarifies and interprets the IEP provisions, answers some of the most frequently asked questions about those provisions, and provides technical assistance to interested parties. This document is intended to serve those purposes.

C. Development of Document

This interpretation culminates a process which involved extensive public review and comment, including: (1) Comments from a series of public meetings conducted during the summer of 1979; (2) background papers submitted by an *ad hoc* task force on IEPs; and (3) more than one hundred written comments from reviewers of various drafts of the document. All written comments were reviewed, and the suggestions and concerns of the commenters were considered in preparing the document.

D. Effect of Document

The primary purpose of this document is to clarify and interpret the IEP provisions of the Act and regulations. Since those provisions have the force and effect of law, the Secretary regards the clarifications and interpretations in the document as legally binding, and the Department will follow them in providing advice and in determining whether affected agencies are in compliance with the Act and regulations. In addition, the document includes non-binding suggestions and guidance on how to carry out the various legally binding requirements.

The legally binding requirements in the interpretation are identified by such mandatory language as "must", "the IEP *would have to be* revised", or "labels *may not* be used". The non-binding suggestions and guidance are stated in such non-mandatory language as "the agency should" or "it is expected that."

E. Organization of Document

Part I of the document sets out the major purposes and functions of the IEP requirement. Part II clarifies and interprets the individual provisions of the IEP regulations (§§ 300.340–300.349).

F. Redesignation of Regulations

As a result of the creation of the Department of Education, the regulations under EHA–B were recently transferred to title 34 (Education) of the CFR (45 FR 77368, November 21, 1980). The EHA–B regulations were transferred and redesignated as 34 CFR Part 300. Individual section numbers, however, have not changed. For example, the sections on IEP's, previously 45 CFR 121a.340–121a.349, have been redesignated as 34 CFR 300.340–300.349.

Call for Public Comment

The Secretary is interested in receiving public comments on the extent to which the Department should provide further guidance on individualized education programs. These comments may be sent at any time to the Department contact person identified in the beginning of this document.

(Catalog of Federal Domestic Assistance No. 84.027, Education of Handicapped Children, Part B)

Dated: January 9, 1981.

Shirley M. Hufstedler,

Secretary of Education.

34 CFR Part 300 is amended by adding the following appendix:

Appendix—Notice of Interpretation

I. Purpose of the IEP

II. IEP Requirements

§ *300.340 Definition*

§ *300.341 State educational agency responsibility*

1. Who is responsible for ensuring the development of IEPs for handicapped children served by a public agency other than an LEA?

2. For a child placed out of State by a public agency, is the placing or receiving State responsible for the child's IEP?

§ *300.342 When individualized education programs must be in effect*

3. In requiring that an IEP be in effect before special education and related services are provided, what does "be in effect" mean?

4. How much of a delay is permissible between the time a handicapped child's IEP is finalized and when special education is provided?

5. For a handicapped child receiving special education for the first time, when must an IEP be developed—before placement or after placement?

6. If a handicapped child has been receiving special education in one LEA and moves to another community, must the new LEA hold an IEP meeting before the child is placed in a special education program?

§ *300.343 Meetings*

7. What is the purpose of the 30 day timeline in § 300.343(c)?

8. Must the agency hold a separate meeting to determine a child's eligibility for special education and related services, or can this step be combined with the IEP meeting?

9. Must IEPs be reviewed or revised at the beginning of each school year?

10. How frequently must IEP meetings be held and how long should they be?

11. Who can initiate IEP meetings?

12. May IEP meetings be tape-recorded?

§ *300.344 Participants in meetings*

(Agency representative)

13. Who can serve as the "representative of the public agency" at an IEP meeting?

14. Who is the "representative of the public agency" if a handicapped child is served by a public agency other than the SEA or LEA?

(The child's teacher)

15. For a handicapped child being considered for initial placement in special education, which teacher should attend the IEP meeting?

16. If a handicapped child is enrolled in both regular and special education classes, which teacher should attend the IEP meeting?

17. If a handicapped child in high school attends several regular classes, must all of the child's regular teachers attend the IEP meeting?

18. If a child's primary handicap is a speech impairment, must the child's regular teacher attend the IEP meeting?

19. If a child is enrolled in a special education class because of a primary handicap and also receives speech-language pathology services, must both specialists attend the IEP meeting?

(The child, parents, other individuals)

20. When may representatives of teacher organizations attend IEP meetings?

21. When may a handicapped child attend an IEP meeting?

22. Do the parents of a handicapped student retain the right to attend the IEP meeting when the student reaches the age of majority?

23. Must related services personnel attend IEP meetings?

24. Are agencies required to use a case manager in the development of a handicapped child's IEP?

25. For a child with a suspected speech impairment, who must represent the evaluation team at the IEP meeting?

§ *300.345 Parent participation*

26. What is the role of the parents at an IEP meeting?

27. What is the role of a surrogate parent at an IEP meeting?

28. Must the public agency let the parents know who will be at the IEP meeting?

29. Are parents required to sign IEPs?

30. If the parent signs the IEP, does the signature indicate consent for initial placement?

31. Do parents have the right to a copy of their child's IEP?

32. Must parents be informed at the IEP meeting of their right to appeal?

33. Does the IEP include ways for parents to check the progress of their children?

34. Must IEPs include specific "checkpoint intervals" for parents to confer with teachers and to revise or update their children's IEPs?

35. If the parents and agency are unable to reach agreement at an IEP meeting, what steps should be followed until agreement is reached?

§ *300.346 Content of the individualized education program*

(Present levels of educational performance)

36. What should be included in the statement of the child's present levels of educational performance?

(Annual goals and short term objectives)

37. Why are goals and objectives required in the IEP?

38. What are "annual goals" in an IEP?

39. What are "short term instructional objectives" in an IEP?

40. Should the IEP goals and objectives focus only on special education and related services, or should they relate to the total education of the child?

41. Should there be a relationship between the goals and objectives in the IEP and those that are in instructional plans of special education personnel?

42. When must IEP objectives be written—before placement or after placement?

43. Can short term instructional objectives be changed without initiating another IEP meeting?

(Specific special education and related services)

44. Must the IEP include all special education and related services needed by the child or only those available from the public agency?

45. Is the IEP a commitment to provide services—i.e., must a public agency provide all of the services listed in the IEP?

46. Must the public agency itself directly provide the services set out in the IEP?

47. Does the IEP include only special education and related services or does it describe the total education of the child?

48. If modifications are necessary for a handicapped child to participate in a regular education program, must they be included in the IEP?

49. When must physical education (PE) be described or referred to in an IEP?

50. If a handicapped child is to receive vocational education, must it be described or referred to in the student's IEP?

51. Must the IEP specify the amount of services or may it simply list the services to be provided?

52. Must a handicapped child's IEP indicate the extent to which the child will be educated in the regular educational program?

(Projected dates/Evaluation)

53. Can the anticipated duration of services be for more than twelve months?

54. Must the evaluation procedures and schedules be included as a separate item in the IEP?

(Other IEP content questions)

55. Is it permissible for an agency to have the IEP completed when the IEP meeting begins?

56. Is there a prescribed format or length for an IEP?

57. Is it permissible to consolidate the IEP with the individualized service plan developed under another Federal program?

58. What provisions on confidentiality of information apply to IEPs?

§ 300.347 Private school placements

59. If placement decisions are made at the time the IEP is developed, how can a private school representative attend the meeting?

§ 300.348 Handicapped children in parochial or other private schools

§ 300.349 Individualized education programs—accountability

60. Is the IEP a performance contract?

Authority: Part B of the Education of the Handicapped Act, as amended (20 U.S.C. 1411–1420), unless otherwise noted.

Individualized Education Programs (IEPs)

Interpretation of Requirements Under Part B of the Education of the Handicapped Act, As Amended by Pub. L. 94–142

I. Purpose of the IEP

There are two main parts of the IEP requirement, as described in the Act and regulations: (1) The IEP meeting(s), at which parents and school personnel jointly make decisions about a handicapped child's educational program, and (2) the IEP document itself, which is a written record of the decisions reached at the meeting. The overall IEP requirement, comprised of these two parts, has a number of purposes and functions:

a. The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to jointly decide what the child's needs are, what services will be provided to meet those needs, and what the anticipated outcomes may be.

b. The IEP process provides an opportunity for resolving any differences between the parents and the agency concerning a handicapped child's special education needs; first, through the IEP meeting, and second, if necessary, through the procedural protections that are available to the parents.

c. The IEP sets forth in writing a commitment of resources necessary to enable a handicapped child to receive needed special education and related services.

d. The IEP is a management tool that is used to ensure that each handicapped child is provided special education and related services appropriate to the child's special learning needs.

e. The IEP is a compliance/monitoring document which may be used by authorized monitoring personnel from each governmental level to determine whether a handicapped child is actually receiving the free appropriate public education agreed to by the parents and the school.

f. The IEP serves as an evaluation device for use in determining the extent of the child's progress toward meeting the projected outcomes.

Note.—The Act does not require that teachers or other school personnel be held accountable if a handicapped child does not achieve the goals and objectives set forth in the IEP. See § 300.349, *Individualized education program—accountability.*

II. IEP Requirements

This part (1) repeats the IEP requirements in §§ 300.340–300.349 of the regulations (boxed material), (2) provides additional clarification, as necessary, on sections or paragraphs of the regulations on which such clarification is needed, and (3) answers some questions regarding implementation of the IEP requirements that are not expressly addressed in the regulations. These questions and clarifying information are presented in a question and answer format immediately after the particular section of the regulations that is presented.

INDIVIDUALIZED EDUCATION PROGRAMS

§ 300.340 Definition.

As used in this part, the term "individualized education program" means a written statement for a handicapped child that is developed and implemented in accordance with §§ 300.341-300.349.

(20 U.S.C. 1401(19).)

§ 300.341 State educational agency responsibility.

(a) *Public agencies.* The State educational agency shall insure that each public agency develops and implements an individualized education program for each of its handicapped children.

(b) *Private schools and facilities.* The State educational agency shall insure that an individualized education program is developed and implemented for each handicapped child who:

(1) Is placed in or referred to a private school or facility by a public agency; or

(2) Is enrolled in a parochial or other private school and receives special education or related services from a public agency.

(20 U.S.C. 1412 (4), (6); 1413(a)(4).)

Comment: This section applies to all public agencies, including other State agencies (e.g., departments of mental health and welfare), which provide special education to a handicapped child either directly, by contract or through other arrangements. Thus, if a State welfare agency contracts with a private school or facility to provide special education to a handicapped child, that agency would be responsible for insuring that an individualized education program is developed for the child.

1. *Who is responsible for ensuring the development of IEPs for handicapped children served by a public agency other than an LEA?*

The answer will vary from State to State, depending upon State law, policy, or practice. In each State, however, the SEA is ultimately responsible for ensuring that each agency in the State is in compliance with the IEP requirements and the other provisions of the Act and regulations. (See § 300.600 regarding SEA responsibility for all education programs.)

The SEA must ensure that every handicapped child in the State has available a free appropriate public education (FAPE), regardless of which agency, State or local, is responsible for the child. While the SEA has flexibility in deciding the best means to meet this obligation (e.g., through interagency agreements), there can be no failure to provide FAPE due to jurisdictional disputes among agencies.

Note.—Section 300.2(b) states that the requirements of the Act and regulations apply to all political subdivisions of the State that are involved in the education of handicapped children, including (1) the SEA, (2) LEAs, (3) other State agencies (such as Departments of Mental Health and Welfare, and State schools for the deaf or blind), and (4) State correctional facilities.

The following paragraphs outline (1) some of the SEA's responsibilities for developing policies or agreements under a variety of interagency situations, and (2) some of the responsibilities of an LEA when it initiates the placement of a handicapped child in a school or program operated by another State agency:

a. *SEA POLICIES OR INTERAGENCY AGREEMENTS.* The SEA, through its written policies or agreements, must ensure that IEPs are properly written and implemented for all handicapped children in the State. This applies to each interagency situation that exists in the State, including any of the following: (1) When an LEA initiates the placement of a child in a school or program operated by another State agency (see "LEA-Initiated Placements" in paragraph "b", below); (2) when a State or local agency other than the SEA or LEA places a child in a residential facility or other program; (3) when parents initiate placements in public institutions; and (4) when the courts make placements in correctional facilities.

Note.—This is not an exhaustive list. The SEA's policies must cover any other interagency situation that is applicable in the State, including placements that are made for both educational and for non-educational purposes.

Frequently, more than one agency is involved in developing or implementing a handicapped child's IEP (e.g., when the LEA remains responsible for the child, even though another public agency provides the special education and related services, or when there are shared cost arrangements). It is important that SEA policies or agreements define the role of each agency involved in the situations described above, in order to resolve any jurisdictional problems that could delay the provision of a free appropriate public education to a handicapped child. For example, if a child is placed in a residential facility, any one or all of the following agencies might be involved in the development and/or implementation of the child's IEP: The child's LEA, the SEA, another State agency, an institution or school under that agency, and the LEA where the institution is located.

Note.—The SEA must also ensure that any agency involved in the education of a handicapped child is in compliance with the "least restrictive environment" provisions of the Act and regulations, and, specifically, with the requirement that each handicapped child's placement (1) be determined at least annually, (2) be based on the child's IEP, and (3) be as close as possible to the child's home (§ 300.552(a), *Placements.)*

b. *LEA-INITIATED PLACEMENTS.* When an LEA is responsible for the education of a handicapped child, the LEA is also responsible for developing the child's IEP. The LEA has this responsibility even if development of the IEP results in placement in a State-operated school or program.

Note.—The IEP must be developed before the child is placed. See Question 5, below.) When placement in a State-operated school is necessary, the affected State agency or agencies must be involved by the LEA in the development of the IEP. (See response to Question 59, below, regarding praticipation of a private school representative at the IEP meeting.)

After the child enters the State school, meetings to review or revise the child's IEP could be conducted by either the LEA or the State school, depending upon State law, policy, or practice. However, both agencies should be involved in any decisions made about the child's IEP (either by attending the IEP meetings, or through correspondence or telephone calls). There must be a clear decision, based on State law, as to whether responsibility for the child's education is transferred to the State school or remains with the LEA, since this decision determines which agency is responsible for reviewing or revising the child's IEP.

2. *For a child placed out of State by a public agency, is the placing or receiving State responsible for the child's IEP?*

The "placing" State is responsible for developing the child's IEP and ensuring that it is implemented. The determination of the specific agency in the placing State that is responsible for the child's IEP would be based on State law, policy, or practice. However, as indicated in Question 1, above, the SEA in the placing State is responsible for ensuring that the child has available a free appropriate public education.

Note.—The Department is considering the possibility of publishing a separate document on out-of-State placements. That paper would address the responsibilities of the placing and receiving States under both EHA-B and Section 504 of the Rehabilitation Act of 1973.

§ 300.342 When individualized education programs must be in effect.

(a) On October 1, 1977, and at the beginning of each school year thereafter, each public agency shall have in effect an individualized education program for every handicapped child who is receiving special education from that agency.

(b) An individualized education program must:

(1) Be in effect before special education and related services are provided to a child; and

(2) Be implemented as soon as possible following the meetings under § 300.343.

(20 U.S.C. 1412 (2)(B), (4), (6); 1414(a)(5); Pub. L. 94-142, Sec. 8(c) (1975).)

Comment. Under paragraph (b)(2), it is expected that a handicapped child's individualized education program (IEP) will be implemented immediately following the meetings under § 300.343. An exception to this would be (1) when the meetings occur during the summer or a vacation period, or (2) where there are circumstances which require a short delay (e.g., working out transportation arrangements). However, there can be no undue delay in providing special education and related services to the child.

3. *In requiring that an IEP be in effect before special education and related services are provided, what does "be in effect" mean?*

As used in the regulations, the term "be in effect" means that the IEP (1) has been developed properly (i.e., at a meeting(s) involving all of the participants specified in the Act (parent, teacher, agency representative, and, where appropriate, the child)); (2) is regarded by both the parents and agency as appropriate in terms of the child's needs, specified goals and objectives, and the services to be provided; and (3) will be implemented as written.

4. *How much of a delay is permissible between the time a handicapped child's IEP is finalized and when special education is provided?*

In general, no delay is permissible. It is expected that the special education and related services set out in a child's IEP will be provided by the agency beginning immediately after the IEP is finalized. The comment following Section 300.342 identifies some exceptions ((1) when the meetings occur during the summer or other vacation period, or (2) when there are circumstances which require a short delay, such as working out transportation arrangements). However, unless otherwise specified in the IEP, the IEP services must be provided as soon as possible following the meeting.

Note.—§ 300.346(d) requires that the IEP include the "projected dates for initiation of services."

5. *For a handicapped child receiving special education for the first time, when must an IEP be developed—before placement or after placement?*

An IEP must "be in effect *before* special education and related services are provided to a child." (§ 300.342(b)(1), emphasis added.) The appropriate placement for a given handicapped child cannot be determined until after decisions have been made about what the child's needs are and what will be provided. Since these decisions are made at the IEP meeting, it would not be permissible to first place the child and then develop the IEP. Therefore, the IEP must be developed before placement. The above requirement does not preclude temporarily placing an eligible handicapped child in a program as part of the evaluation process—before the IEP is finalized—to aid in determining the most appropriate placement for the child. It is essential that the temporary placement not become the final placement before the IEP is finalized. In order to ensure that this does not happen, the State might consider requiring LEAs to take the following actions:

a. Develop an "interim" IEP for the child, which sets out the specific conditions and timeliness for the trial placement. (See paragraph "c", below.)

b. Ensure that the parents agree to the interim placement before it is carried out, and that they are involved throughout the process of developing, reviewing, and revising the child's IEP.

c. Set a specific timeline (e.g., 30 days) for completing the evaluation and making judgments about the most appropriate placement for the child.

d. Conduct an IEP meeting at the end of the trial period in order to finalize the child's IEP.

Note.—Once a handicapped child's IEP is in effect and the child is placed in a special education program, the teacher might develop detailed lesson plans or objectives *based* on the IEP. However, these lesson plans and objectives are not required to be a part of the IEP itself. (See Questions 37–43, below, regarding IEP goals and objectives.)

6. *If a handicapped child has been receiving special education in one LEA and moves to another community, must the new LEA hold an IEP meeting before the child is placed in a special education program?*

It would not be necessary for the new LEA to conduct an IEP meeting if: (1) A copy of the child's current IEP is available; (2) the parents indicate that they are satisfied with the current IEP; and (3) the new LEA determines that the current IEP is appropriate and can be implemented as written.

If the child's current IEP is not available, or if either the LEA or the parent believes that it is not appropriate, an IEP meeting would have to be conducted. This meeting should take place within a short time after the child enrolls in the new LEA (normally, within one week).

Note.—The child must be placed in a special education program immediately after the IEP is finalized. See Question 4, above.

If the LEA or the parents believe that additional information is needed (e.g., the school records from the former LEA) or that a new evaluation is necessary before a final placement decision can be made, it would be permissible to temporarily place the child in an interim program before the IEP is finalized. (See Question 5, above.)

§ 300.343 Meetings.

(a) *General.* Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising a handicapped child's individualized education program.

(b) *Handicapped children currently served.* If the public agency has determined that a handicapped child will receive special education during school year 1977–1978, a meeting must be held early enough to insure that an individualized education program is developed by October 1, 1977.

(c) *Other handicapped children.* For a handicapped child who is not included under paragraph (b) of this action, a meeting must be held within thirty calendar days of a determination that the child needs special education and related services.

(d) *Review.* Each public agency shall initiate and conduct meetings to periodically review each child's individualized education program and if appropriate revise its provisions. A meeting must be held for this purpose at least once a year.

(20 U.S.C. 1412 (2)(B), (4), (6); 1414(a)(5).)

Comment. The dates on which agencies must have individualized education programs (IEPs) in effect are specified in § 300.342 (October 1, 1977, and the beginning of each school year thereafter). However, except for new handicapped children (i.e., those evaluated and determined to need special education after October 1, 1977), the timing of meetings to develop, review, and revise IEPs is left to the discretion of each agency.

In order to have IEPs in effect by the dates in § 300.342, agencies could hold meetings at the end of the school year or during the summer preceding those dates. In meeting the October 1, 1977 timeline, meetings could be conducted up through the October 1 date. Thereafter, meetings may be held any time throughout the year, as long as IEPs are in effect at the beginning of each school year.

The statute requires agencies to hold a meeting at least once each year in order to review, and if appropriate revise, each child's IEP. The timing of those meetings could be on the anniversary date of the last IEP meeting on the child, but this is left to the discretion of the agency.

7. *What is the purpose of the 30 day timeline in Section 300.343(c)?*

The 30 day timeline in § 300.343(c) ensures that there will not be a significant delay between the time a child is evaluated and when the child begins to receive special education. Once it is determined—through the evaluation—that a child is handicapped, the public agency has *up to* 30 days to hold an IEP meeting.

Note.—See Questions 4 and 5, above, regarding finalization of IEP and placement of the child.

8. *Must the agency hold a separate meeting to determine a child's eligibility for special education and related services, or can this step be combined with the IEP meeting?*

Paragraph (e) of § 300.532 *(Evaluation procedures)* provides that the evaluation of each handicapped child must be "made by a multidisciplinary team or group of persons * * *". The decisions regarding (1) whether the team members actually meet together, and (2) whether such meetings are separate from the IEP meeting, are matters that are left to the discretion of State or local agencies.

In practice, some agencies hold separate eligibility meetings with the multidisciplinary team before the IEP meeting.

Note.—When separate meetings are conducted, placement decisions would be made at the IEP meeting. However, placement options could be discussed at the eligibility meeting.

Other agencies combine the two steps into one. If a combined meeting is conducted, the public agency must include the parents as participants at the meeting. (See § 300.345 for requirements on parent participation.)

Note.—If, at a separate eligibility meeting, a decision is made that a child is *not* eligible for special education, the parents should be notified about the decision.

9. *Must IEPs be reviewed or revised at the beginning of each school year?*

No. The basic requirement in the regulations is that IEPs must *be in effect* at the beginning of each school year. Meetings must be conducted at least once each year to review and, if necessary, revise each handicapped child's IEP. However, the meetings may be held anytime during the year, including (1) at the end of the school year, (2) during the summer, before the new school year begins, or (3) on the anniversary date of the last IEP meeting on the child.

10. *How frequently must IEP meetings be held and how long should they be?*

Section 614(a)(5) of the Act provides that each public agency must hold meetings periodically, but not less than annually, to review each child's IEP and, if appropriate, revise its provisions. The legislative history of the Act makes it clear that there should be as many meetings a year as any one child may need. (121 Cong. Rec. S20428–29 (Nov. 19, 1975) (remarks of Senator Stafford))

There is no prescribed length for IEP meetings. In general, meetings (1) will be longer for initial placements and for children who require a variety of complex services, and (2) will be shorter for continuing placements and for children who require only a minimum amount of services. In any event, however, it is expected that agencies will allow sufficient time at the meetings to ensure meaningful parent participation.

11. *Who can initiate IEP meetings?*

IEP meetings are initiated and conducted at the descretion of the public agency. However, if the parents of a handicapped child believe that the child is not progressing satisfactorily or that there is a problem with the child's current IEP, it would be appropriate for the parents to request an IEP meeting. The public agency should grant any reasonable request for such a meeting.

Note.—Under § 300.506(a), the parents or agency may initiate a due process hearing at any time regarding any matter related to the child's IEP.

If a child's teacher(s) feels that the child's placement or IEP services are not appropriate to the child, the teacher(s) should follow agency procedures with respect to (1) calling or meeting with the parents and/or (2) requesting the agency to hold another meeting to review the child's IEP.

12. *May IEP meetings be tape-recorded?*

The use of tape recorders at IEP meetings is not addressed by either the Act or the regulations. Although taping is clearly not required, it is permissible at the option of either the parents or the agency. However, if the recording is maintained by the agency, it is an "education record", within the meaning of the Family Educational Rights and Privacy Act ("FERPA"; 20 U.S.C. 1232g), and would, therefore, be subject to the confidentiality requirements of the regulations under both FERPA (34 CFR Part 99) and EHA–B (34 CFR 300.560–.565).

§ 300.344 Participants in meetings.

(a) *General.* The public agency shall insure that each meeting includes the following participants:

(1) A representative of the public agency, other than the child's teacher, who is qualified to provide, or supervise the provision of, special education.

(2) The child's teacher.

(3) One or both of the child's parents, subject to § 300.345.

(4) The child, where appropriate.

(5) Other individuals at the discretion of the parent or agency.

(b) *Evaluation personnel.* For a handicapped child who has been evaluated for the first time, the public agency shall insure:

(1) That a member of the evaluation team participates in the meeting; or

(2) That the representative of the public agency, the child's teacher, or some other person is present at the meeting, who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.

(20 U.S.C. 1401(19); 1412 (2)(B), (4), (6); 1414(a)(5).)

Comment. 1. In deciding which teacher will participate in meetings on a child's individualized education program, the agency may wish to consider the following possibilities:

(a) For a handicapped child who is receiving special education, the "teacher" could be the child's special education teacher. If the child's handicap is a speech impairment, the "teacher" could be the speech-language pathologist.

(b) For a handicapped child who is being considered for placement in special education, the "teacher" could be the child's regular teacher, or a teacher qualified to provide education in the type of program in which the child may be placed, or both.

(c) If the child is not in school or has more than one teacher, the agency may designate which teacher will participate in the meeting.

2. Either the teacher or the agency representative should be qualified in the area of the child's suspected disability.

3. For a child whose primary handicap is a speech impairment, the evaluation personnel participating under paragraph (b)(1) of this section would normally be the speech-language pathologist.

13. *Who can serve as the "representative of the public agency" at an IEP meeting?*

The "representative of the public agency" could be any member of the school staff, other than the child's teacher, who is "qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children." (Section 602(19) of the Act.) Thus, the agency representative could be (1) a qualified special education administrator, supervisor, or teacher (including a speech-language pathologist), or (2) a school principal or other administrator—if the person is qualified to provide, or supervise the provision of, special education.

Each State or local agency may determine which specific staff member will serve as the agency representative. However, the representative should be able to ensure that whatever services are set out in the IEP will actually be provided and that the IEP will not be vetoed at a higher administrative level within the agency. Thus, the person selected should have the authority to commit agency resources (i.e., to make decisions about the specific special education and related services that the agency will provide to a particular child).

For a handicapped child who requires only a limited amount of special education, the agency representative able to commit appropriate resources could be a special education teacher, or a speech-language pathologist, other than the child's teacher. For a child who requires extensive special education and related services, the agency representative might need to be a key administrator in the agency.

Note.—IEP meetings for continuing placements could be more routine than those for initial placements, and, thus, might not require the participation of a key administrator.

14. *Who is the "representative of the public agency" if a handicapped child is served by a public agency other than the SEA or LEA?*

The answer depends on which agency is responsible, under State law, policy, or practice, for any one or all of the following: (1) The child's education, (2) placing the child, and (3) providing (or paying for the provision of) special education and related services to the child.

In general, the agency representative at the IEP meeting would be a member of the agency or institution that is responsible for the child's education. For example, if a State agency (1) places a child in an institution, (2) is responsible under State law for the child's education, and (3) has a qualified special education staff at the institution, then a member of the institution's staff would be the agency representative at the IEP meetings.

Sometimes there is no special education staff at the institution, and the children are served by special education personnel from the LEA where the institution is located. In this situation, a member of the LEA staff would usually serve as the agency representative.

Note.—In situations where the LEA places a child in an institution, paragraph "b" of the response to Question 1, above, would apply.

15. *For a handicapped child being considered for initial placement in special education, which teacher should attend the IEP meeting?*

The teacher could be either (1) a teacher qualified to provide special education in the child's area of suspected disability, or (2) the child's regular teacher. At the option of the agency, both teachers could attend. In any event, there should be at least one member of the school staff at the meeting (e.g., the agency representative or the teacher) who is qualified in the child's area of suspected disability.

Note.—Sometimes more than one meeting is necessary in order to finalize a child's IEP. If, in this process, the special education teacher who will be working with the child is identified, it would be useful to have that teacher participate in the meeting with the parents and other members of the IEP team in finalizing the IEP. When this is not possible, the agency should ensure that the teacher is given a copy of the child's IEP as soon as possible after the IEP is finalized and before the teacher begins working with the child.

16. *If a handicapped child is enrolled in both regular and special education classes, which teacher should attend the IEP meeting?*

In general, the teacher at the IEP meeting should be the child's special education teacher. At the option of the agency or the parent, the child's regular teacher also might attend. If the regular teacher does not attend, the agency should either provide the regular teacher with a copy of the IEP or inform the regular teacher of its contents. Moreover, the agency should ensure that the special education teacher, or other appropriate support person, is able, where necessary, to consult with and be a resource to the child's regular teacher.

17. *If a handicapped child in high school attends several regular classes, must all of the child's regular teachers attend the IEP meeting?*

No. Only one teacher must attend. However, at the option of the LEA, additional teachers of the child may attend. The following points should be considered in making this decision:

a. Generally, the number of participants at IEP meetings should be small. Small meetings have several advantages over large ones. For example, they (1) allow for more open, active parent involvement, (2) are less costly, (3) are easier to arrange and conduct, and (4) are usually more productive.

Note.—In an informal examination of IEPs from five States, Department staff found that, on the average, IEP meetings were attended by four persons.

b. While large meetings are generally inappropriate, there may be specific circumstances in which the participation of additional staff would be beneficial. When the participation of the regular teachers is considered by the agency or the parents to be beneficial to the child's success in school (e.g., in terms of the child's participation in the regular education program), it would be appropriate for them to attend the meeting.

c. Although the child's regular teachers would not routinely attend IEP meetings, they should either (1) be informed about the child's IEP by the special education teacher or agency representative, and/or (2) receive a copy of the IEP itself.

18. *If a child's primary handicap is a speech impairment, must the child's regular teacher attend the IEP meeting?*

No. A speech-language pathologist would usually serve as the child's "teacher" for purposes of the IEP meeting. The regular teacher could also attend at the option of the school.

19. *If a child is enrolled in a special education class because of a primary handicap, and also receives speech-language pathology services, must both specialists attend the IEP meeting?*

No. It is not required that both attend. The special education teacher would attend the meeting as the child's "teacher". The speech-language pathologist could either (1) participate in the meeting itself, or (2) provide a written recommendation concerning the nature, frequency, and amount of services to be provided to the child.

20. *When may representatives of teacher organizations attend IEP meetings?*

Under the Family Educational Rights and Privacy Act ("FERPA"; 20 U.S.C.

1232g) and implementing regulations (34 CFR Part 99), officials of teacher organizations may not attend IEP meetings at which personally identifiable information from the student's education records may be discussed—except with the prior written consent of the parents. (See 34 CFR 99.30(a)(1).)

In addition, EHA–B does not provide for the participation of representatives of teacher organizations at IEP meetings. The legislative history of the Act makes it clear that attendance at IEP meetings should be limited to those who have an intense interest in the child. (121 Cong. Rec. S10974 (June 18, 1975) (remarks of Sen. Randolph).) Since a representative of a teacher organization would be concerned with the interests of the teacher rather than the interests of the child, it would be inappropriate for such an official to attend an IEP meeting.

21. *When may a handicapped child attend an IEP meeting?*

Generally, a handicapped child should attend the IEP meeting whenever the parent decides that it is appropriate for the child to do so. Whenever possible, the agency and parents should discuss the appropriateness of the child's participation before a decision is made, in order to help the parents determine whether or not the child's attendance will be (1) helpful in developing the IEP and/or (2) directly beneficial to the child. The agency should inform the parents before each IEP meeting—as part of the "notice of meeting" required under § 300.345(b)—that they may invite their child to participate.

Note.—The parents and agency should encourage older handicapped children (particular those at the secondary school level) to participate in their IEP meetings.

22. *Do the parents of a handicapped student retain the right to attend the IEP meeting when the student reaches the age of majority?*

The Act is silent concerning any modification of the rights of a handicapped student's parents when the student reaches the age of majority. The Department is considering providing further guidance on this issue in a separate document.

23. *Must related services personnel attend IEP meetings?*

No. It is not required that they attend. However, if a handicapped child has an identified need for related services, it would be appropriate for the related services personnel to attend the meeting or otherwise be involved in developing the IEP. For example, when the child's evaluation indicates the need for a specific related service (e.g., physical therapy, occupational therapy, or counseling), the agency should ensure that a qualified provider of that service either (1) attends the IEP meeting, or (2) provides a written recommendation concerning the nature, frequency, and amount of service to be provided to the child.

Note.—This written recommendation could be a part of the evaluation report.

24. *Are agencies required to use a case manager in the development of a handicapped child's IEP?*

No. However, some agencies have found it helpful to have a special educator or some other school staff member (e.g., a social worker, counselor, or psychologist) serve as coordinator or case manager of the IEP process for an individual child or for all handicapped children served by the agency. Examples of the kinds of activities which case managers might carry out are (1) coordinating the multidisciplinary evaluation; (2) collecting and synthesizing the evaluation reports and other relevant information about a child that might be needed at the IEP meeting; (3) communicating with the parents; and (4) participating in, or conducting, the IEP meeting itself.

25. *For a child with a suspected speech impairment, who must represent the evaluation team at the IEP meeting?*

No specific person must represent the evaluation team. However, a speech-language pathologist would normally be the most appropriate representative. For many children whose primary handicap is a speech impairment, there may be no other evaluation personnel involved. The comment following § 300.532 (*Evaluation procedures*) states:

> Children who have a speech impairment as their primary handicap may not need a complete battery of assessments (e.g., psychological, physical, or adaptive behavior). However, a qualified speech-language pathologist would (1) evaluate each speech impaired child using procedures that are appropriate for the diagnosis and appraisal of speech and language disorders, and (2) where necessary, make referrals for additional assessments needed to make an appropriate placement decision.

§ 300.345 Parent participation.

(a) Each public agency shall take steps to insure that one or both of the parents of the handicapped child are present at each meeting or are afforded the opportunity to participate, including:

(1) Notifying parents of the meeting early enough to insure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b) The notice under paragraph (a) (1) of this section must indicate the purpose, time, and location of the meeting, and who will be in attendance.

(c) If neither parent can attend, the public agency shall use other methods to insure parent participation, including individual or conference telephone calls.

(d) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place such as:

(1) Detailed records of telephone calls made or attempted and the results of those calls.

(2) Copies of correspondence sent to the parents and any responses received, and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) The public agency shall take whatever action is necessary to insure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

(f) The public agency shall give the parent, on request, a copy of the individualized education program.

(20 U.S.C. 1401(19); 1412 (2)(B), (4), (6); 1414(a)(5).)

Comment. The notice in paragraph (a) could also inform parents that they may bring other people to the meeting. As indicated in paragraph (c), the procedure used to notify parents (whether oral or written or both) is left to the discretion of the agency, but the agency must keep a record of its efforts to contact parents.

26. *What is the role of the parents at an IEP meeting?*

The parents of a handicapped child are expected to be equal participants along with school personnel, in developing, reviewing, and revising the child's IEP. This is an active role in which the parents (1) participate in the

discussion about the child's need for special education and related services, and (2) join with the other participants in deciding what services the agency will provide to the child.

Note.—In some instances, parents might elect to bring another participant to the meeting, e.g., a friend or neighbor, someone outside of the agency who is familiar with applicable laws and with the child's needs, or a specialist who conducted an independent evaluation of the child.)

27. *What is the role of a surrogate parent at an IEP meeting?*

A surrogate parent is a person appointed to represent the interests of a handicapped child in the educational decision-making process when that child has no other parent representation. The surrogate has all of the rights and responsibilities of a parent under EHA–B. Thus, the surrogate parent is entitled to (1) participate in the child's IEP meeting, (2) see the child's education records, and (3) receive notice, grant consent, and invoke due process to resolve differences. (See § 300.514, *Surrogate parents.*)

28. *Must the public agency let the parents know who will be at the IEP meeting?*

Yes. In notifying parents about the meeting, the agency "must indicate the purpose, time, and location of the meeting, and *who will be in attendance.*" (§ 300.345(b), emphasis added.) Where possible, the agency should give the name and position of each person who will attend. In addition, the agency should inform the parents of their right to bring other participants to the meeting. (See Question 21, above, regarding participation of the child.) It is also appropriate for the agency to ask whether the parents intend to bring a participant to the meeting.

29. *Are parents required to sign IEPs?*

Parent signatures are not required by either the Act or regulations. However, having such signatures is considered by parents, advocates, and public agency personnel to be useful.

Note.—A national survey conducted under contract with the Department indicates that, in practice, most IEPs are signed by parents.)

The following are some of the ways in which IEPs signed by parents and/or agency personnel might be used:

a. A signed IEP is one way to document who attended the meeting.

Note.—This is useful for monitoring and compliance purposes.

If signatures are not used, the agency must document attendance in some other way.

b. An IEP signed by the parents is one way to indicate that the parents approved the child's special education program.

Note.—If, after signing, the parents feel that a change is needed in the IEP, it would be appropriate for them to request another meeting. See Question 11, above.

c. An IEP signed by an agency representative provides the parents a signed record of the services that the agency has agreed to provide.

Note.—Even if the school personnel do not sign, the agency still must provide, or ensure the provision of, the services called for in the IEP.

30. *If the parent signs the IEP, does the signature indicate consent for initial placement?*

The parent's signature on the IEP would satisfy the consent requirement concerning initial placement of the child (§ 300.504(b)(1)(ii)) only if the IEP includes a statement on initial placement which meets the definition of "consent" in § 300.500:

"Consent" means that: (a) the parent has been fully informed of all information relevant to the activity for which consent is sought * * *

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and

(c) The parent understands that the granting of consent is voluntary * * * and may be revoked at any time.

31. *Do parents have the right to a copy of their child's IEP?*

Yes. Section 300.345(f) states that "the public agency shall give the parent, on request, a copy of the individualized education program." In order that parents may know about this provision, it is recommended that they be informed about it at the IEP meeting and/or receive a copy of the IEP itself a reasonable time following the meeting.

Note.—The National Committee for Citizens in Education reports that in a 1979 survey of approximately 2,500 parents of handicapped children in 46 States, nearly 60% indicated that a completed copy of the IEP had been made available for them to keep.

32. *Must parents be informed at the IEP meeting of their right to appeal?*

If the agency has already informed the parents of their right to appeal, as it is required to do under the prior notice provisions of the regulations (§§ 300.504–300.505), it would not be necessary for the agency to do so again at the IEP meeting.

• Section 300.504(a) of the regulations states that "written notice which meets the requirements under § 300.505 must be given to parents a reasonable time" before the public agency proposes or refuses "to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child."

• Section 300.505(a) states that the notice must include "(1) A full explanation of all procedural safeguards available to parents" under the due process provisions of the regulations (§§ 300.500–300.589).

The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to jointly decide upon what the child's needs are, what will be provided, and what the anticipated outcomes may be. If, during the IEP meeting, parents and school staff are unable to reach agreement, the agency should remind the parents that they may seek to resolve their differences though the due process procedures under the Act.

Note.—Section 300.506(a) states that "a parent or public educational agency may initiate a hearing on any matters described in § 300.504(a)(1) and (2)."

Every effort should be made to resolve differences between parents and school staff without resort to a due process hearing (i.e., through voluntary mediation or some other informal step). However, mediation or other informal procedures may not be used to deny or delay a parent's right to a due process hearing. (See § 300.506. *Impartial due process hearing.*)

33. *Does the IEP include ways for parents to check the progress of their children?*

In general, the answer is yes. The IEP document is a written record of decisions jointly made by parents and school personnel at the IEP meeting regarding a handicapped child's special education program. That record includes agreed upon items, such as goals and objectives, and the specific special education and related services to be provided to the child.

The goals and objectives in the IEP should be helpful to both parents and school personnel, in a general way, in checking on a child's progress in the special education program. (See Questions 37–43, below, regarding goals and objectives in the IEP.) However, since the IEP is not intended to include the specifics about a child's total educational program that are found in

daily, weekly, or monthly instructional plans, parents will often need to obtain more specific, on-going information about the child's progress—through parent-teacher conferences, report cards and other reporting procedures ordinarily used by the agency.

34. *Must IEPs include specific "checkpoint intervals" for parents to confer with teachers and to revise or update their children's IEPs?*

No. A handicapped child's IEP is not required to include specific "checkpoint intervals" (i.e., meeting dates) for reviewing the child's progress. However, in individual situations, specific meeting dates could be designated in the IEP, if the parents and school presonnel believe that it would be helpful to do so.

Although meeting dates are not required to be set out in the IEP itself, there are specific provisions in the regulations and in this document regarding agency responsibilities in initiating IEP meetings, including the following: (1) Public agencies must hold meetings periodically, but not less than annually, to review, and if appropriate, revise, each child's IEP (§ 300.343(d)); (2) there should be as many meetings a year as the child needs (see Question 10, above); and (3) agencies should grant any reasonable parental request for an IEP meeting (see Question 11, above).

In addition to the above provisions, it is expected that, through an agency's general reporting procedures for all children in school, there will be specific designated times for parents to review their children's progress (e.g., through periodic parent-teacher conferences, and/or the use of report cards, letters, or other reporting devices).

35. *If the parents and agency are unable to reach agreement at an IEP meeting, what steps should be followed until agreement is reached?*

As a general rule, the agency and parents would agree to an interim course of action for serving the child (i.e., in terms of placement and/or services) to be followed until the area of disagreement over the IEP is resolved. The manner in which this interim measure is developed and agreed to by both parties is left to the discretion of the individual State or local agency. However, if the parents and agency cannot agree on an interim measure, the child's last agreed upon IEP would remain in effect in the areas of disagreement until the disagreement is resolved. The following may be helpful to agencies when there are disagreements:

a. There may be instances where the parents and agency are in agreement about the basic IEP services (e.g., the child's placement and/or the special education services), but disagree about the provision of a particular related service (i.e., whether the service is needed and/or the amount to be provided). In such cases, it is recommended (1) that the IEP be implemented in all areas in which there is agreement, (2) that the document indicate the points of disagreement, and (3) that procedures be initiated to resolve the disagreement.

b. Sometimes the disagreement is with the placement or kind of special education to be provided (e.g., one party proposes a self-contained placement, and the other proposes resource room services). In such cases, the agency might, for example, carry out any one or all of the following steps: (1) Remind the parents that they may resolve their differences through the due process procedures under EHA–B; (2) work with the parents to develop an interim course of action (in terms of placement and/or services) which both parties can agree to until resolution is reached; and (3) recommend the use of mediation, or some other informal procedure for resolving the differences without going to a due process hearing. (See Question 32, above, regarding the right to appeal.)

c. If, because of the disagreement over the IEP, a hearing is initiated by either the parents or agency, the agency may not change the child's placement unless the parents and agency agree otherwise. (See § 300.513, *Child's status during proceedings.*) The following two examples are related to this requirement:

(1) A child in the regular fourth grade has been evaluated and found to be eligible for special education. The agency and parents agree that the child has a specific learning disability. However, one party proposes placement in a self-contained program, and the other proposes placement in a resource room. Agreement cannot be reached, and a due process hearing is initiated. Unless the parents and agency agree otherwise, the child would remain in the regular fourth grade until the issue is resolved.

On the other hand, since the child's need for special education is not in question, both parties might agree—as an interim measure—(1) to temporarily place the child in either one of the programs proposed at the meeting (self-contained program or resource room), or (2) to serve the child through some other temporary arrangement.

(2) A handicapped child is currently receiving special education under an existing IEP. A due process hearing has been initiated regarding an alternative special education placement for the child. Unless the parents and agency agree otherwise, the child would remain in the current placement. In this situation, the child's IEP could be revised, as necessary, and implemented in all of the areas agreed to by the parents and agency, while the area of disagreement (i.e., the child's placement) is being settled through due process.

Note.—If the due process hearing concerns whether or not a particular service should continue to be provided under the IEP (e.g., physical therapy), that service *would* continue to be provided to the child under the IEP that was in effect at the time the hearing was initiated, (1) unless the parents and agency agree to a change in the services, or (2) until the issue is resolved.

§ 300.346 Content of individualized education program.

The individualized education program for each child must include:

(a) A statement of the child's present levels of educational performance;

(b) A statement of annual goals, including short term instructional objectives;

(c) A statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs;

(d) The projected dates for initiation of services and the anticipated duration of the services; and

(e) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.

(20 U.S.C. 1401(19); 1412 (2)(B), (4), (6), 1414(a)(5); Senate Report No. 94-168, p. 11 (1975).)

36. *What should be included in the statement of the child's present levels of educational performance?*

The statement of present levels of educational performance will be different for each handicapped child. Thus, determinations about the content

of the statement for an individual child are matters that are left to the discretion of participants in the IEP meetings. However, the following are some points which should be taken into account in writing this part of the IEP.

a. The statement should accurately describe the effect of the child's handicap on the child's performance in any area of education that is affected, including (1) academic areas (reading, math, communication, etc.), and (2) non-academic areas (daily life activities, mobility, etc.).

Note.—Labels such as "mentally retarded" or "deaf" may not be used as a substitute for the description of present levels of educational performance.)

b. The statement should be written in objective measurable terms, to the extent possible. Data from the child's evaluation would be a good source of such information. Test scores that are pertinent to the child's diagnosis might be included, where appropriate. However, the scores should be (1) self-explanatory (i.e., they can be interpreted by all participants without the use of test manuals or other aids), or (2) an explanation should be included. Whatever test results are used should reflect the impact of the handicap on the child's performance. Thus, raw scores would not usually be sufficient.

c. There should be a direct relationship between the present levels of educational performance and the other components of the IEP. Thus, if the statement describes a problem with the child's reading level and points to a deficiency in a specific reading skill, this problem should be addressed under both (1) goals and objectives, and (2) specific special education and related services to be provided to the child.

37. *Why are goals and objectives require in the IEP?*

The statutory requirements for including annual goals and short term objectives (Section 602(19)(B)), and for having at least an annual review of a handicapped child's IEP (Section 614(a)(5)), provide a mechanism for determining (1) whether the anticipated outcomes for the child are being met (i.e., whether the child is progressing in the special education program) and (2) whether the placement and services are appropriate to the child's special learning needs. In effect, these requirements provide a way for the child's teacher(s) and parents to be able to track the child's progress in special education. However, the goals and objectives in the IEP are not intended to be as specific as the goals and objectives that are normally found in daily, weekly, or monthly instructional plans.

38. *What are "annual goals" in an IEP?*

The annual goals in the IEP are statements which describe what a handicapped child can reasonably be expected to accomplish within a twelve month period in the child's special education program. As indicated under Question 36, above, there should be a direct relationship between the annual goals and the present levels of educational performance.

39. *What are "short term instructional objectives" in an IEP?*

"Short term instructional objectives" (also called "IEP objectives") are measurable, intermediate steps between a handicapped child's present levels of educational performance and the annual goals that are established for the child. The objectives are developed based on a logical breakdown of the major components of the annual goals, and can serve as milestones for measuring progress toward meeting the goals.

In some respects, IEP objectives are similar to objectives used in daily classroom instructional plans. For example, both kinds of objectives are used (1) to describe what a given child is expected to accomplish in a particular area within some specified time period, and (2) to determine the extent to which the child is progressing toward those accomplishments.

In other respects, objectives in IEPs are different from those used in instructional plans, primarily in the amount of detail they provide. IEP objectives provide general benchmarks for determining progress toward meeting the annual goals. These objectives should be projected to be accomplished over an extended period of time (e.g., an entire school quarter or semester). On the other hand, the objectives in classroom instructional plans deal with more specific outcomes that are to be accomplished on a daily, weekly, or monthly basis. Classroom instructional plans generally include details not required in an IEP, such as the specific methods, activities, and materials (e.g., use of flash cards) that will be used in accomplishing the objectives.

40. *Should the IEP goals and objectives focus only on special education and related services, or should they relate to the total education of the child?*

IEP goals and objectives are concerned primarily with meeting a handicapped child's need for special education and related services, and are not required to cover other areas of the child's education. Stated another way, the goals and objectives in the IEP should focus on offsetting or reducing the problems resulting from the child's handicap which interfere with learning and educational performance in school. For example, if a learning disabled child is functioning several grades below the child's indicated ability in reading and has a specific problem with word recognition, the IEP goals and objectives would be directed toward (1) closing the gap between the child's indicated ability and current level of functioning, and (2) helping the child increase the ability to use word attack skills effectively (or to find some other approach to increase independence in reading).

For a child with a mild speech impairment, the IEP objectives would focus on improving the child's communication skills, by either (1) correcting the impairment, or (2) minimizing its effect on the child's ability to communicate. On the other hand, the goals and objectives for a severely retarded child would be more comprehensive and cover more of the child's school program than if the child has only a mild handicap.

41. *Should there be a relationship between the goals and objectives in the IEP and those that are in instructional plans of special education personnel?*

Yes. There should be a direct relationship between the IEP goals and objectives for a given handicapped child and the goals and objectives that are in the special education instructional plans for the child. However, the IEP is not intended to be detailed enough to be used as an instructional plan. The IEP, through its goals and objectives, (1) sets the general direction to be taken by those who will implement the IEP, and (2) serves as the basis for developing a detailed instructional plan for the child.

Note.—See Question 56, below, regarding the length of IEPs.

42. *When must IEP objectives be written—before placement or after placement?*

IEP objectives must be written before placement. Once a handicapped child is placed in a special education program, the teacher might develop lesson plans or more detailed objectives *based* on the IEP; however, such plans and objectives are not required to be a part of the IEP itself.

43. *Can short term instructional objectives be changed without initiating another IEP meeting?*

No. Section 300.343(a) provides that the agency "is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and *revising* a handicapped child's individualized education program" (emphasis added). Since a change in short term

instructional objectives constitutes a revision of the child's IEP, the agency must (1) notify the parents of the proposed change (see § 300.504(a)(1)), and (2) initiate an IEP meeting. Note, however, that if the parents are unable or unwilling to attend such a meeting, their participation in the revision of the IEP objectives can be obtained through other means, including individual or conference telephone calls (see § 300.345(c)).

44. *Must the IEP include all special education and related services needed by the child or only those available from the public agency?*

Each public agency must provide a free appropriate public education to all handicapped children under its jurisdiction. Therefore, the IEP for a handicapped child must include all of the specific special education and related services needed by the child—as determined by the child's current evaluation. This means that the services must be listed in the IEP even if they are not directly available from the local agency, and must be provided by the agency through contract or other arrangements.

45. *Is the IEP a commitment to provide services—i.e., must a public agency provide all of the services listed in the IEP?*

Yes. Each handicapped child's IEP must include all services necessary to meet the child's identified special education and related services needs; and all services in the IEP must be provided in order for the agency to be in compliance with the Act.

46. *Must the public agency itself directly provide the services set out in the IEP?*

The public agency responsible for the education of a handicapped child could provide IEP services to the child (1) directly, through the agency's own staff resources, or (2) indirectly, by contracting with another public or private agency, or through other arrangements. In providing the services, the agency may use whatever State, local, Federal, and private sources of support are available for those purposes (see § 300.301(a)). However, the services must be at no cost to the parents, and resposibility for ensuring that the IEP services are provided remains with the public agency.

47. *Does the IEP include only special education and related services or does it describe the total education of the child?*

The IEP is required to include only those matters concerning the provision of special education and related services and the extent to which the child can participate in regular education programs. (NOTE: The regulations define "special education" as specially designed instruction to meet the unique needs of a handicapped child, and "related services" as those which are necessary to assist the child to benefit from special education.) (See §§ 300.14 and 300.13, respectively.)

For some handicapped children, the IEP will only address a very limited part of their education (e.g., for a speech impaired child, the IEP would generally be limited to the child's speech impairment). For other children (e.g., those who are profoundly retarded), the IEP might cover their total education. An IEP for a physically impaired child with no mental impairment might consist only of specially designed physical education. However, if the child also has a mental impairment, the IEP might cover most of the child's education

Note.—The IEP is not intended to be detailed enough to be used as an instructional plan. See Question 41, above.

48. *If modifications are necessary for a handicapped child to participate in a regular education program, must they be included in the IEP?*

Yes. If modifications (supplementary aids and services) to the regular education program are necessary to ensure the child's participation in that program, those modifications must be described in the child's IEP (e.g., for a hearing impaired child, special seating arrangements or the provision of assignments in writing). This applies to any regular education program in which the student may participate, including physical education, art, music, and vocational education.

49. *When must physical education (PE) be described or referred to in the IEP?*

Section 300.307(a) provides that "physical education services, specially designed if necessary, must be made available to every handicapped child receiving a free appropriate public education." The following paragraphs (1) set out some of the different PE program arrangements for handicapped students, and (2) indicate whether, and to what extent, PE must be described or referred to in an IEP:

a. *Regular PE with non-handicapped students.* If a handicapped student can participate fully in the regular PE program without any special modifications to compensate for the student's handicap, it would not be necessary to describe or refer to PE in the IEP. On the other hand, if some modifications to the regular PE program are necessary for the student to be able to participate in that program, those modifications must be described in the IEP.

b. *Specially designed PE.* If a handicapped student needs a specially designed PE program, that program must be addressed in all applicable areas of the IEP (e.g., present levels of educational performance, goals and objectives, and services to be provided). However, these statements would not have to be presented in any more detail than the other special education services included in the student's IEP.

c. *PE in separate facilities.* If a handicapped student is educated in a separate facility, the PE program for that student must be described or referred to in the IEP. However, the kind and amount of information to be included in the IEP would depend on the physical-motor needs of the student and the type of PE program that is to be provided.

Thus, if a student is in a separate facility that has a standard PE program (e.g., a residential school for the deaf), and if it is determined—on the basis of the student's most recent evaluation—that the student is able to participate in that program without any modifications, then the IEP need only note such participation. On the other hand, if special modifications to the PE program are needed for the student to participate, those modifications must be described in the IEP. Moreover, if the student needs an individually designed PE program, that program must be addressed under all applicable parts of the IEP. (See paragraph "b", above.)

Note.—The Department is considering the possibility of publishing a separate document on the PE requirement under the Act and regulations.

50. *If a handicapped student is to receive vocational education, must it be described or referred to in the student's IEP?*

The answer depends on the kind of vocational education program to be provided. If a handicapped student is able to participate in the regular vocational education program without any modifications to compensate for the student's handicap, it would not be necessary to include vocational education in the student's IEP. On the other hand, if modifications to the regular vocational education program are necessary in order for the student to participate in that program, those modifications must be included in the IEP. Moreover, if the student needs a specially designed vocational education program,then vocational education must be described in all applicable areas of the student's IEP (e.g., present levels of educational performance, goals and objectives, and specific services to be

provided). However, these statements would not have to be presented in any more detail than the other special education services included in the IEP.

Note.—Regulations under the Vocational Education Act provide that (1) certain funds available under that Act for vocational programs for handicapped persons must be used in a manner consistent with the State's plan under EHA–B, and (2) the five-year State Vocational Education Plan "shall describe how the program provided each handicapped child will be planned and coordinated in conformity with and as a part of the child's individualized education program as required by the Education of the Handicapped Act." See 34 CFR 400.141(f)(10), 400.182(f) (formerly 45 CFR 104.141(f)(10), 104.182(f)).

51. *Must the IEP specify the amount of services or may it simply list the services to be provided?*

The amount of services to be provided must be stated in the IEP, so that the level of the agency's commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to that specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP.

Changes in the amount of services listed in the IEP cannot be made without holding another IEP meeting. However, as long as there is no change in the overall amount, some adjustments in scheduling the services should be possible (based on the professional judgment of the service provider) without holding another IEP meeting.

Note.— The parents should be notified whenever this occurs.

52. *Must a handicapped child's IEP indicate the extent to which the child will be educated in the regular educational program?*

Yes. Section 300.346(c) provides that the IEP for each handicapped child must include a "statement of * * * the extent to which the child will be able to particpate in regular educational programs." One way of meeting this requirement is to indicate the percent of time the child will be spending in the regular education program with non-handicapped students. Another way is to list the specific regular education classes the child will be attending.

Note.—If a severely handicapped child, for example, is expected to be in a special classroom setting most of the time, it is recommended that, in meeting the above requirement, the IEP include any non-curricular activities in which the child will be participating with non-handicapped students (e.g., lunch, assembly periods, club activities, and other special events).

53. *Can the anticipated duration of services be for more than twelve months?*

In general, the anticipated duration of services would be up to twelve months. There is a direct relationship between the anticipated duration of services and the other parts of the IEP (e.g., annual goals and short term objectives), and each part of the IEP would be addressed whenever there is a review of the child's program. If it is anticipated that the child will need a particular service for more than one year, the duration of that service could be projected beyond that time in the IEP. However, the duration of each service must be reconsidered whenever the IEP is reviewed.

54. *Must the evaluation procedures and schedules be included as a separate item in the IEP?*

No. The evaluation procedures and schedules need not be included as a separate item in the IEP, but they must be presented in a recognizable form and be clearly linked to the short term objectives.

Note.—In many instances, these components are incorporated directly into the objectives.

Other Questions About the Content of an IEP

55. *Is it permissible for an agency to have the IEP completed when the IEP meeting begins?*

No. It is not permissible for an agency to present a completed IEP to parents for their approval before there has been a full discussion with the parents of (1) the child's need for special education and related services, and (2) what services the agency will provide to the child. Section 602(9) of the Act defines the IEP as a written statement *developed in any meeting* with the agency representative, the teacher, the parent, and, whenever appropriate, the child.

It would be appropriate for agency staff to come prepared with evaluation findings, statements of present levels of educational performance, and a recommmendation regarding annual goals, short term instructional objectives, and the kind of special education and related services to be provided. However, the agency must make it clear to the parents at the outset of the meeting that the services proposed by the agency are only recommendations for review and discussion with the parents. The legislative history of Pub. L. 94–142 makes it clear that parents must be given the opportunity to be active participants in all major decisions affecting the education of their handicapped children. (See, e.g., S. Rep. No. 168, 94th Cong. 1st Sess. 13 (1975); S. Rep. No. 455 (Conference Report), 94th Cong. 1st Sess. 47–50 (1975).)

56. *Is there a prescribed format or length for an IEP?*

No. The format and length of an IEP are matters left to the discretion of State and local agencies. The IEP should be as long as necessary to adequately describe a child's program. However, as indicated in Question 41, above, the IEP is not intended to be a detailed instructional plan. The Federal IEP requirements can usually be met in a one to three page form.

Note.—In a national survey conducted under contract with the Department, it was found that 47% of the IEPs reviewed were 3 pages or less in length.

57. *Is it permissible to consolidate the IEP with an individualized service plan developed under another Federal program?*

Yes. In instances where a handicapped child must have both an IEP and an individualized service plan under another Federal program, it may be possible to develop a single, consolidated document: *Provided*, That (1) it contains all of the information required in an IEP, and (2) all of the necessary parties participate in its development.

Examples of individualized service plans which might be consolidated with the IEP are: (1) The Individualized Care Plan (Title XIX of the Social Security Act (Medicaid)), (2) the Individualized Program Plan (Title XX of the Social Security Act (Social Services)), (3) the Individualized Service Plan (Title XVI of the Social Security Act (Supplemental Security Income)), and (4) the

Individualized Written Rehabilitation Plan (Rehabilitation Act of 1973).

58. *What provisions on confidentiality of information apply to IEPs?*

IEPs are subject to the confidentiality provisions of both (1) EHA–B (Section 617(c) of the Act; §§ 300.560–300.576 of the regulations), and (2) the Family Educational Rights and Privacy Act ("FERPA", 20 U.S.C. 1232g). An IEP is an "education record" as that term is used in the FERPA and implementing regulations (34 CFR Part 99) and is, therefore, subject to the same protections as other education records relating to the student.

Note.—Under Section 99.31(a) of the FERPA regulations, an educational agency may disclose personally identifiable information from the education records of a student without the written consent of the parents "if the disclosure is—(1) To other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interests * * *" in that information.

§ 300.347 Private school placements.

(a) *Developing individualized education programs.* (1) Before a public agency places a handicapped child in, or refers a child to, a private school or facility, the agency shall initiate and conduct a meeting to develop an individualized education program for the child in accordance with § 300.343.

(2) The agency shall insure that a representative of the private school facility attends the meeting. If the representative cannot attend, the agency shall use other methods to insure participation by the private school or facility, including individual or conference telephone calls.

(3) The public agency shall also develop an individualized educational program for each handicapped child who was placed in a private school or facility by the agency before the effective date of these regulations.

(b) *Reviewing and revising individualized education programs.* (1) After a handicapped child enters a private school or facility, any meetings to review and revise the child's individualized education program may be initiated and conducted by the private school or facility at the discretion of the public agency.

(2) If the private school or facility initiates and conducts these meetings, the public agency shall insure that the parents and an agency representative:

(i) Are involved in any decision about the child's individualized education program; and

(ii) Agree to any proposed changes in the program before those changes are implemented.

(c) *Responsibility.* Even if a private school or facility implements a child's individualized education program, responsibility for compliance with this part remains with the public agency and the State educational agency.

(20 U.S.C. 1413(a)(4)(B).)

59. *If placement decisions are made at the time the IEP is developed, how can a private school representative attend the meeting?*

Generally, a child who requires placement in either a public or private residential school has already been receiving special education, and the parents and school personnel have often jointly been involved over a prolonged period of time in attempting to find the most appropriate placement for the child. At some point in this process (e.g., at a meeting where the child's current IEP is being reviewed), the possibility of residential school placement might be proposed—by either the parents or school personnel. It both agree, then the matter would be explored with the residential school. A subsequent meeting would then be conducted to finalize the IEP. At this meeting, the public agency must ensure that a representative of the residential school either (1) attends the meeting, or (2) participates through individual or conference telephone calls, or by other means.

§ 300.348 Handicapped children in parochial or other private schools.

If a handicapped child is enrolled in a parochial or other private school and receives special education or related services from a public agency, the public agency shall:

(a) Initiate and conduct meetings to develop, review, and revise an individualized education program for the child, in accordance with § 300.343; and

(b) Insure that a representative of the parochial or other private school attends each meeting. If the representative cannot attend, the agency shall use other methods to insure participation by the private school, including individual or conference telephone calls.

(20 U.S.C. 1413(a)(4)(A).)

Note.—The Department is considering publishing a separate document concerning the education of handicapped children placed in parochial or other private schools by their parents. Questions concerning IEPs for those children would be addressed in that document.

§ 300.349 Individualized education program—accountability.

Each public agency must provide special education and related services to a handicapped child in accordance with an individualized education program. However, Part B of the Act does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives.

(20 U.S.C. 1412(2)(B); 1414(a) (5), (6); Cong. Rec. at H 7152 (daily ed., July 21, 1975).)

Comment. This section is intended to relieve concerns that the individualized education program constitutes a guarantee by the public agency and the teacher that a child will progress at a specified rate. However, this section does not relieve agencies and teachers from making good faith efforts to assist the child in achieving the objectives and goals listed in the individualized education program. Further, the section does not limit a parent's right to complain and ask for revisions of the child's program, or to invoke due process procedures, if the parent feels that these efforts are not being made.

60. *Is the IEP a performance contract?*

No. Section 300.349 makes it clear that the IEP is *not* a performance contract that imposes liability on a teacher or public agency if a handicapped child does not meet the IEP objectives. While the agency must provide special education and related services in accordance with each handicapped child's IEP, the Act does not require that the agency, the teacher, or other persons be held accountable if the child does not achieve the growth projected in the written statement.

[FR Doc. 81-1803 Filed 1-16-81; 8:45 am]

BILLING CODE 4000-01-M

federal register

Monday
January 19, 1981

Part XIII

Department of Transportation

Urban Mass Transportation Administration

Service Changes and Fare Changes; Public Hearing Requirements

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 635

Public Hearing Requirements for Service Changes and Fare Changes

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Final rule.

SUMMARY: The Urban Mass Transportation Administration (UMTA) is revising its regulations implementing section 5(i)(3) of the Urban Mass Transportation Act of 1964, as amended. This section of the Act requires recipients of section 5 funds to hold public hearings or to provide an opportunity for a public hearing prior to changes in fares and prior to substantial changes in service. The revisions address several issues raised during a recent comment period concerning when a hearing must be held.

DATE: These revisions are effective on February 18, 1981.

FOR FURTHER INFORMATION CONTACT: Charlotte Adams, Office of Program Analysis, (202) 472-6997.

SUPPLEMENTARY INFORMATION: On April 17, 1980, UMTA issued a final rule implementing section 5(i)(3) (45 FR 26298). UMTA provided for public comment on the percentage tests for when a public hearing is required. A total of fifty-two written comments were received. Although comments were specifically requested on § 635.7(a), comments were received concerning all of the provisions of § 635.7. All of the comments have been considered, and revisions are being made to most of the provisions of § 635.7.

The Administrator had determined that this regulation is not a significant regulation under the criteria in the DOT Order for Improving Government Regulations (44 FR 11042, February 26, 1979).

Under the DOT Order, a full evaluation is not warranted because the expected economic impact of the regulations is minimal. The final rule revises procedural standards implementing a statutory provision.

The provisions of OMB Circular A-95 apply to this Final Rule. It covers the following programs as listed in the Catalog of Federal Domestic Assistance (CFDA): 20.507 Urban Mass Transportation Capital and Operating Assistance Formula Grants.

Discussion of the Comments Received and of Changes to the Regulations.

Several comments were received concerning the existing § 635.7(a)(2) of the regulation objecting to the "25% test" on a route basis because it is perceived as having the effect of deterring routine service adjustments. It was also pointed out that changes in service, no matter how slight, could be interpreted as "directly affecting" 100% of ridership at all times.

Three changes have been made in the regulations to address these concerns. First, because it is not UMTA's intent to inhibit day-to-day service changes, exemptions for minimum headway adjustments have been provided for. In addressing the second concern, UMTA found that the confusion over the implication of the term "direct affect" upon ridership also could apply to the determination of route miles and revenue vehicle miles, a slight change "directly affecting" 100% of these calculations. To clarify the intent of the percentage tests and to accommodate the concern over the use of the "ridership test", UMTA has eliminated ridership as a gauge of substantial change in service, and eliminated the term "directly affects." It is felt that these changes will provide a clearer understanding of the conditions which warrant a public hearing and allow the flexibility to implement routine service adjustments.

One commentor requested increased exemptions for promotional fares and services. The current regulation provides for experimental service changes and UMTA feels this provision is sufficient. However, in further recognition of the significant and utility of promotional fare programs, and in response to the request for additional flexibility to implement such programs without a public hearing, UMTA has added a new provision concerning promotional fare changes. This Section exempts periodic or daily promotional fares from the public hearing requirements for up to 180 days. As applied in the regulation, UMTA defined promotional fares as a reduction in fare on an existing service intended to provide an incentive for increased transit ridership.

Several commentors questioned the provision concerning several changes in a fiscal year that add up to the percentages in § 635.7(a). The commentors were concerned with the recordkeeping burdens associated with the requirement. The deletion of "ridership" as a test should significantly lessen any recordkeeping burdens. UMTA does not specifically require any formal records to be maintained and it is felt that transit authorities will be able to adequately determine when hearings are required.

Several comments were received concerning the provision dealing with "emergency" service changes. The comments dealt with the requirement that the Regional Administrator be notified of all emergency changes, and with the requirement that a hearing be held within 60 days if the emergency change is to be in effect for 90 days or more.

Most commentors felt that the requirement to notify the Regional Administrator is excessive and could possibly inundate UMTA with useless information especially when only a one or two day emergency change is made. UMTA agrees with the thrust of the comments and has eliminated the requirement that the Regional Administrator be notified of "emergency" service changes.

In regard to the hearing requirement for emergency changes of over 90 days, the commentors were concerned that many emergencies last more than 90 days and that in many instances few, if any, alternatives are available, and a public hearing would serve no useful purpose.

Since the purpose of section 5(i)(3) is to give the public an opportunity to participate in a transit authority's decision regarding service changes, the provision regarding "emergencies" is being revised to allow emergency service changes of up to 180 days without a public hearing. This change will meet the needs of both the transit authorities and the public.

Even though UMTA will not require transit authorities to notify the public of emergency changes lasting less than 180 days, we do encourage the authorities to widely publish changes by using all media available, and by posting notices on transit vehicles and at transit stops.

The provision concerning experimental service changes is being revised to clarify that the tests in § 635.7(a) also are to be used when an experimental service change exceeding 180 days is being made and that a new route may be added as an experiment.

One commentor suggested that UMTA adopt an alternative to the procedures outlined in § 635.7. This recommended alternative would place responsibility at the local level for developing criteria for the determination of when a hearing should be required. Although UMTA recognizes the appeal of such flexibility, we feel that implementation of this Section of the Act necessitates the development of and adherence to uniform national criteria. In addition,

UMTA must ensure compliance with the requirements of the Act.

If individual transit operators developed local criteria as a gauge of "substantial change in service" requiring a public hearing, UMTA would be put into the position of assessing the reasonableness of each local determination. This would be impractical and undesirable from the perspective of national program administration.

Similarly, a request was made that transit operators with local regulatory authority be allowed to follow their own procedures for public involvement in the adjustment of service levels. UMTA has no reservation about the appropriateness of locally determined service levels. However, as stated above, we believe it necessary to implement the Act on a nationwise basis using uniform criteria for establishing a threshold for public awareness. A transit authority is free to supplement these requirements with any local procedures for additional public involvement in the decision-making process prior to fare and service changes.

Accordingly, Part 635 of Title 49 of the Code of Federal Regulations is amended by revising § 635.7 to read as follows:

§ 635.7 When hearing is required.

(a) Except as provided elsewhere in this section, a hearing required by section 5(i)(3) of the Act must be held when—

(1) There is a change in any fare;

(2) There is any change in service of—

(i) 25 percent or more of the number of transit route miles of a route; or

(ii) 25 percent or more of the number of transit revenue vehicle miles of a route computed on a daily basis for the day of the week for which the change is made; or

(3) A new transit route is established.

(b) Reduced or free promotional fares which are instituted on a daily basis or periodically within a period of 180 days are exempt from the public hearing requirement.

(c) If a number of changes on a route in an operator's fiscal year add up to the percentages in paragraph (a) of this section, a hearing must be held prior to the last change.

(d) Headway adjustments of up to 5 minutes during peak hour service, and up to 15 minutes during non-peak hour service are exempt from the public hearing requirements.

(e) Standard seasonal variations are exempt from the public hearing requirement unless the number, timing or type of standard seasonal variations change.

(f) In an emergency situation, a service change may be implemented immediately without a public hearing being held. A public hearing on the emergency change must be held if the emergency change is to be in effect for more than 180 days and if the change meets the test of paragraph (a) (2) or (3). Examples of emergency service changes include but are not limited to those made because of a power failure for a rail or fixed guideway system, the collapse of a bridge over which bus routes pass, major road or rail construction, or inadequate supplies of fuel.

(g) Experimental service changes may be instituted for 180 days or less without a public hearing being held. The public hearing on an experimental service change is required if the experimental service change remains in effect for more than 180 days and if the change meets the tests of paragraph (a) (2) or (3). The hearing may be held prior to the institution of, or during the period of the experimental service change and will satisfy the requirement for a final public hearing if the hearing notice required by § 635.9 states that the experiment may become permanent at the end of the experimental period. If a hearing is not held prior to or during the period of the experimental service change, the service that existed prior to the change must be reinstituted at the end of 180 days and a public hearing held in accordance with § 635.9 before the experimental service may be continued.

(49 U.S.C. 1604(i)(3); 49 CFR 1.51)

Dated: January 12, 1981.

Theodore C. Lutz,

Administrator.

[FR Doc. 81-1784 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-57-M

federal register

Monday
January 19, 1981

Part XIV

Department of Transportation

Urban Mass Transportation Administration

Emergency Stockpiling of Buses

DEPARTMENT OF TRANSPORTATION

49 CFR Part 639

Emergency Stockpiling of Buses

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Final rule.

SUMMARY: The Urban Mass Transportation Administration (UMTA) is issuing a policy that allows its grantees to stockpile buses for possible future emergency use. Prior UMTA policy required grantees to sell buses being replaced and use the proceeds to offset the cost of the new buses. The revised policy permits the retention of replaced buses as part of a stockpiled reserve fleet which would ensure the availability of a larger pool of buses nationwide to respond to substantial and unexpected sudden changes in demand for service during emergencies.

EFFECTIVE DATE: February 18, 1981.

FOR FURTHER INFORMATION CONTACT: Randy Best, Office of Program Analysis, (202) 472-6997.

SUPPLEMENTARY INFORMATION:

Classification

The Administrator has determined that this regulation is not a significant regulation under the criteria in the DOT Order for Improving Government Regulations (44 FR 11042, February 26, 1979). Under the DOT Order, a full evaluation is not warranted because the expected economic impact of the regulation is minimal. The regulation establishes policy and sets out requirements concerning the stockpiling of buses.

The provisions of OMB Circular A-95 apply to this Final Rule. It covers the following programs as listed in the Catalog of Federal Domestic Assistance (CFDA):

20.205—Highway Research, Planning, and Construction (Only Transit projects funded under 23 U.S.C. 103(e)(4) and 142 (a) and (c)).

20.507—Urban Mass Transportation Capital and Operating Assistance Formula Grants.

Discussion

UMTA encourages grantees to consider stockpiling as an opportunity for low cost preparedness for potential increased capacity needs. Buses stored under this policy may be used in times of energy emergencies, as a supplement to regular transit equipment if there are unexpected changes in local conditions, or for short term use as a substitute for buses being rehabilitated.

UMTA awards capital assistance grants for bus fleet expansion, bus rehabilitation and bus replacement. This regulation will not apply to bus fleet expansion and bus rehabilitation projects in which no buses are permanently removed from active service. Through this new policy, UMTA will approve stockpiling of buses that are being removed from active service and replaced by new buses. UMTA also will permit stockpiling of buses that are no longer needed for regular transit service because of service cutbacks.

UMTA is currently in the process of developing its policy guidelines for bus replacement, fleet expansion, and reserve fleets. These guidelines will establish a comprehensive UMTA bus policy.

Background

A Notice of Proposed Rulemaking on UMTA's bus stockpiling policy was published on March 3, 1980 (45 FR 13994). This notice was published as Part 641; however, for administrative reasons the Final Rule has been changed to Part 639. Comments on the Notice of Proposed Rulemaking were invited through April 16, 1980. A total of 47 written comments were received from individuals as well as transit operators and State and local governments. Most comments expressed basic agreement with the intent of UMTA's bus stockpiling policy. In developing the Final Rule, UMTA has given consideration to all comments received. Review of the comments received indicated the desirability of making changes in the rule as it was proposed. The sections of this Final Rule which have been revised or were the subject of major interest are discussed below.

Discussion of the Comments Received and of Changes to the Rule

In the Notice of Proposed Rulemaking UMTA specifically requested responses to four issues which relate to bus stockpiling: (1) The condition of buses to be stockpiled; (2) a stockpile maintenance program; (3) conditions justifying emergency return to service; and (4) lease or loan of stockpiled buses to other transit operators. Most of the comments received address one or more of these issues.

All of the comments on the condition of buses to be stockpiled stated that the buses must be operable; however, comments differed in response to establishing a maintenance program. Several comments suggested that UMTA establish maintenance requirements for stockpiled buses to ensure that the buses remain operable, but these comments differed on what the maintenance requirements should be. Most of the comments received on the maintenance issue stated that it was a local responsibility and each transit property should determine its own maintenance needs. UMTA agrees with this position and will not establish specific maintenance requirements for stockpiled buses. However, UMTA will continue to require that stockpiled buses be maintained in a condition that allows their return to service on short notice. If not so maintained, UMTA may require the grantee to sell the buses and use the proceeds to reduce the cost of subsequent capital grants.

Responses outlining conditions which justify the return of stockpiled buses to service generally agreed that any change in local conditions that greatly increases demand for transit vehicles, such as energy emergencies, natural disasters, fire in bus storage facilities, unanticipated increases in ridership, etc., are sufficient justification. More importantly, over half of the comments received specifically stated that the return of stockpiled buses to service should be solely a local decision. Respondents disagreed with the requirement of prior UMTA approval that was included in § 641.3(g) of the Notice of Proposed Rulemaking. Respondents want the flexibility to deploy stockpiled buses to meet increased transit demand regardless of the reason for the increase. Comments indicated that requiring prior concurrence from UMTA would increase red tape and cause substantial delays in deploying buses. UMTA agrees that prior concurrence is unnecessary and has revised the Final Rule, eliminating sections that require UMTA approval to deploy stockpiled buses. In the Final Rule, grantees must notify UMTA when stockpiled buses are returned to service for a period of more than 30 consecutive days or for 90 days or more during a calendar year.

UMTA does not agree that transit authorities should be able to deploy stockpiled buses to meet increases in transit demand regardless of the reason for the increase. Under the policy, buses that are stockpiled and replaced by new buses should not be used for conventional fleet expansion purposes. Stockpiled buses that have been replaced by new buses may be deployed only during local emergencies which create sudden substantial and unexpected increases in demand for service, as described in § 639.3(h).

Comments addressing the issue of temporary lease or loan of stockpiled buses to other transit operators for emergency service stated that there

should be no federally mandated lease or loan requirements. One comment suggested that States should have this authority, but all of the other responses indicated that lease or loan decisions should be made at the local level. UMTA agrees that the appropriate level for decisions on the temporary lease or loan of stockpiled buses for emergency service is the local level. However, revenues from lease operations must be used for transit purposes and grantees must seek UMTA approval for the permanent transfer or disposal of vehicles.

A few responses outlined problems with tire lease arrangements for stockpiled buses. Transit operators that lease tires expressed reluctance to lease tires for stockpiled vehicles. While UMTA recognizes this problem we do not feel that it can be satisfactorily resolved in this policy statement. Differences in lease arrangements and local statutory requirements make a single solution impossible; therefore, this problem will be handled on a case-by-case basis.

A few comments indicated that there was no need to issue a stockpiling policy statement because there are no existing provisions which require grantees to immediately dispose of replaced vehicles. These comments misinterpret UMTA's intent in issuing a bus stockpiling policy statement. The bus stockpiling policy statement does not alter existing administrative requirements; it publicizes the option of stockpiling buses as a method of preparing for sudden substantial future increases in demand for service due to local emergencies. Most comments indicated that transit operators were previously unaware of stockpiling as an alternative to the disposal of replaced vehicles.

Accordingly, Title 49 of the Code of Federal Regulations is amended by adding a new Part 639, to read as follows:

PART 639—STOCKPILING OF BUSES

Sec.
639.1 Policy.
639.3 Requirements.

Authority: 49 U.S.C. 1604; 23 U.S.C. 103 and 142; 49 CFR 1.51.

§ 639.1 Policy.

The Urban Mass Transportation Administration will permit the stockpiling of buses by its grantees for future emergency use.

§ 639.3 Requirements.

(a) This section sets out the requirements that the Urban Mass Transportation Administration and its grantees will follow in implementing the policy set out in § 639.1.

(b) "Stockpiling" means removing buses from service and placing them into storage for use during emergencies which increase the demand for transit service.

(c) UMTA will permit the stockpiling of buses that are being replaced because they have been proven to be uneconomical to operate under current conditions in regular transit service. In addition, buses that are no longer needed for regular transit service because of service reductions may be stockpiled.

(d) New bus replacement grants need not always include provisions which reduce the project's cost by applying revenue generated from the disposal of replaced vehicles as an element of the grant contract. Instead of disposing of replaced vehicles, grantees may retain the vehicles for future emergency use.

(e) In cases of bus replacement grants that contain provisions which reduce the project's cost through the disposal of replaced buses, but where the disposal has not yet taken place, UMTA may give the grantee permission to retain the vehicles. In these cases additional UMTA funds may be available to offset 80 percent of the increased project cost due to the elimination of these provisions.

(f) Revenue obtained from the ultimate disposal of stockpiled vehicles must be used to reduce the cost of subsequent capital grants.

(g) The number of buses stored, as well as the type and size of any storage facility, must be consistent with the requirements established in local energy contingency plans.

(h) Stockpiled buses may be used only in the following situations:

(1) A national petroleum shortfall which results in a sharp increase in demand for mass transit services.

(2) As a supplement to regular transit service if unexpected changes in local conditions warrant the immediate availability of increased mass transit capacity.

(3) For short term use as a substitute for buses being rehabilitated.

(i) Grantees must notify the UMTA Regional Administrator in writing when stockpiled buses are returned to service for a period of more than 30 consecutive days or for 90 days or more during a calendar year. This notification must include a description of the conditions which justify removing the bus from the stockpile.

(j) Normal operating costs incidental to the storage of buses, preparation for storage, and if necessary, return to active service are eligible expenses for operating assistance under section 5 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1604).

(k) Under this regulation capital costs associated with the storage of stockpiled vehicles, such as purchase of land and its suitable preparation, are eligible expenses for capital assistance only under section 5 of the Urban Mass Transportation Act of 1964, as amended; section 103 of Title 23 of the United States Code (Interstate Transfer); and section 142 of Title 23 of the United States Code (Federal Aid Urban Systems).

(l) Stockpiled buses must be maintained in a condition that allows their return to service on short notice. If not so maintained, UMTA may require the grantee to sell the buses and use the proceeds to reduce the costs of subsequent capital grants. In order to maintain the service-ability of stockpiled buses, they may be used periodically as substitutes for buses in regular mass transit operations.

(m) Grantees may temporarily lease or loan stockpiled vehicles to other transit operators for emergency service. However, revenues from lease operations must be used for transit purposes. Grantees must seek UMTA approval for the permanent transfer or disposal of vehicles.

(n) Stockpiled buses may not be used for charter, school bus or other nontransit needs.

Dated: January 13, 1981.

Theodore C. Lutz,

Administrator.

[FR Doc. 81-1785 Filed 1-16-81; 8:45 am]
BILLING CODE 4910-57-M

federal register

Monday
January 19, 1981

Part XV

Department of Transportation

Federal Aviation Administration

Operations Review Program:
Notice No. 11

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 135, 145, and 147

[Docket No. 21269; Notice No. 81-1]

Operations Review Program: Notice No. 11

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice describes the FAA's disposition of certain proposals discussed at the Operations Review Conference. The FAA has determined that certain amendments to the rules applicable to aircraft and certificated operators should be proposed to expand, clarify, or simplify these rules and to provide a level of safety commensurate with the development and expansion of the aviation system. Proposals included would allow fuel jettisoning when determining landing weight for the alternate airport, would require replacement of three-pointer altimeters, would increase the number of megaphones for airplanes with more than 199 passengers, and would allow operators to reduce capacity in specified situations by blocking seats. Certain other proposals were withdrawn by their proponents. Other proposals are being removed from further consideration after review by the FAA. The proposals, withdrawals, and removals are contained in this notice.

DATES: Comments must be received on or before April 20, 1981.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn.: Rules Docket (AGC-204), Docket No. 21269, 800 Independence Avenue, SW., Washington, D.C. 20591, or delivered in duplicate to: Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591. Comments delivered must be marked: Docket No. 21269. Comments may be inspected at Room 916 between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Mr. Everett W. Pittman, Regulatory Review Branch (AVS-22), Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Indpendence Avenue, SW., Washington, D.C. 20591, Telephone: (202) 755-8714.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adoption of the proposals contained in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before the date specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. For convenience, each proposal in this notice is numbered separately. The FAA requests that interested persons, when submitting comments, refer to proposals by these numbers and by the sections to which they relate.

Commenters wishing to have the FAA acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments on Docket No. 21269." The postcard will be dated, time stamped, and returned to the commenter.

Availability of This Notice

Any person may obtain a copy of this notice of proposed rule making (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this MPRM. Persons interested in being placed on a mailing list for future NPRMs should request a copy of Advisory Circular No. 11-2 which describes the application procedures.

Background

The aviation industry in the United States and abroad has grown substantially during the last 10 years. Paralleling its rapid growth and numerous technological advances are significant changes in the operating environment in which airmen, air agencies, and aircraft operators function.

To enhance the FAA's responsiveness to the needs of the general public and the aviation community in fulfilling the agency's aviation safety responsibilities, the FAA issues Notice 79-9 (40 FR 8685; February 28, 1975), inviting all interested persons to submit proposals for consideration during the Operations Review Program. The FAA received more than 5,000 individual comments contained in 123 submissions. Based on those comments and on the compilation of proposals, the FAA prepared a number of working documents for the Operations Review Conference held in Arlington, VA. The FAA distributed those documents to each person who participated in the Operations Review Conference and to all other interested persons who requested them.

The Operations Review Conference was attended by more than 600 persons. Various committees discussed all scheduled agenda items during the conference. Summaries were given by the FAA committee chairperson at the close of the discussion on each agenda item. Persons present were given the opportunity to correct those oral summaries. Those summaries were edited, combined with an attendee list and transcripts of certain plenary session speeches, and distributed to all attendees and to other interested persons.

The Proposals

This notice deals with selected proposals concerning Parts 121, 135, 145, and 147 contained in the following Operations Review Committee Workbooks.

Committee No.	Title
1	Aircraft Equipment and Requirements.
2	Aircraft Maintenance.
3	Aircraft Operating Rules.
4	Airmen Certification.
6	Certificated Operators and Agencies.
7	Flight Attendants.
10	Special Issues.

A number of proposals contained in both the compilation and the working documents are not included in this notice. The proposals listed in Appendices I and II fall into two categories as follows: Appendix I—Proposals withdrawn by proponent; Appendix II—Proposals removed from consideration.

The Proposed Amendments

Accordingly, the Federal Aviation Administration proposes to amend Parts

121, 135, 145, and 147 of the Federal Aviation Regulations (14 CFR Parts 121, 135, 145, and 147) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

11–1. By amending § 121.197 by adding a sentence at the end to read as follows:

§ 121.197 Transport category airplanes: Turbine engine powered: Landing limitations: Alternate airports.

* * * In the case of an alternate airport for departure, as provided in § 121.617, allowance may be made for fuel jettisoning in addition to normal consumption of fuel and oil when determining the weight anticipated at the time of arrival.

Explanation. An alternate airport for departure is an airport to which, in the event of an emergency condition during or shortly after takeoff, the airplane may proceed, instead of returning to a departure airport which is below landing minimums. Fuel jettisoning is allowed under §§ 121.191 and 121.193 if that airplane returns to the departure airport. Thus, allowance may be made for jettisoning fuel, in addition to the normal consumption of fuel and oil, when determining the anticipated landing weight at the alternate airport for departure.

Ref. Proposal 407; § 121.197; Committee 3; Agenda Item C–3.

11–2. By revising § 121.285 (b) and (c), and adding a new § 121.285(d) to read as follows:

§ 121.285 Carriage of cargo in passenger compartments.

* * * * *

(b) Cargo (including carry-on baggage) may be carried anywhere in the passenger compartment if it is carried in an approved cargo bin that meets the following requirements.

* * * * *

(c) Cargo (including carry-on baggage) may be carried forward or alongside of seated passenger compartment occupants if the cargo is restrained in accordance with the following:

* * * * *

(d) Cargo (including carry-on baggage) may be carried aft of seated passenger compartment occupants if the cargo is restrained in accordance with paragraph (c) of this section and a bulkhead or divider of sufficient strength to withstand the cargo-induced inertia forces specified in § 25.561(b)(3) is directly forward of the cargo.

Explanation. Present § 121.285 specifies minimum safety standards for the carriage of cargo (including carry-on baggage) in passenger compartments by specifying the location of that cargo relative to seated passengers. Since flight attendants are considered crewmembers and not passengers, the current language excludes them when establishing those locations. Flight attendants should be afforded the same level of safety as the passengers. Substitution of the words "passenger compartment occupants" for the word "passengers" in §§ 121.285 (b) and (c) would require consideration of all occupants when establishing cargo location. However, this change without other clarifying changes would eliminate the carriage of cargo in the passenger cabin other than in approved cargo bins, as a flight attendant is usually seated at the most forward bulkhead near the entrance door for emergency evacuation purposes.

The phrase "foremost seated passengers" in current § 121.285(b) is somewhat confusing and is unnecessary, since cargo can be carried forward, aft, or alongside of seated occupants if it is carried in an approved cargo bin. Accordingly, § 121.285(b) as proposed is rewritten to clarify that cargo may be carried anywhere in a passenger compartment if it is carried in an approved cargo bin.

Section 121.285(c) as proposed is rewritten to remove any mention of cargo bins because of the proposed revision to § 121.285(b). Also, new wording is proposed which states that cargo may be carried forward of or alongside of seated passenger compartment occupants if it is restrained in accordance with §§ 121.285 (c)(1) through (c)(5). Finally, proposed § 121.285(d) would permit the carriage of cargo aft of seated passenger compartment occupants if it is placed directly aft of a structural bulkhead or divider of sufficient strength to withstand crash inertia loads and is also restrained in accordance with § 121.285 (c)(1) through (c)(5).

Ref. Proposals 413 and 414; § 121.285; Committee 6A; Agenda Item E.

11–3. By amending § 121.291 by revising paragraphs (a) (1) and (2) and adding a new paragraph (a)(3), by redesignating paragraphs (b) and (c) as (d) and (f), respectively, and by adding new paragraphs (b), (c), and (e) to read as follows:

§ 121.291 Demonstration of emergency evacuation procedures.

(a) * * *

(1) Upon increasing the passenger seating capacity by more than 5 percent above the maximum number previously evacuated in a successful seating capacity demonstration, but not more than the maximum number certificated for the airplane;

(2) Following rebuilding or alteration that significantly changes the passenger cabin seating configuration or emergency exits; or

(3) Upon the initial introduction of a type and model of airplane into passenger-carrying operations.

(b) However, the demonstration required under paragraph (a) need not be repeated for any airplane type or model for which a successful full seating capacity demonstration has been performed by an aircraft manufacturer under Part 25 of this chapter or by a Part 121 certificate holder providing—

(1) The passenger seating capacity for which a successful full seating capacity demonstration has been conducted has not been increased by more than 5 percent, but not more than the maximum number certificated for the airplane;

(2) The passenger cabin interior configuration, including the location of flight attendants, has not been changed in a manner that will affect the emergency evacuation of passengers; and

(3) Evacuation procedures, number of flight attendants, emergency exits, aisle width, and seat pitch used by each certificate holder must be equal to or exceed those used in the successful full seating capacity demonstration.

(c) A certificate holder who, under paragraph (b), uses a full seating capacity demonstration performed by the aircraft manufacturer under Part 25 or by a Part 121 certificate holder must—

(1) Demonstrate the effectiveness of its crewmember emergency training and evacuation procedures by conducting a demonstration, not requiring passengers and observed by the Administrator, in which the flight attendants for that type aircraft open 50-percent of the floor-level exists and 50 percent of the non-floor-level exits whose opening by a flight attendant is defined as an emergency evacuation duty under § 121.397, and deploy 50 percent of the exit slides. The exits and slides must be ready for use within 15 seconds or within the same time used in the certification demonstration, whichever is less, and the Administrator selects the flight attendants at random to be used and the exists to be opened;

(2) Apply for and obtain approval from the Flight Standards District Office maintaining surveillance of its operations prior to conducting the demonstration;

(3) Use flight attendants in this demonstration who have completed the certificate holder's FAA-approved

training program for the type and model of aircraft and passed a written examination on the emergency equipment and procedures; and

(4) Apply and obtain approval from the FAA certificate-holding office having jurisdiction over its operations before commencing operations with this type and model of aircraft.

* * * * *

(e) For a type and model aircraft for which the simulated ditching specified in paragraph (d) has been conducted by a Part 121 certificate holder, the requirements of paragraphs (b)(2), (4) and (5) of Appendix D to this part are complied with if each life raft is removed from stowage, one life raft designated by the Administrator is inflated, and crewmembers assigned to the inflated life raft indicate the location of stowed emergency equipment and describe its use.

* * * * *

Explanation. This proposal would allow a Part 121 certificate holder to use the results of a successful full-scale demonstration conducted by a manufacturer under Part 25 or by another Part 121 certificate holder rather than conduct a full-scale demonstration of emergency evacuation procedures, provided certain additional conditions are met. For instance, the certificate holder must conduct a partial demonstration by opening 50 percent of the floor-level exits and 50 percent of the non-floor-level exits whose opening by a flight attendant is defined as an emergency evacuation duty under § 121.397, and deploying 50 percent of the exit slides within 15 seconds. It is the intent of this regulation that the flight attendants be selected at random and that they not be coached on the procedures just prior to the demonstration. This proposal reduces the number of emergency evacuation demonstrations that need be conducted. This in turn reduces the probability of injury caused by hundreds of passengers exiting an aircraft during a demonstration. The FAA has granted several exemptions from the current rule which allow these partial demonstrations and has experienced no derogation of safety. By incorporating the provisions of these exemptions into the regulations, the costs and time involved in submitting and revising petitions for exemption would be eliminated. A full-scale demonstration is still required if the conditions for the partial demonstration are not met.

In Airworthiness Review Amendment No. 7 (43 FR 50578; October 30, 1978), the emergency evacuation demonstration conditions of § 25.803(c) were upgraded to those required by Part 121 so that one demonstration may serve both airworthiness and operations requirements. Thus, the proposed change to § 121.291(b) allows the operators to take advantage of a condition that was envisaged when § 25.803(c) was revised.

Proposed § 121.291(a)(2) refers to significant changes to the passenger seating configuration or emergency exits, whereas the present rule requires an emergency evacuation upon a major change. The word "major" was changed to "significant" to preclude erroneously associating it with major and minor repairs and alterations as defined in Part 43. Some minor repairs or alterations could significantly change the passenger seating configuration and require an emergency evacuation.

This proposal also clarifies the requirements concerning successfully demonstrating ditching procedures for those certificate holders who are operating a type and model of aircraft for which successful ditching demonstrations have been previously conducted by other certificate holders. Additionally, the proposal provides for the inflation of one life raft since such a demonstration provides a sufficient test of safety procedures.

Ref. Proposal 415; § 121.291(a); Committee 6A; Agenda Item E.

11–4. By revising § 121.301 to read as follows:

§ 121.301 Applicability.

This subpart prescribes instrument and equipment requirements for all certificate holders, operators, and persons on board the airplane.

Explanation. Various sections within Subpart K pertain solely to persons on board an aircraft. For example, § 121.311(b) speaks to each person on board, § 121.317(c) speaks to each passenger or crewmember, and § 121.327(b)(3) speaks to flight crewmembers. Thus, the current language of the applicability statement in § 121.301 is somewhat misleading in referring only to certificate holders and would be revised to more fully spell out the applicability.

Ref. Proposal 418; § 121.301; Committee 1; Agenda item C–1.

11–5. By revising § 121.305(b) to read as follows:

§ 121.305 Flight and navigational equipment.

* * * * *

(b) An altimeter that meets the performance and environmental standards of the applicable Technical Standard Order, or the equivalent. However, after (a date two years after the effective date of this amendment), the altimeter for turbojet powered airplanes must not be a three-pointer type.

* * * * *

Explanation. Current § 121.305(b) requires the use of a sensitive altimeter for airplanes operating under Part 121 of this chapter. The term "sensitive" altimeter is not defined. This proposal requires the use of an altimeter that meets the standards of the applicable Technical Standard Order, or the equivalent.

A joint FAA–DOT study (Report FAA–RD–73–108, dated September 1973) found the three-pointer altimeters to be the least desirable type of altimeter since they are more easily misread than other types of altimeters. Further, the study indicated that the high ascent and descent rate characteristics of turbojet powered airplanes is a contributing factor in the misreading of these altimeters. Two Naval Research Laboratory Altitude Comparison Projects (Numbers 1522 and 1641, April 1964, and September 1965, respectively) yielded substantially the same results. These reports have been docketed for public examination.

The Special Air Safety Advisory Group (SASAG) also recommended that the use of three-pointer altimeters by prohibited in all large turbojet powered airplanes because such altimeters can easily be misread. The SASAG report cites the cases of a DC–8 descending to San Francisco on a clear moonless night and a 707 descending into Chicago in instrument weather conditions where near crashes were allegedly caused by the misreading of three-pointer altimeters.

Advance Notice of Proposed Rule Making (ANPRM) No. 77–18 (42 FR 43408; August 29, 1977) solicited comments and supporting data concerning alleged deficiencies in the three-pointer altimeter. A total of 44 comments were received in response to ANPRM 77–18. The FAA conducted a preliminary economic impact evaluation in 1978 to determine the cost of switching from three-pointer altimeters. That analysis used a per aircraft cost of $10,000 and estimated the total number requiring replacement to be 280 airplanes under Part 135 and 1,540 airplanes under Part 121. This results in a total cost impact of $18,200,000. The FAA recognizes that these figures are somewhat outdated. Inflation will undoubtedly have increased the per aircraft cost. Conversely the FAA is aware that a continuing program for conversion from three-pointer altimeters has been in effect and that the total still

requiring conversion could be made lower.

After careful consideration of the comments received, the SASAG report, and the moderate cost estimated in a preliminary economic impact evaluation, the FAA concludes that safety considerations justify proposing amendments to the regulations which will bring about the replacement of the three-pointer altimeters in certain turbojet powered airplanes within a reasonable period of time. Considering the number of airplanes in the fleet having three-pointer altimeters, the present availability of new altimeters, the probable redesign of instrument panels required, and the airline scheduled maintenance periods during which the altimeters could be more cost effectively installed, a two-year applicability date is believed to be appropriate. The FAA requests that specific comments and data supporting or opposing this time period and the economic impact of the conversion be submitted in response to this notice.

Ref. Proposal 421; § 121.305; Committee 1; Agenda Item C–1.

11–6. By amending §§ 121.309(f)(1) and (f)(2) by replacing the words "to a normal" with the words "from a required", by inserting in § 121.309(f)(2) the phrase "and less than 200" between "99" and "passengers", and by adding a new § 121.309(f)(3) to read as follows:

§ 121.309 Emergency equipment.

* * * * *

(f) * * *

(3) Three megaphones in the passenger cabin on each airplane with a seating capacity of more than 199 passengers, one installed at the forward end, one installed at the most rearward location, and one in the mid-section of the airplane. These megaphones must be readily accessible to a required flight attendant seat.

Explanation. This proposal increases the number of portable battery-powered megaphones accessible to flight attendants on passenger-carrying airplanes with a seating capacity of more than 199 passengers from two to three. The present rule requires one megaphone for airplanes with a seating capacity of 60–99 passengers and two for airplanes with a seating capacity of more the 99 passengers. When two megaphones re required, they must be located at the forward and rearward extremes of the airplane. With the increased size of modern passenger airplanes, emergency information transmitted over megaphones located at the two extremes of the airplane may not be audible to passengers near the middle. Thus, for airplanes with a seating capacity of more than 199 passengers, a third, mid-fuselage megaphone is proposed.

This proposal would also revise §§ 121.309(f)(1) and (f)(2) to require the megaphones to be readily accessible from a required flight attendant seat. Because "required" flight attendant seats are normally occupied during takeoff and landing, this will ensure that the megaphone is normally at an occupied seat for all passenger seating configurations. An other than required flight attendant seat may not be occupied on all flights.

Ref. Proposal 428; § 121.309; Committee 1; Agenda Item C–2.

11–7. By revising § 121.318(b)(4) and adding a new (b)(5) to read as follows:

§ 121.318 Public address system.

* * * * *

(b) * * *

(4) After (a date 2 years after the effective date of this amendment), transmission must be audible in each occupiable compartment, at each passenger and flight attendant seat, and in each lavatory.

(5) After (a date 2 years after the effective date of this amendment), it must be capable of operation from a power source independent of the main electrical generating system, without jeopardizing the inflight emergency electrical power system.

Explanation. The proposal to revise paragraph (b)(4) provides public address capability in all occupiable compartments, including lower lobe galleys when installed. This revision would ensure that flight attendants who may be in the lower lobe galley spaces receive information disseminated by way of the public address system to enable them to perform their safety functions more effectively. The FAA estimates that a 2-year compliance time is necessary for § 121.318(b)(4) since many operating airplanes do not have public address system speakers in each occupiable compartment or in each lavatory. This allows sufficient time for design, manufacture, and installation of the equipment. Specific comments on the appropriateness of the time period, including the number of airplanes affected and the costs involved, are requested when commenting on this proposal.

Proposed § 121.318(b)(5) requires power to be supplied to the public address system from a power source independent of the main electrical generating system. Currently, the only type of emergency evacuation communications equipment required is the portable megaphone required by § 121.309. The National Transportation Safety Board's Special Study, NTSB–AAS–74–3, "Safety Aspects of Emergency Evacuations from Air Carrier Aircraft", revealed that although the regulations do not require public address systems for emergency communications, these systems are often used to instruct the crew to initiate emergency evacuations. However, since the public address systems are not always connected to the emergency electrical supply, they are not always usable when the aircraft power is interrupted. There have been several incidents where the pilot aborted the takeoff and stopped. All switches were shut off and the flight crew could not readily order an emergency evacuation because no electrical power was available to the public address system. Also, there has been an accident caused by the failure in flight of all four engines due to fuel depletion. The flight crew's ability to give preimpact warning and instruction was hampered because the aircraft's public address system lost power when the engines stopped operating. Reliable communication is important to initiate and direct an evacuation or give preimpact instructions; thus, the power source for the public address system should be independent of the main supply.

The FAA anticipates that, to make the operation of the public address system independent of the main electrical generating system, system redesign and development is required, in addition to an airplane retrofit program. There are more than 3,250 airplanes operated under Part 121 which will likely require retrofit of the revised system. After careful consideration of the system redesign and development needed, the costs and time involved in retrofitting 3,250 airplanes, an other factors, the FAA concludes that two years is needed to comply with the requirement after it becomes effective. The FAA requests that specific comments and data supporting or opposing this time period, and the costs involved, be submitted in response to this notice.

Ref. Proposals 452 and 453; § 121.318; Committee 1; Agenda Item C–3.

11–8. By revising § 121.323(f) to read as follows:

§ 121.323 Instruments and equipment for operation at night.

* * * * *

(f) An altimeter that meets the performance and environmental standards of the applicable Technical Standard Order or the equivalent. However, after (a date two years after the effective date of this amendment) the altimeter for turbojet powered

airplanes must not be a three-pointer type.

Explanation. See the explanation for Proposal 11–5.

Ref. Proposal 458; § 121.323; Committee 1; Agenda Item C–4.

11–9. By revising § 121.325(b) to read as follows:

§ 121.325 Instruments and equipment for operations under IFR or over-the-top.

* * * * *

(b) An altimeter that meets the performance and environmental standards of the applicable Technical Standard Order or the equivalent. However, after [a date two years after the effective date of this amendment] the altimeter for turbojet powered airplanes must not be a three-pointer type.

* * * * *

Explanation. See the explanation for Proposal 11–5.

Ref. Proposal 459; § 121.325; Committee 1; Agenda Item C–4.

11–10. By revising § 121.329(b)(1) to read as follows:

§ 121.329 Supplemental oxygen for sustenance: Turbine engine powered airplanes.

* * * * *

(b) * * *

(1) At cabin pressure altitudes above 10,000 feet, up to and including 12,000 feet, oxygen must be provided for and used by each flight crewmember on flight deck duty, and must be provided for other crewmembers, for that part of the flight at those altitudes that is of more than 30 minutes duration.

* * * * *

Explanation. Inserting commas before and after the phrase "and must be provided for other crewmembers" would make it clear that the part of the rule that begins with "for that part of the flight" applies to the flight crew on flight deck duty as well as other crewmembers and removes any possible ambiguity.

The proposed amendment to substitute the word "occupant" for "passenger" and to add a new § 121.219(c)(4) has not been proposed for the reasons for removing Proposal 461 from consideration stated in Appendix II.

Ref. Proposals 462 and 463; § 121.329; Committee 10; Agenda Item F.

11–11. By amending § 121.333 by replacing the phrase "cabin attendant" with the phrase "flight attendant" at two places in paragraph (d), by replacing the phrase "cabin attendant" with the phrase "flight attendant" in the last sentence of paragraph (e)(3), and by revising paragraph (f) to read as follows:

§ 121.333 Supplemental oxygen for emergency descent and for first aid: Turbine engine powered airplanes with pressurized cabins.

* * * * *

(f) *Passenger briefing.* Before flight is conducted above flight level 250, a crewmember shall instruct the passengers on the necessity of using oxygen n the event of cabin depressurization, shall point out to them the location of such equipment, and shall demonstrate the proper means of activation and use of oxygen-dispensing equipment, including proper donning procedures. Demonstration masks shall be identical in external appearance to those used aboard the airplane on which the demonstration is given, and shall include an adjustable headstrap and the required length of tubing with safety pin and lanyard (where applicable) attached.

Explanation. This proposal provides specific requirements for the demonstration masks and a demonstration of proper donning for these masks. Current cabin announcements on the use of oxygen do not always include the complete information, nor do the demonstrations use equipment similar to that installed on the airplane. The proposal also replaces the phrase "cabin attendant" with the correct phrase "flight attendant."

During the Operations Review Program, the proponent stated that § 121.333(d) should be amended since misinterpretations exist as to the number of portable oxygen bottles that are to be abroad the aircraft for flight attendant use. Present § 121.333(d) clearly states that portable oxygen equipment is required for each attendant and the FAA sees no need for further clarification.

The proponent also recommended that § 121.333(d) be amended to include the statement "Such portable oxygen equipment shall be regularly inspected for any possible deficiencies by the airline and properly maintained." This statement has not been included since the certificate holder's continuous airworthiness maintenance program, approved in accordance with the requirements of Subpart L of Part 121, specifies inspection frequencies that provide for proper upkeep of the portable oxygen equipment.

Ref. Proposal 465; § 121.333; Committee 10; Agenda Item F.

11–12. By revising § 121.351(a) to read as follows:

§ 121.351 Radio equipment for extended overwater operations and for certain other operations.

(a) No person may conduct an extended overwater operation unless the airplane is equipped with the radio equipment necessary to comply with § 121.349 and an additional and independent radio system that complies with § 121.347(a)(1).

* * * * *

Explanation. This regulation has been erroneously interpreted to require only one means of en route radio communication. This proposal clarifies the fact that two independent radio communication systems are required.

Ref. Proposal 471; § 121.351; Committee 1; Agenda Item C–5.

11–13. By revising § 121.359(d) to read as follows:

§ 121.359 Cockpit voice recorders.

* * * * *

(d) In complying with this section, an approved cockpit voice recorder having an erasure feature may be used provided that the recorded information for the last 30 minutes of the current or most recent flight is not erased or otherwise obliterated. Except as provided in paragraph (e), when the recorder is removed from the airplane for maintenance, or the recording is removed for test or read-out, the recorded information may be erased or otherwise obliterated after maintenance, test, or read-out has been accomplished.

* * * * *

Explanation. This proposal would clairfy the current rule by requiring that the recorded information for the last 30 minutes of the current or most recent flight may not be erased or otherwise obliterated, except as specifically noted and subject to the exceptions provided in paragraph (e), which require a longer retention period in the event of an accident or occurrence requiring immediate notification of the National Transportation Safety Board.

Ref. Proposal 472; § 121.359; Committee 1; Agenda Item C.6.

11–14. By revising § 121.391(c) to read as follows:

§ 121.391 Flight attendants.

* * * * *

(c) The number of flight attendants approved under paragraphs (a) and (b) of this section must be set forth in the certificate holder's operations specifications. However, seats that have been blocked off do not have to be considered in determining the seating capacity of the airplane and the required number of flight attendants, provided the procedures authorizing the certificate holder's operations manual

are complied with, except that flights with blocked seats must have a minimum of two flight attendants.

(1) The blocking off of seats is authorized in the following situations—

(i) Specific flight or flights listed in the certificate holder's operations specifications which include the minimum number of flight attendants and maximum number of passengers permitted and which have been verified from operating experience as being consistently operated from origination to termination with passenger loads at or less than the reduced seating capacity proposed;

(ii) Specific flights which require substitution of aircraft due to mechanical irregularities or weather related delays, requiring additional crewmembers at locations where additional crewmembers cannot be obtained without more than a 2-hour delay or flight cancellation. Operations may not be conducted beyond the nearest station at which a replacement for the crewmember is available or can be made available without more than a 2-hour delay or flight cancellation; or

(iii) Specific flights on which a crewmember cannot continue due to illness and a replacement crewmember cannot be obtained at that location without more than a 2-hour delay or flight cancellation. Operations may not be conducted beyond the nearest station at which a replacement for the crewmember is available or can be made available without more than a 2-hour delay or flight cancellation.

(2) The procedures used to block off seats must be approved by the Administrator, set forth in the certificate holder's operations manual, and must contain at least the following—

(i) The location of and means to block the affected passenger seats;

(ii) Methods to notify the pilot in command and other crewmembers when the passenger seating capacity is reduced and the maximum seating capacity authorized;

(iii) Methods to designate a flight crewmember who will verify that the number of passengers on board is not more than the authorized reduced seating passenger capacity; and

(iv) Methods to provide each crewmember on the aircraft being operated in a reduced seating configuration with specific instructions on their emergency duties and seating locations appropriate to the modified seating configuration to ensure the optimum emergency evacuation capability.

(3) Except when seats are blocked in accordance with paragraph (c)(1)(i), the certificate holder shall deliver written notification to its FAA certificate-holding office within 72 hours after it blocks seats in accordance with this paragraph. The notification shall contain a detailed statement of the specific basis for the authorization.

* * * * *

Explanation. The number of flight attendants required on passenger-carrying aircraft is based upon the seating capacity of the aircraft. The actual number of passengers on a particular flight does not affect this requirement. The existing rule allows the number of required flight attendants to be reduced, but only if a sufficient number of passenger seats are physically removed from the cabin. This proposal would allow the operator to reduce the passenger-carrying capacity of its aircraft in specified situations by blocking passenger seats and thereby reduce the number of flight attendants required to be aboard the aircraft. Specific situations in which the FAA could provide authorization for the blocking off of seats, and corresponding reduction in required number of flight attendants, are: (1) Flights which experience has shown to operate with passenger loads at or less than the reduced seating capacity proposed, such as late night and early morning flights; (2) specific flights which require unplanned substitution of aircraft due to mechanical irregularities or weather related delays at locations where additional crewmembers cannot be obtained at that location without more than a 2-hour delay or flight cancellation; or (3) specific flights on which a crewmember cannot continue due to illness and a replacement crewmember cannot be obtained at that location without more than a 2-hour delay or flight cancellation. The proposed 2-hour time period for delay of flight is consistent with the 2-hour increase in flight crewmember flight and duty time proposed for rulemaking in Notice 78–3 (43 FR 8070; February 27, 1978).

The FAA has granted limited exemptions from § 121.391(a)(3), with conditions similar to those specified in proposed § 121.391(c)(1), to permit a reduction in the number of flight attendants required on particular flights by blocking off a number of seats, and no safety problems have been noted.

These exemptions have enabled the air carriers concerned to operate in a more efficient and less costly manner. If the need to change an aircraft at an intermediate stop during a flight requires substitution of a larger aircraft, another flight attendant might be required. An operator might be required to cancel or substantially delay the flight until the extra flight attendant could be transported to the location of the aircraft if extra flight attendants were not based at that stop. Elimination of such delays and cancellations is in the public interest. By limiting the circumstances under which seats can be blocked and by closely monitoring the use of this authority, safety will not be adversely affected.

The FAA has taken steps to ensure that the conditions under which seats can be blocked are strictly followed. The FAA will closely monitor all actions taken under this authority. The certificate holders would be required to develop procedures which must be submitted for approval to their certificate-holding office. The required procedures shall consider such factors as overall cabin size, number and location of exits, location of blocked seats, and number and location of flight attendants. For approval, the procedures must ensure the optimum emergency evacuation configuration. In most cases, this would require that the flight attendants be seated immediately adjacent to the passengers with at least one flight attendant forward and one aft of them. In other cases, the optimum configuration might be with the flight attendants all forward, all aft, or some other location. In any case, the certificate holder must designate an arrangement which ensures the optimum emergency evacuation configuration. These procedures must also assure that the capability for accomplishing an emergency evacuation within 90 seconds is not reduced. The FAA will not authorize an operator to reduce the flight attendant complement below the number required by § 121.391 for the number of seats not blocked. In addition, the certificate holder would be required to submit written notification to the certificate-holding office within 72 hours of its use of this authority under §§ 121.391(c)(1)(ii) and (iii). This notification shall include the basis for use of this authority and will enable the FAA to review all action taken in accordance with this authority.

This proposal also lists specific procedures which must be set forth in the certificate holder's operations manual and which must be followed when blocking seats. These procedures include such matters as the location of and means used to block the affected passenger seats, and methods to provide each crewmember on the aircraft being operated in a reduced seating configuration with specific instructions on their emergency duties.

Additionally, this proposal contains a provision that flights with blocked seats must have a minimum of two flight attendants.

This proposed regulation is not intended to provide for frequent reductions in the number of flight attendants. The strict limitations placed on its use provide a regulation which provides relief, on an occasional basis, only to certificate holders who need such relief. By limiting and controlling the situations during which this proposed regulation can be employed, safety will not be adversely affected.

This proposal only allows for the blocking of seats; the FAA has no intention of allowing, under this paragraph, the blocking or deactivation of exits. Although exits may be blocked or deactivated under certain approved circumstances, the proposed revisions to § 121.391 do not affect existing guidance used to evaluate the reduction of the number of emergency exits.

Ref. Proposals 491 and 495; § 121.391; Committee 7; Agenda Item C.

§ 121.417 [Amended]

11–15. By amending § 121.417(c) by substituting the word "for" for the word "on" in the first sentence.

Explanation. The present rule requires each crewmember to perform certain emergency drills and to actually operate certain equipment during initial training and once each 24-calendar months during recurrent training on each type aircraft. As indicated by § 121.417(c)(6)(vii), it was intended that this initial and recurrent training could be accomplished on an airplane or on a training device approved under the training program requirements of § 121.407. By changing the phrase "on each type aircraft" in § 121.417(c) to "for each type aircraft", the intent is clarified.

Ref. Amendment 121–148 (43 FR 46230; October 5, 1978).

11–16. Amending § 121.439 by adding a sentence at the end of paragraph (a) and by revising paragraphs (b), (c), and (d) and adding a new (e) to read as follows:

§ 121.439 Pilot qualification: Recent experience.

(a) * * * In addition, any person who fails to make the three required takeoffs and landings within any consecutive 90-day period must reestablish recency of experience as provided in paragraph (b) of this section.

(b) In addition to meeting all applicable training and checking requirements of this part, a required pilot flight crewmember who has not met the requirements of paragraph (a) of this section must reestablish recency of experience as follows:

(1) Under the supervision of a check airman, make at least three takeoffs and landings in the type airplane in which that person is to serve or in a visual simulator approved for the takeoff and landing maneuvers for the type of airplane in which that person is to serve.

(2) The takeoffs and landings required in paragraph (b)(1) of this section must include—

(i) At least one takeoff with a simulated failure of the most critical powerplant;

(ii) At least one landing from an ILS approach to the lowest ILS minimum authorized for the certificate holder; and

(iii) At least one landing to a full stop.

(c) The requirements of paragraph (b)(2) of this section may be accomplished in an approved visual simulator which has not been approved for the takeoff and landing maneuvers if the requirements of paragraph (b)(1) of this section are accomplished in the airplane. In this case, the first three landings accomplished in operations under this part will satisfy the landing requirement of paragraph (b)(1) of this section if the pilot has previously logged 100 hours in the same type airplane in which he is to serve and is observed by a check airman.

(d) When using a simulator to accomplish any of the requirements of paragraph (a) or (b) of this section, each required flight crewmember position must be occupied by an appropriately qualified person and the simulator must be operated as if in a normal in-flight environment without benefit of the slew or freeze features.

(e) A check airman who observes the takeoffs and landings prescribed in paragraphs (b)(1) and (c) of this section shall certify that the person being observed is proficient and qualified to perform flight duty in operations under this part and may require any additional maneuvers that are determined necessary to make this certifying statement.

Explanation. The objective of Amendment Number 121–144 (43 FR 22643; May 25, 1978) was to require three takeoffs and landings within any consecutive 90-day period to establish recency of experience and to require a pilot who has gone a period of 90 days without a takeoff and landing to reestablish recency of experience in accordance with § 121.439(b). The rule is not clear with regard to the second objective and proposed § 121.439(a) clarifies the intent. The NTSB, in recommendation A 74–104, identified two accidents in which they attributed lack of recent experience in type as a contributing factor. Pilots who have gone at least 90 days without three required takeoffs and landings should have to reestablish experience by meeting the more extensive requirements of § 121.439(b). Accomplishing three takeoffs and landing after an extended period of inactivity is not sufficient to reestablish experience to the necessary level of competency.

Section 121.439 as amended by Amendment 121–144 has caused considerable confusion regarding implementation of the requirements of paragraph (b) of that section. Clarifying instructions were issued by the FAA after the effective date of the amendment but there is still considerable variance in the procedures used for compliance. Therefore, in an effort to clarify the FAA's intent with regard to reestablishing recency of experience under present paragraph (b), those provisions have been revised. It was not the intent of the FAA to allow persons reestablishing recency of experience to obtain credit for those takeoffs and landings accomplished in a simulator which is not approved for the takeoff and landing maneuvers. Only those simulators approved for the takeoff and landing maneuver provide the capability of evaluating a pilot's ability to successfully land the airplane. When a simulator which has not been approved for the takeoff and landing maneuver is used toward satisfying the requirements for reestablishing recency of experience, the qualifying pilot should at least be required to meet the minimum landing requirement for pilots maintaining recency of experience. Therefore, in such cases, it is proposed to require a pilot to accomplish three landings in the airplane under the supervision of a check airman, either under line operations or in a training environment. To allow this flexibility for accomplishing the landings, this proposal changes the present requirement in § 121.439(c) for two landings on the line to three landings. The present requirement for 100 hours in airplane type remains. Proposed § 121.439(b) and (c) clarify the landing requirement. Also, it has been reported that in some instances simulators are not being employed in a proper manner when used to satisfy the requirements of § 121.439. Proposed paragraph (d) assures that the qualifying pilot is exposed to as realistic an "in-flight" environment as possible. The proposed requirements of this paragraph are in consonance with recently issued total simulation requirements (45 FR 44176; June 30, 1980).

Ref. Proposals 541 and 542; § 121.439; Committee 4; Agenda Item E.

11–17. By revising § 121.543(b)(3)(i) to read as follows:

§ 121.543 Flight crewmembers at controls.

* * * * *

(b) * * *

(3) * * *

(i) In the case of the assigned pilot in command, by a pilot who holds an airline transport pilot certificate and an appropriate type rating, is currently qualified as pilot in command or second in command and is qualified as pilot in command of that aircraft during the en route cruise portion of the flight. A second in command qualified to act as a pilot in command en route need not have completed the following pilot in command requirements: the 6-month recurrent flight training required by § 121.433(c)(1)(iii); the operating experience required by § 121.434; the takeoffs and landings required by § 121.439; the line check required by § 121.440; and the 6-month proficiency check or simulator training required by § 121.441(a)(1); and

* * * * *

Explanation. This proposal would change the current regulation by allowing the assigned pilot in command to be relieved for a rest period by a pilot who is currently qualified as a second in command and is also qualified as pilot in command of the aircraft during the en route cruise portion of the flight. In addition, this relief pilot must hold an airline transport pilot certificate and an appropriate type rating.

Operations Review Program Amendment No. 5 (43 FR 22643; May 25, 1978) provided procedures which allowed an assigned pilot in command to leave that pilot's assigned duty station for a rest period if relieved by a pilot qualified to act a pilot in command who holds an airline transport certificate and appropriate type rating. However, since this amendment became effective, exemptions have been issued which allow the pilot in command to be relieved, under certain conditions, by a pilot who is fully qualified as a second in command and fully qualified as a pilot in command during the en route cruise portion of the flight except for the 6-month recurrent flight training and the 6-month proficiency check or simulator training. The granting of the exemptions does not adversely effect safety since the airplane would be operated at all times during the en route phase by pilots adequately qualified for that phase of flight. If adopted, this proposal would eliminate the need for any further exemptions of this type, thereby reducing the paperwork burden on the public and FAA and satisfying the intent of Executive Order 12044.

Ref. Proposal 565; § 121.543; Committee 3; Agenda Item D.

11–18. By revising the first sentence of § 121.563 to read as follows:

§ 121.563 Reporting mechanical irregularities.

The pilot in command shall ensure that all mechanical irregularities occurring during flight time are entered in the maintenance log of the airplane at the end of that flight time. * * *

Explanation. It has brought to the attention of the FAA that a change made to § 121.563 in Operations Review Amendment No. 8 was not explained in the proposal and that the change has a significant impact on the requirement for reporting mechanical irregularities. In revising § 121.563, the word "time" was inadvertently omitted from the first sentence. Section 1.1 defines "flight time" as the time from the moment the aircraft first moves under its own power for the purpose of flight until the moment it comes to rest at the next point of landing ("Block-to-block" time). On the other hand, § 121.703(b) defines "during flight" as being the period from the moment the aircraft leaves the surface of the earth on takeoff until it touches down on landing. As it was never the intent of the FAA to change the period over which mechanical irregularities must be reported, this revision is proposed to correct this oversight. Additionally, the phrase "next place of landing" at the end of the sentence is changed to "end of that flight time" for clarity and for consistency with the definition of the term "flight time" appearing earlier in the sentence.

11–19. By revising § 121.589(a)(2) to read as follows:

§ 121.589 Carry-on baggage.

(a) * * *

(2) As provided in paragraphs (c) or (d) of § 121.285; or

* * * * *

Explanation: This proposal would add a reference to new paragraph (d) of § 121.285 concerning carriage of cargo in passenger compartments. See the explanation for proposal 11–2.

11–20. By amending § 121.703(a) by deleting the word "and" from the end of paragraph (a)(15), by replacing the period at the end of paragraph (a)(16) with a semicolon, and by adding new paragraphs (a)(17), (a)(18) and (a)(19) to read to follows:

§ 121.703 Mechanical reliability reports.

(a) * * *

(17) Doors and exits designated as emergency exits, including automatic or manual operating systems and components;

(18) Emergency escape slides and components and systems or hardware for manual or automatic deployment; and

(19) Galley or passenger service equipment and crewmember or passenger accommodations which could result in injury to a crewmember or passenger, restrict the emergency egress of either, or adversely affect the airworthiness of the aircraft.

* * * * *

Explanation. This proposal would require each certificate holder to report the occurrence or detection of each failure, malfunction or defect concerning the listed systems, components, and equipment in the mechanical reliability report. Emergency evacuation systems have increased in complexity in recent years. The absence of specific reporting requirements prevents adequate accumulation, coding and dissemination of technical information needed by the FAA and industry to take timely corrective measures regarding these highly safety oriented items.

The FAA has a duty to ensure that the environment to which the occupants of the airplane, both passengers and flight attendants, are exposed is as safe as practicable. Unreported failures of galley equipment or passenger service equipment, for example, could eventually lead to conditions that would pose a direct safety hazard to the occupants of the airplane under normal and emergency conditions. Thus, the reporting of such failures, malfunctions, or defects, as required by proposed § 121.703(a)(19), is considered necessary.

Ref. Proposal 643; § 121.703; Committee 2; Agenda Item P.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

11–21. By amending § 135.149(a) to read as follows:

§ 135.149 Equipment requirements: General.

* * * * *

(a) An altimeter that meets the performance and environmental standards of the applicable Technical Standard Order or the equivalent. However, after (a date two years afgter the effective date of this amendment), the altimeter for turbojet powered airplanes must not be a three-pointer type.

* * * * *

Explanation. See the explanation for Proposal 11–5. In addition to the changes discussed under Proposal 11–5, the phrase "and is adjustable for barometric pressure" is deleted since this aspect is covered under the applicable Technical Standard Order.

Ref. This proposal was not contained in the Operations Review but is a companion change to a proposal in Part 121 which was a part of the Operations Review.

11–22. By amending § 135.415(a) by deleting the word "and" from the end of paragraph (a)(15), by replacing the period at the end of paragraph (a)(16) with a semicolon, and by adding new paragraphs (a)(17), (a)(18) and (a)(19) to read as follows:

§ 135.415 Mechanical reliability reports.

(a) * * *

(17) Doors and exits designated as emergency exits, including automatic or manual operating systems and components;

(18) Emergency escape slides and components and systems or hardware for manual or automatic deployment; and

(19) Galley or passenger service equipment and crewmember or passenger accommodations which could result in injury to a crewmember or passenger, restrict the emergency egress of either, or adversely affect the airworthiness of the aircraft.

* * * * *

Explanation. See the explanation for Proposal 11–20 which adds the same requirements in § 121.703.

Ref. This proposal was not contained in the Operations Review but is a companion change to a proposal in Part 121 which was a part of the Operations Review.

PART 145—REPAIR STATIONS

11–23. By deleting § 145.11(a)(4); by deleting the word "and" and the semicolon at the end of § 145.11(a)(3) and replacing them with a period; by adding the word "and" at the end of § 145.11(a)(2); and by revising § 145.11(a)(1) to read as follows:

§ 145.11 Application and issue.

(a) * * *

(1) A list by type, make, or model, as appropriate, of the airframe, aircraft engine, propeller, appliance, or part thereof, for which the applicant seeks approval;

* * * * *

Explanation. This proposal provides the FAA with a listing of products for which repair station certificate and rating is sought. This list assists the FAA in identifying which initial or additional ratings are being applied for under § 145.31 and which limited ratings are being applied for under § 145.33. When applying for a rating under § 145.31, the application need only identify the type of rating desired (airframe, powerplant, propeller, radio, instrument, or accessory) and the class. When applying under § 145.33, more specific information is necessary on the make and model as specified in the appropriate paragraph of § 145.33. Placing this information on the application will assist the repair station applicant in properly preparing the application and the FAA inspector in evaluating the applicant's compliance with applicable requirements. Section 145.11(a)(4) is redundant because of proposed § 145.11(a)(1) would be deleted.

Ref. Proposal 860; § 145.11; Committee 6B; Agenda Item C–1.

11–24. By revising § 145.41 to read as follows:

§ 145.41 Recommendation of persons for certification as repairmen.

(a) When a person applies for a domestic repair station certificate and rating(s), or additional rating(s), that require a repairman, that person must—

(1) Recommend at least one person for certification as a repairman;

(2) Certify to the Administrator that the person recommended meets the requirements of § 65.101 of this chapter; and

(3) Certify that the person recommended is able to perform and supervise the assigned work.

(b) Each person recommended per paragraph (a)(1) of this section must be at or above the level of shop foreman or department head, or be responsible for supervising the work performed by the repair station. A qualified person so recommended may be certificated as a repairman.

Explanation. This proposal makes clear that the person to be certificated as a repairman must be certified as meeting the requirements of § 65.101 by the person making the recommendation. In addition, it establishes the positions and activities that must be assigned to the individual as part of the eligibility for certification.

Ref. Proposal 872; § 145.41; Committee 4; Agenda Item G.

11–25. By revising the second sentence of § 145.47(b) to read as follows:

§ 145.47 Equipment and materials: Ratings other than limited ratings.

* * * * *

(b) * * * The station shall test all inspection and test equipment at regular intervals to ensure correct calibration to a standard of the National Bureau of Standards, or a standard provided by the equipment manufacturer or, in the case of foreign equipment, to the standard of that foreign country if approved by the Administrator. * * *

* * * * *

Explanation. This proposal provide specific standards to which test and inspection equipment must be calibrated in order to standardize tests and inspections and provide more uniformity.

Ref. Proposal 875; § 145.47(b); Committee 6B; Agenda Item C–3.

11–26. By amending Appendix A of Part 145 by adding an asterisk (*) after the words "Replacement of valve guides and seats" in paragraph (b)(1)(i); by adding an asterisk (*) after the words "Precision drilling, tapping, boring, milling and cutting operations" in paragraph (b)(1)(iii); and by revising paragraph (a)(3) to read as follows:

Appendix A

* * * * *

(a) * * *

(3) Alloy skin and structural components:

Repair and replace metal skin, using power tools and equipment,

Repair and replace alloy members and components such as tubes, channels, cowlings, fittings, attach angles, etc.,

Alignment of components, using jigs or fixtures as in the case of joining fuselage sections or other similar operations,

Make up wooden forming blocks or dies,

Fluorescent inspection of alloy components,*

Fabricate alloy members and components such as tubes, channels cowlings, fittings, attach angles, etc.*

* * * * *

Explanation. This proposal eliminates the current requirements in paragraph (a)(3) providing that repair stations must be able to fabricate alloy members and components. This is no longer necessary since fabrication of alloy components is rarely necessary in the process of sheet metal repair. The general practice is to order replacement parts. This proposal also relaxes certain requirements of paragraphs (b)(1)(i) and (b)(1)(iii) by providing that repair stations need not have the equipment and material on the premises for performing the job functions of replacing valve guides and seats, precision drilling, tapping, boring, milling, and cutting if they contract that particular type of work to an outside agency having such equipment and

material. This change recognizes an already accepted practice.

Ref. Proposal 889; Part 145; Appendix A; Committee 6B; Item C–4.

PART 147—AVIATION MAINTENANCE TECHNICIAN SCHOOLS

§ 147.35 [Amended]

11–27. By amending § 147.35(a) by inserting the words "and hours spent in each subject of instruction" after the word "grades" in the first sentence.

Explanation. This proposal would require that each transcript issued to a student who graduates from a school or who leaves before graduation contain the hours spent in each subject of instruction. Students transferring from one school to another have experienced difficulty because of a lack of this information. This has resulted in students not receiving proper credit for courses completed and being improperly placed within the curriculum of the new school. This proposal would make it easier for the new school to evaluate the student's prior curriculum and properly place that student within its curriculum. The original proposal discussed at the conference used the term "area of instruction" as opposed to the term "subject" as contained in this proposal. The term "subject" is more appropriate since it is used in other sections of Part 147.

Ref. Proposal 899; Part 147.35; Committee 6B: Agenda Item D.

Proposal 110. This proposal would have amended § 65.85 to add a provision that a mechanic may perform the inspections required by Part 91. This proposal was based on the assumption that annual and progressive inspections would be replaced by continuous inspections. Mechanics are now allowed to perform the continuous inspections of Subpart D of Part 91. The proposals, which would have established continuous inspections, were not adopted. Thus, there is no need to adopt this proposal since the mechanic is already authorized to perform those inspections required by Part 91.

Proposals 391 and 396. These proposals would have deleted the current requirements in §§ 121.177(a)(3) and 121.189(d) (1) and (2) concerning horizontal separation of 300 feet beyond the airport boundaries and added a requirement to clear all obstacles in the departure area as specified in the United States Standard for Terminal Instrument Procedures (TERPS). The current rules are satisfactory and TERPS should not be referenced in the rules since the information contained in TERPS is subject to change without public notice and procedure.

Appendix I.—*Proposals Withdrawn by Proponent*

The following proposals were withdrawn by the proponent during or after the conference. The withdrawal of the FAA proposals does not commit the FAA to any further course of action.

14 CFR (FAR)	Proposal No.	Committee No.	Agenda item	Proponent
121.215	409	1	C–1	Air Transport Association
121.215	411	1	C–1	Federal Aviation Administration.
121.305	419	1	C–1	Do.
121.305(j)	422	1	C–1	Do.
121.313, 121.564	446	1	C–3	Do.
121.315, 121.549	447	1	C–3	Do.
121.349(a)	469	1	C–6	Do.
121.371(d)	480	6A	F	Do.
121.375	482	6A	F	Do.
121.377	484	6A	F	Do.
121.379	485	6	A	Do.
121.391	491	7	C	Do.
145.31	867	6B	C–2	Do.
145.49	876	6B	C–3	Do.

Appendix II.—*Proposals Removed From Further Consideration*

Based on the FAA's review of the discussions at the Operations Review Conference and the information submitted by interested persons, the following proposals are removed from consideration for the reasons listed:

14 CFR (FAR)	Proposal No.	Committee No.	Agenda item	Proponent
65.85	110	4	B–3	Sam Corso.
121.177(a)(3)	391	3	C–2	Air Line Pilots Association.
121.189(c)	393	3	C–2	Do.
121.189(c)(1)	394	3	C–2	Do.
121.189(d)(1)	395	3	C–2	Air Transport Association.
121.189(d) (1) and (2)	396	3	C–2	Air Line Pilots Association.
121.189(d)(2)	397	3	C–2	Air Transport Association.
121.189	398	3	C–2	Air Line Pilots Association.
121.191(b)(6)	402	3	C–1	Air Transport Association.
121.193	403	3	C–1	Do.
121.195(b)	404	3	C–3	The deHavilland Aircraft of Canada.
121.195(d)	405	3	C–3	Do.
121.195(f)	406	3	C–3	Air Line Pilots Association.
121.197(b)	408	3	C–3	Do.
121.215	410	1	C–1	Association of Flight Attendants.
121.219	412	1	C–1	Do.
121.291	417	6A	E	Air Transport Association.
121.305	420	1	C–1	Air Line Pilots Association.
121.307	423	1	C–1	Do.
121.309	424	1	C–2	Association of Flight Attendants.
121.309(f)	427	1	C–2	National Transportation Safety Board.
121.310	430	1	C–2	Do.
121.310(a)	431	1	C–2	Air Transport Association.
121.310	432	1	C–2	Association of Flight Attendants.
121.310(j)	435	6A	E	Air Transport Association.
121.310	436	6A	E	Air Line Pilots Association.
121.311	440	1	C–3	Association of Flight Attendants.
121.313(e)	443	1	C–3	Sun Chemical Corp.
121.317	448	1	C–2	Association of Flight Attendants.
121.319	454	1	C–4	Do.
121.319	455	1	C–4	Air Line Pilots Association.
121.326	460	1	C–4	Thomson-CSF and Sfena.
121.327	461	10	F	Association of Flight Attendants.
121.321	464	10	F	Do.
121.347 and 121.351	468	1	C–5	Air Transport Association.
121.349(c)	470	1	C–6	Aerospace Industries Association.
121.360(a)	474	1	C–6	Mr. Richard L. Newman.
121, Subpart L	475	2	G	Mr. Sam J. Corso.
121, Subpart L	476	2	G	Do.
121.361	477	2	O	International Association of Machinists and Aerospace Workers.
121.371(b)	479	6A	F	Association of European Airlines.
121.375	483	6A	F	International Association of Machinists and Aerospace Workers.
121.380(a)(2)(vii)	487	2	D	U.K. Civil Aviation Authority.
121.391(a)	493	7	C	Transport Workers Union of America.

Appendix II.—*Proposals Removed From Further Consideration—Continued*

Based on the FAA's review of the discussions at the Operations Review Conference and the information submitted by interested persons, the following proposals are removed from consideration for the reasons listed:

14 CFR (FAR)	Proposal No.	Committee No.	Agenda item	Proponent
121.571	581	6A	H	National Transportation Safety Board.
121.571	582	7	D	Do.
145.2	859	6B	C-1	Mr. Sam J. Corso.
145.11(a)	861	6B	C-1	Sun Chemical Corp.
145.13	862	6B	C-2	S.G.A.C./France.
145.17	863	6B	C-2	Sun Chemical Corp.
145.31	865	6B	C-2	Mr. Sam J. Corso.
145.33	868	6B	C-2	Do.
145.39	871	4	G	Sun Chemical Corp.
145.47	874	6B	C-3	Mr. Sam J. Corso.
145.49	877	6B	C-3	Do.
145.51	878	6B	C-4	Do.
145.51	882	6B	C-4	Air Transport Corp.
145.53	883	6B	C-4	Sun Chemical Corp.
145.71	887	6B	C-4	S.G.A.C./France.
145, app. A	890	6B	C-4	Mr. Sam J. Corso.

Proposal 393. This proposal would have revised § 121.189(c) to require all thrust reversers to be operative before an airplane may take off on a wet, icy, snow-covered, or slush-covered runway. This proposal is considered overly restrictive in that the performance credit for the thrust reversers was not considered when certificating the airplane under the provisions of Part 25 of this chapter. Inoperative thrust reversers, like other equipment, should be handled in the Minimum Equipment List (MEL) including, where necessary, appropriate restrictions and limitations.

Proposal 394. This proposal would have amended § 121.189 to redefine accelerate-stop distance. Accelerate-stop distance was redefined in § 121.191(c)(1) by Airworthiness Review Program Amendment No. 6 (43 FR 2302; January 16, 1978).

Proposals 395 and 397. These proposals would have revised §§ 121.189(d) (1) and (2) to provide for a net takeoff flight path that clears all obstacles "* * * that penetrate a 1.2 percent gradient measured from the end of the runway as defined in Part 77 * * *." The current rules in this regard are satisfactory in that the certificate holder and the pilot in command are responsible for determining physical obstacle clearances and adjusting weights to obtain required clearances in accordance with procedures set forth in the Airplane Flight Manual.

Proposal 398. This proposal would have amended § 121.189(e) by adding a requirement for takeoffs from runways that have a friction coefficient less than that for a dry runway. Although the basic concept contained in this proposal has merit, the recommendation that 20 percent be added to the dry distance performance does not appear to be based on factural test data. Past efforts in this regard have not resulted in agreement within the technical community on the standards to be used in determining friction coefficient, the equipment to be used in making this determination, or the criteria to be used in the application of these standards on a day-to-day basis at airports served by Part 121 operators. The FAA plans to issue an ANPRM to solicit more information on this issue.

Proposals 402 and 403. These proposals would have amended §§ 121.191 and 121.193 to allow the consumption of more fuel and oil after engine failure than is allowed for in the en route net flight path data in the Airplane Flight Manual. The current rules define requirements for dispatch based upon the Flight Manual data and do not relate to pilot inflight techniques or judgement. The pilot is not prohibited from selecting any power setting considered necessary for the safety of flight once an engine has been rendered inoperative.

Proposal 404. This proposal would have amended § 121.195(b) by adding specific landing performance provisions for Short Takeoff and Landing aircraft (STOL). Insufficient justification was presented in this proposal to warrant a rule change to Part 121, since no specific performance data was presented on which to base an amendment to the rule. The FAA knows of no reason to amend § 121.195(b) for STOL operations.

Proposal 405. This proposal would have revised § 121.195(d) to restrict a turbine engine powered airplane from landing on a runway containing water, slush, snow or ice unless the runway provided the same margin of safety as a dry runway. Major differences of opinion exist within the national aviation community concerning such basic runway factors as: (1) An acceptable vehicle with which to measure runway friction; (2) a definition of a reference wet surface (i.e., damp versus depth of water, snow, or slush); and (3) factors to be used in establishing acceptable performance margins. All of these considerations will require resolution before rulemaking action can be initiated.

Proposals 406 and 408. These proposals would have amended §§ 121.195 and 121.197 to require consideration of missed approach climb gradients for the landing runway at destination and alternate airports. While climb gradient information is desirable, the proposal would require consideration of destination runways, as distinguished from airports, which would further complicate dispatch procedures. Insufficient justification was presented to warrant a rule change and service experience does not indicate a safety problem.

Proposals 410. This proposal would have amended § 121.215 to require receptacles for towels, paper or similar waste to be fireproof and to have means to contain or extinguish all possible fires. The subject matter of this proposal is contained in Airworthiness Review Amendment No. 8 (45 FR 7750; February 4, 1980).

Proposal 412. This proposal would have amended § 121.219 to require that each occupiable compartment be suitably ventilated. The proposal would have little effect since § 121.219 applies only to transport category airplanes that were types certificated under regulations in effect before October 31, 1946. We assume that the proponent intended to provide a parallel provision, in the operating rules, to certain proposed changes to the ventilation rules in § 25.831, which were also submitted by the proponent for the Airworthiness Review Program. Section 25.831 has been amended by Airworthiness Review Amendment No. 5 (42 FR 36960; August 18, 1977) to require that a means be provided to control the temperature and quantity of ventilating air supplied to the crewmember compartments or area is ventilated by air interchange with other compartments or areas under all operating conditions. Therefore, this proposal is redundant and unnecessary.

Proposal 417. This This proposal would have allowed means other than actual demonstration to be used to comply with the emergency evacuation performance requirements of § 121.291. The recommendation contained in this proposal was included in Airworthiness Review Program Amendment No. 7 (43 FR 50578; October 30, 1978) and was developed to serve both airworthiness and operational requirements relating to

demonstrations of emergency evacuations.

Proposal 420. This proposal would have revised § 121.305 to require that the pitot heat system be automatically energized whenever an engine is running and that an indicating system be provided. Amendments 25–43 and 91–148, effective April 12, 1978, amended §§ 25.1326 and 91.50 to require a pitot heat indication system in all transport category airplanes equipped with flight instrument pitot heating systems. With regard to the portion of this proposal to require the automatic energizing of the pitot heat system when an engine is running, insufficient justification was presented to warrant such a change since the current manual procedures (checklist items) for energizing the system are adequate. These procedures provide protection against unwanted energizing of the system and possible damage (i.e., overheating and possible burnout of elements on the ground).

Proposal 423. This proposal would have expanded § 121.307 to make it consistent with the powerplant instrument requirements in § 25.1305. Section 121.157 requires all airplanes entering the air carrier fleet after June 30, 1942, to be certificated as a transport category airplane, whcih is more restrictive than § 121.307. It would be redundant to repeat the powerplant requirements in Part 121 when compliance has already been demonstrated to Part 25.

Proposal 424. This proposal would have amended § 121.309 to provide that access to emergency equipment is not restricted and that the emergency equipment is similar in type, location, and operation for each given type aircraft of each air carrier. It would have also required a CO_2 or dry-chemical fire extinguisher near each lavatory and galley area, a first-aid kit in the cabin of each aircraft, one megaphone for 21 to 99 passengers, and an additional megaphone for each additional 100 passenger seating capacity increment. The words "readily accessible" in the current rule require unrestricted access to emergency equipment. The use of dry-chemical fire extingushers can cause a problem with electrical and electronic components. First-aid kits are required and are normally located in the cabin of the aircraft. The present rule requires one megaphone for an airplane with a seating capacity of more than 60 and less than 100 passengers. Section 121.309 is being revised in Proposal 11–6 to require three megaphones on airplanes with a seating capacity of more than 199 passengers. This requirement has proven satisfactory in past operations and the proponent did not submit any justification to warrant changing the rule to include those aircraft with more than 20-passenger capacity as proposed.

Proposal 427. This proposal would have revised § 121.309(f) to require that the certificate holder designate the flight attendant responsible for use of the megaphone(s) during an emergency evacuation and relocate the megaphone(s) so that they are within easy reach of the flight attendant(s) while seated. The proposal would also require that consideration be given to the installation of new, light, and compact megaphones to facilitate stowage and use.

It is not practical for the certificate holder to designate the flight attendant who will be responsible for using the portable megaphones when the need exists, since all flight attendants are trained in the use of megaphones and their locations, and are expected to use them in case of an emergency. Further, it is inappropriate to require the certificate holder to consider using a specific type or model of megaphone, as long as they meet FAA standards. Proposal 11–6 requires that megaphones must be readily accessible from a required flight attendant seat.

Proposal 430. This proposal would have amended § 121.310(a) to require that emergency evacuation slides on all floor-level exits be automatically inflated upon deployment. The justification given was based on the National Transportation Safety Board's Special Study, NTSB–AAS–74–3, "Safety Aspects of Emergency Evacuations from Air Carrier Aircraft." That study revealed that evacuation slides which had to be manually inflated required more time to make an exit usable than fully automatic slides (that is, automatically deployed and automatically inflated). More rapid slide deployment and inflation would allow evacuation to begin sooner.

Present § 121.310(a) requires that assisting means for floor-level emergency exits meet the requirements of § 25.809(f)(1) in effect on April 30, 1972. Section 25.809(f)(1) in effect on April 30, 1972, requires that all such slides be automatically deployed and automatically erected except that the slide may be erected manually when installed at service doors and passenger doors. Present § 121.310(a) goes on to say that, if the Administrator finds that the design of the exit makes compliance impractical, he may grant a deviation from the requirement of automatic deployment, provided the slide automatically erects upon deployment.

This deviation would be just the opposite of the exception permitted in § 25.809(f)(1) discussed above. In fact, very few if any airplanes have obtained such a deviation; rather, most narrow-bodies airplane slides are automatically deployed and manually inflated.

All aircraft operating under § 121.310(a) have demonstrated an evaucation time of 90 seconds or less. This time included the opening of doors, deployment and erection of slides, and evacuation of occupants. If fully automatic slides were required on all airplanes, evacuation time could possibly be shortened by a few seconds. However, significant cost impacts would result and the minor saving in evacuation time would not justify the lost time and revenue that would be involved in retrofitting all large air carrier aircraft, except the newer wide-body aircraft, with automatic slides. Not only would new slides be required on a significant portion of the fleet, but also the exit opening system would have to be redesigned to comply with the current reuirements in § 25.809(f)(1). Amendment 25–32 (37 FR 3966; February 24, 1972) revised § 25.809(f)(1) to require that each passenger emergency exist which is also a passenger entrance door or a service door must be provided with means to prevent deployment of the assisting means when it is opened from either the inside or the outside under non-emergency conditions for normal use. This requirement is necessary when fully automatic slides are installed to prevent injury to ground personnel when opening the exit to deplane the passengers or for servicing.

The current regulations provide an acceptable level of safety and the recommended change does not justify the significant economic burden that would result.

Proposal 431. This proposal would have amended § 121.310 to require automatic assist means to be armed only during taxiing in areas other than the parking or gate area. The justification given was that this would preclude inadvertent deployment at the gate by inadvertent opening of the door from the outside. Adequate safety justification was not provided for the change, since the slides should be armed at all times when passengers are on board, including that time the aircraft is parked at the boarding gate, to assure proper evacuation in the event of an emergency while at the gate.

Inadvertent slide deployment can best be minimized by providing additional training to flight attendants and other pertinent ground personnel and by incorporating procedural changes in the flight attendants' manual.

Proposal 432. The proposal would have amended § 121.310 to require the

application of self-illuminating material to the emergency exit placards, the aisles, and the emergency exit marking band, and would require 20-inch aisleways and a 36-inch seat pitch. The rules governing emergency exit location, illumination, and access are presently defined in §§ 25.801 through 25.813. Insufficient justification was provided for this proposal. The proposal was vague as to any problems to be expected and did not specify that any increase in safety would be achieved.

Proposal 435. This proposal would have amended § 121.310(j) to allow the deactivation of exists other than those required for the particular passenger seating configuration. All aspects of this proposal were considered when the affected regulations were last evaluated and revised in 1967. The proponent did not introduce any new factors that would justify lowering the level of safety by deactivating useable exits and the FAA is not aware of a need for a revision to the existing rule.

Proposal 436. This proposal would have amended § 121.310 to require the installation of an automatic type emergency locator transmitter (ELT) in all airplanes operating under Part 121. Airplanes operated under Part 121 are currently required to have a flight monitoring or flight following system covering their route systems and are normally under radar surveillance. Scheduled flights by scheduled air carriers certificated by the Civil Aeronautics Board (CAB) were specifically excluded from the requirement by Section 601(d)(2)(B) of the Federal Aviation Act of 1958 and are not subject to change through FAA rule making.

Proposal 440. This proposal would have amended § 121.311 by eliminating side-facing seats, placarding seats that will not remain upright, providing seat belt/shoulder harnesses for flight attendants, and standardizing seat belts on airplanes. Side-facing seats have been eliminated as discussed in Airworthiness Amendment No. 8 (45 FR 7750; February 4, 1980). The rule provides that each passenger seat back be in the upright position for takeoff and landing. Any malfunctioning seat shall be fixed prior to flight or, if it occurs in flight, at the next available location. If shoulder harnesses are provided, the current rule provides that they must be fastened during takeoff and landing unless the harness interferes with the crewmember duties. Rule making pertaining to the requirement for combined seat belt and shoulder harness for each flight attendant seat is contained in Airworthiness Amendment No. 8. Most seat belts are Technical Standard Order approved and as such are well standardized. In addition, the pretakeoff demonstration describes the proper operation of the seat belts installed on the airplane.

Proposal 443. This proposal would have amended § 121.313 to require a static port heater or equivalent to prevent malfunctioning due to icing. This proposal is already covered by §§ 23.1325(b)(3) and 25.1325(b) for new airplane designs. Existing airworthiness requirements are adequate and insufficient justification was presented to require retrofitting of all aircraft operating under Part 121.

Proposal 448. This proposal would have amended § 121.317 to clarify that passenger information signs be "clearly" visible to passengers and flight attendants and to change the words "cabin attendant" to "flight attendants." Operations Review Amendment No. 4 (43 FR 22636; May 25, 1978) amended § 121.417 to require that passenger information signs meet the requirements of § 25.791, which require all signs to be legible to each person under all probable conditions of cabin illumination, and also deleted the words "cabin attendants."

Proposal 454. This proposal would have amended § 121.319 to require: interphone availability or accessibility from all occupiable compartments; an oral and visual alerting system for flight attendants in all compartments including compartments separate from the main passenger compartment; and a means of two-way communication between a flight attendant and ground personnel. Airworthiness Review Program Amendment No. 7 (43 FR 50578; October 30, 1978) amended § 121.319 to provide a crewmember interphone system between the pilot compartment and each passenger compartment and the pilot compartment and each galley located on other than the main passenger deck level. The performance of the alerting system between the cockpit and flight attendants with oral or visual signals has been effective and no change is required. There is no requirement for communication between the flight attendant station and the ground as this is handled through the cockpit. The portion of this proposal to provide communications between all occupiable compartments and ground personnel could cause serious safety problems during emergency situations. The responsibility for communication with ground personnel should remain with the pilot in command and should not be delegated during an emergency to a flight attendant in the passenger compartment. For additional discussions see Notice 75–14 (40 FR 11736; March 13, 1975) and Amendment 121–121 (49 FR 42185; September 11, 1975).

Proposal 455. This proposal would have added a new § 121.319 to require approved autopilots for all turbojets and that they be fully operative, except for flights below flight level 240 or for less than 2 hours when specified modes must be operative. While there are advantages in having fully operative autopilots, it is incorrect to suggest that modern turbojet aircraft cannot be operated safely without an autopilot functioning in all modes (as heading or altitude hold modes).

Proposal 460. This proposal would have added a new § 121.326 to prohibit landing on runways without a radio or visual system providing information on deviation from a standard approach slope, unless the airplane is fitted with an instrument capable of providing instant information on speed vector direction and the balance between thrust, drag, lift, and mass. The FAA is presently evaluating equipment, such as heads-up display systems, that would provide a system in the cockpit with which the flight crew would have the capability of establishing a visual approach slope. Rule making would be premature before completion of the evaluation.

Proposals 461 and 464. These proposals would have amended §§ 121.327 and 121.331 respectively by replacing the word "passenger" with the word "occupant" to include flight attendants under the requirements of paragraph (c) to provide them an equal level of safety. Supplemental oxygen is provided for flight attendants under the crewmember requirements of §§ 121.327(b) and 121.331(b) and there would be a conflict if flight attendants were also included under the supplemental requirements for passengers under paragraph (c). Use of the word occupant in paragraph (c) creates this conflict.

The proposal would have also required in §§ 121.327 and 121.331 that oxygen dispensing units be immediately and readily available for use by all occupants in all occupiable compartments. Transport category airplanes that have as their certification basis CAR 4b effective September 1, 1958 (Amendment 4b–9) or later amendments, or Part 25 and are certificated for operation above 25,000 feet must have oxygen dispensing units that are immediately available to each occupant wherever seated. For airplanes certificated for operation above 30,000 feet, the oxygen dispensing units must be automatically presented to the

occupants. The inclusion of the supplemental oxygen requirements in CAR 4b, later recodified as Part 25, was necessitated by the advent of turbine powered airplanes with normal operating altitudes higher than the operating altitudes of reciprocating engine powered airplanes. Turbine powered airplanes certificated to CAR 4b prior to Amendment 4b-9 have the supplemental oxygen requirements of Amendment 4b-9 imposed as special conditions. Thus, all airplanes operating under Part 121 have supplemental oxygen requirements that meet the intent of the proposal.

Proposal 468. This proposal would have amended §§ 121.347 and 121.351 to require communication with appropriate ground stations along the route but not necessarily at each point along the route. This relaxes the current requirement that a flight must be able to communicate with at least one appropriate ground station from any point on an extended overwater route. Lack of communication capability during any polar or extended overwater operation could place the aircraft in a serious, if not dangerous, situation. The current regulations provide an acceptable level of safety and the changes recommended did not sufficiently justify a reduction in the level of safety.

Proposal 470. This proposal would have amended § 121.349 to allow substitution of certain area navigation computer systems (RNAV) for one very high frequency omnidirectional station (VOR) receiver or one distance measuring equipment (DME) system to provide independent navigation capability. Substituting an RNAV system for one VOR receiver would eliminate dual instrument landing system (ILS) capabilities. The current regulations provide an acceptable level of safety and no change is necessary.

Proposal 474. This proposal would have amended § 121.360 to require a ground proximity warning system on all turbine powered airplanes. The current rule requires the equipment only on large turbine powered airplanes. Separate rulemaking action amended Part 135 of this chapter to require a ground proximity warning system in all turbojet powered airplanes having a passenger seating capacity, excluding any pilot seat, of 10 seats or more. The extension of this requirement to all turbine powered airplanes is being addressed in a separate rulemaking action.

Proposals 475 and 476. These proposals are part of a group to move all maintenance rules from Parts 91, 121, 135, etc., and consolidate them in a new Subpart B of Part 43. These proposals comprise an extensive recodification process with no commensurate benefit to aviation safety since it would not streamline, reduce, or simplify the regulations, but would require a tremendous administrative workload and involve changing many advisory circulars and internal instructions.

Proposal 477. This proposal would have deleted § 121.361(b) and prohibited the use of parts returned to service by persons outside of the United States who do not hold U.S. airmen certificates, on the basis that it takes work away from U.S. certificated mechanics and repairmen. This rule change would have deleted the existing parts pool arrangements which have proven to be advantageous. The proposed change would not enhance safety and would impose an unnecessary inconvenience and an economic burden on Part 121 certificate holders.

Proposal 479. This proposal would have revised § 121.371 to allow an FAA-approved repair station to assume full responsibility for accomplishing required inspections. The current rules make certificate holders responsible for all work performed on their airplanes regardless of the certification status of persons or maintenance entities performing such maintenance. This proposed rule change would dilute this responsibility, with a possible detrimental effect on safety.

Proposal 483. This proposal would have revised § 121.375 to require each certificate holder to prepare and keep current a written training pogram curriculum for maintenance personnel for each type of airplane operated, and also require annual recurrent training. The current rules do not specify the type of training program or frequency of training, allowing certificate holders the opportunity to adjust their training program to their specific needs. These training programs are monitored by the FAA for their adequacy.

Proposal 487. This proposal would have amended §§ 121.380, 43.9, and 43.11 to require the current status of applicable service bulletins, including methods of compliance, to be recorded. The recommended rule change has not been sufficiently justified since these current recording requirements are adequate to provide a record of all maintenance and alterations performed and are subject to periodic review by the FAA.

Proposal 493. This proposal would have amended § 121.391 to change the passenger to flight attendant ratio from the current 50-to-1 to 30-to-1. Emergency evacuation demonstrations performed under current FAA requirements have safely and satisfactorily proved that the 50-to-1 ratio is more than adequate. Additionally, insufficient justification was presented to properly support a change in the passenger to flight attendant ratio.

Proposal 581. This proposal would have amended § 121.571 to require that all operators extract the regulations pertinent to passenger safety from the Federal Aviation Regulations and publish them as passenger information. The current dissemination of passenger information by passenger briefings and briefing cards is considered sufficient. Many regulations are "pertinent to passenger safety", yet their dissemination to passengers is not practical because many of the regulations are complex and would tend to confuse the passengers. They are adequately covered in crewmember training programs which instruct crewmembers in all aspects of passenger safety.

Proposal 582. This proposal would have amended § 121.571 to require that passengers be alerted, during pretakeoff briefings, of the need to familiarize themselves with the procedures involved in the operation of emergency exits. The current passenger briefings and the information contained on the printed briefing cards already convey this information on the operation of emergency exits. Dissemination of this information is being emphasized during crewmember training programs and during passenger briefings. In addition, this information is clearly posted at each emergency exit.

Proposal 859. This proposal would have deleted § 145.2 and, along with related proposals, would restructure the current repair station rating systems. The implementation of this proposal, and the accompanying changes which would be necessary in other parts of the regulations, directives, and supporting advisory circulars, are not justified on the basis of increased safety.

Proposal 861. This proposal would have added a new § 145.11(a)(5) which would require applicants for repair stations with any instrument rating (Class 1, 2, 3, or 4) to list, by type and make of instrument, those appliances for which approval is sought. Proposed § 145.11(a)(1) satisfies the intent of this proposal.

Proposal 862. This proposal would have amended § 145.13 to allow foreign countries who have developed requirements and procedures for repair station certification to provide certification and surveillance services for the FAA. The certification and surveillance authority, as related to foreign repair stations certificated by

the FAA, must remain with the FAA. Since foreign repair stations under the FAR are primarily for the purpose of maintaining U.S. registered aircraft operating outside the U.S., the FAA is not prepared to certificate a foreign repair station, or allow certification status to continue on the basis of an affidavit instead of an on-site inspection by the FAA.

Proposal 863. This proposal would have revised § 145.17(a) to impose a 2-year renewal requirement on FAA approved domestic repair stations. The FAA current surveillance activity ensures the continuing capability of these stations and the renewal requirement would place an economic burden on repair stations and the FAA with no commensurate gain in safety.

Proposal 865. This proposal would have revised § 145.31 by replacing the current class ratings, which include descriptive information about the services involved, with a categorical listing which would denote only the general area of services or products involved. The current rating structure should remain as it is since changing the names of the ratings would not enhance safety, be an economic burden on industry (because of having to recertificate the repair stations and additional requirements), and cause confusion to the public.

Proposal 868. This proposal would have revised § 145.33 by replacing the current limited ratings with a process specification that describes the procedure to be used. The current rating structure is adequate and changing it would not enhance safety, would require recertification of all repair stations to include the process specification procedure, and would be an economic burden on industry and FAA.

Proposal 871. This proposal would have amended § 145.39(d) to require that persons who supervise, perform the work without supervision, or inspect the work for which the repair station is rated, must be appropriately certificated and rated as a mechanic or repairman under Part 65. It would also allow a person working under the supervision of a holder of a mechanic or repairman certificate to perform the same functions that the supervisor is authorized to perform if the supervisor personally observes the work and is readily available, in person, for consultation. The current rules impose sufficient requirements. They provide that each person who is directly in charge of the maintenance function of a repair station must be appropriately certificated as a mechanic or repairman under Part 65. To add requirements for additional ratings for additional persons as proposed is unnecessary and creates an additional burden without a commensurate increase in safety.

Proposal 874. This proposal would have revised § 145.47 to eliminate the current requirement for periodic inspection and calibration of test equipment being used. Calibration of this equipment on a continuing basis is a necessary safety requirement and is required to be performed at regular intervals to ensure correct calibration.

Proposal 877. This proposal would have deleted § 145.49. It is based on Proposal 868 which would have eliminated limited ratings and is removed from consideration for the same reasons stated for Proposal 868.

Proposal 878. This proposal would have revised § 145.51 and was predicated on Proposal 865 which would have replaced the present repair stations class and limited ratings with a categorical system denoting only the general area of services or products involved. The current rating system should be retained and therefore this proposal is removed from consideration for the reasons stated for Proposal 865.

Proposal 882. This proposal would have amended § 145.51 to allow a certificate holder, which has an engineering organization acceptable to the Administrator, to approve the technical data for major repairs and major alterations. This proposal has been included in the provisions of Special Federal Aviation Regulations (SFAR) No. 36 (43 FR 3084; January 23, 1978).

Proposal 883. This proposal would have amended § 145.53 to restrict technical data, equipment or facilities to that recommended by the manufacturer. This proposal is unduly restrictive in that the manufacturers' instructions, while desirable, are not the only available source. Further, the prohibition sought in the proposal is already encompassed in the existing § 145.53.

Proposal 887. This proposal would have revised § 145.71 by deleting the requirement that a determination of need must be found by the Administrator before a certificate and rating(s) could be issued for a foreign repair station. The certification of foreign repair stations is based on a requirement for maintaining or altering U.S. registered aircraft operating outside the United States. Thus, this rule change would negate the basic purpose of FAA certification of foreign repair stations.

Proposal 890. This proposal would have deleted Appendix A of Part 145 and reissued the information in an advisory circular. The material in Appendix A is a regulatory requirement and is not appropriate for inclusion in an advisory circular.

(Secs. 313, 314, and 601 through 610 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1355, and 1421 through 1430); sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.45)

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the draft evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to the individual named in the "FOR FURTHER INFORMATION CONTACT" paragraph.

Issued in Washington, D.C., on January 9, 1981.

Kenneth S. Hunt,

Director of Flight Operations.

[FR Doc. 81-1764 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-13-M

federal register

Monday
January 19, 1981

Part XVI

Department of Transportation

Federal Aviation Administration

Elimination of Duties and Activities of Flight Crewmembers Not Required for the Safe Operation of Aircraft

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 20659; Amdt. Nos. 121-168; and 135-11]

Elimination of Duties and Activities of Flight Crewmembers Not Required for the Safe Operation of Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments prohibit performance of nonessential duties and activities by flight crewmembers which are not required for the safe operation of aircraft during critical phases of flight. Nonessential flight crewmember duties and activities can create distractions in the flight crew compartment. These amendments require aircraft operators and flight crewmembers to assure an environment in the flight crew compartment that is free from such potentially dangerous distractions.

EFFECTIVE DATE: May 18, 1981.

FOR FURTHER INFORMATION CONTACT: Marvin J. Walker, Regulatory Review Branch (AVS-22), Safety Regulations Staff, Associate Administrator, for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 755-8714.

SUPPLEMENTARY INFORMATION:

History

This final rule is based on Notice of Proposed Rule Making No. 80-12 published in the **Federal Register** on August 28, 1980, (45 FR 57684). All interested persons have been given an opportunity to participte in the making of the rule, and due consideration has been given to all matters presented.

Background

Notice 80-12 was issued as a result of the FAA's growing awareness that certain activities and nonessential duties assigned to flight crewmembers by the air carrier are not required for the safe operation of aircraft. These nonessential duties and activities are possible sources of dangerous distraction to flight crewmembers and can result in a compromise of safety, especially during critical phases of flight. A review of data derived from the Federal Aviation Administration/ National Aeronautics and Space Administration (NASA), Aviation Safety Reporting System (ASRS), revealed many examples of flight crew errors, omissions, and noncompliance with air traffic control (ATC) clearances which reportedly resulted from distractions caused by the performance of nonessential duties and activities by flight crewmembers. A review of National Transportation Safety Board (NTSB) accident investigation reports further revealed that inadequate cockpit discipline in the flight crew compartment is a commonly cited cause of aviation accidents.

Notice 80-12 proposed adding new §§ 121.542 and 135.100 to the Federal Aviation Regulations (FAR) to eliminate nonsafety related duties and activities during critical phases of flight, thereby greatly reducing accident potential. Critical phases of flight were defined in the notice as all ground operations involving taxi, takeoff and landing, and other flight operations except cruise flight.

Discussion of Comments

Eighteen comments were received in response to Notice 80-12, representing the views of individuals, labor organizations, trade associations, airline companies, and other government agencies. The NTSB in its comment expressed unqualified approval of the proposals, as did one citizen's committee which responded to the notice. A majority of commenters expressed approval of the intent of the proposals. Several, however, suggested changes which would tailor the proposals to specific airline operations. Where practicable, these suggestions have been adopted.

Several commenters object that the definition of critical phases of flight as everything but cruise flight is too stringent, particularly for short-haul up and down operations where there is a minimum, if any, cruise portion of flight. They state that a sterile cockpit until cruise is simply not workable in the instance of these shorter flights and suggest that a hard altitude be specified instead. The FAA agrees. The definition of critical phases of flight is expanded in the flight operations area to allow nonessential duties and activities to be conducted during cruise flight at any altitude, and during climbout and descent above 10,000 feet.

One commenter specifically questions the practicality of prohibiting all extraneous conversation between a pilot and passengers on board small charter aircraft operating under Part 135 of the FAR. The FAA does not agree. The objective of the rule is to reduce distractions in the cockpit. Extraneous conversation in the cockpit during critical phases of flight causes flight crew distraction in small as well as large aircraft. Therefore, Part 135 operators carrying passengers in the same compartment occupied by flight crewmembers should ensure that those passengers are briefed concerning their responsibilities under the law. The FAA considers extraneous conversation, as it pertains to this rule, to be a dialogue not related to the safe operation of an aircraft, such as discussions concerning politics or the passing scenery.

A number of commenters object to the proposals as being ambiguous and lacking definition. They state that the proposals would place both operators and flight personnel in an untenable interpretation dilemma since the list of duties and activities prohibited in the proposals is noninclusive. These commenters suggest that the FAA not issue open-ended rules such as the ones proposed, but rather leave determinations as to which specific duties and activities are unnecessary for the safe operation of aircraft and when they are to be prohibited to the individual operators involved. They suggest that each operator submit a cockpit sterilization procedure to the FAA for approval by the Administrator. The FAA does not agree that the proposals are in any way ambiguous or vague. The rules are clear; they categorically state that airlines shall not require their flight crewmembers to perform nonsafety related duties during critical phases of flight and that flight crewmembers shall not conduct nonsafety related activities which could cause distractions in the flight crew compartment during critical phases of flight. They further state that the pilot-in-command shall not permit any activity during a critical phase of flight which would distract flight crewmembers from the performance of their duties. Critical phases of flight is an expression which is commonly used in discussions concerning flight crew workloads. These are the phases of a flight in which the flight crew is busiest, such as during takeoff and landing and instrument approaches. When many complex tasks are performed in a short time interval, distracting events could cause errors and significant reductions in the quality of work performed. The performance of a nonsafety related duty or activity when flight crew workload is heavy could be the critical event which precludes a flight crewmember from performing an essential function such as extending the landing gear prior to touchdown.

Several of these commenters further state that the proposals would be too difficult to enforce. They suggest that the intent of the proposals to achieve a sterile cockpit during critical phases of

flight could best be furthered by having each operator determine which duties and activities should be prohibited and incorporate them into its training program. The FAA does not agree that the rule is too difficult to enforce. Principal operation inspectors will assure air carrier compliance through review of manuals and procedures. Individual compliance will be assured through en route surveillance, as in the past. Violations of this rule will be pursued as vigorously as those of any other FAR. The FAA does not object to individual operators incorporating additional examples of nonessential duties and activities into their manuals and training programs, however the minimum provisions of these rules must be met.

Several commenters state their belief that individual airline sterile cockpit procedures already in existence have worked well, and that therefore the proposals are not necessary. They state that the adoption of sterile cockpit procedures on a voluntary basis is the most desirable alternative to the proposals in Notice 80–12. The FAA does not agree. A background history of events leading to the formulation of the proposals, including attempts by the FAA to promote voluntary compliance with practices which would prevent cockpit distractions during critical phases of flight, was given in Notice 80–12. Efforts by the FAA to encourage periods of voluntary cockpit sterilization have not been totally successful as evidenced by hundreds of recent ASRS reports detailing incidents of distractions in the flightcrew compartment, and by the continued occurrence of aircraft accidents such as the September 1978 PSA mid-air collision near San Diego in which such unnecessary activities as crewmembers engaging in extraneous conversation have been found to play a part.

Several commenters question the need for the proposed rules given the existence of Federal Aviation Regulations which concern flight safety and cockpit management. They point to regulations which vest the pilot-in-command with full control and responsibility as to the operation of an aircraft, and which prohibit persons from operating an aircraft in a careless or reckless manner. The existence of these regulations alone is insufficient. None of the current Federal Aviation Regulations specifically prohibits performance of nonsafety related duties and activities during critical phases of flight. The need for such a rule is made clear in Notice 80–12 where the Eastern Airlines crash in Charlotte, North Carolina, and the PSA collision near San Diego are discussed as examples of accidents in which a breakdown of cockpit discipline played a part.

One commenter questions the use of ASRS data to support the proposal. He inquires into the type and amount of data reviewed and whether the data was randomly picked. The FAA reviewed 475 ASRS examples of distractions in the cockpit. The period of review spanned from July 1976, when the ASRS program was first conceived, to March 1980. The following table lists the categories stored in the computer and the number of reports in each category for which distraction was judged to be the reason for the reported error:

Categories reviewed	Number of distractions
Altitude alert	209
Alerts and warnings	16
False alarms	20
Ground proximity warning system	39
Cockpit display	60
Aircraft equipment malfunction	91
Checklist	40
	475

ASRS reports of distractions in categories involving paperwork problems, public address systems, flight attendants, company radios, and extraneous conversations were also reviewed. A given ASRS report reviewed by the FAA may have spoken to a combination of the above categories.

This commenter objects to use of the NTSB report on the PSA midair collision in San Diego in support of the proposal, since the Air Line Pilots Association (ALPA) has petitioned the NTSB to reconsider the probable cause of that collision. The FAA does not agree that reference to the NTSB report was in any way inappropriate. ALPA's June 9, 1980, petition for reconsideration of the probable cause of the San Diego crash does not challenge the NTSB's statements concerning the extraneous conversation taking place in the PSA cockpit preceding the collision. In this regard, the NTSB in its accident report stated: "Although the conversation was not causal, it does point out the dangers inherent in this type of cockpit environment during descent and approach to landing." The FAA is in agreement with the NTSB's assessment of the dangers associated with extraneous conversation. The fact that ALPA has petitioned the NTSB has no bearing on these rules.

This commenter states further that if additional cockpit management regulations are needed, they should be dealt with in Part 91 of the regulations which are applicable to all pilots and not just to air carriers and air taxi operators. The FAA does not agree. The amendments apply to Parts 121 and 135 in order to assure the highest level of safety possible for those engaging in air transportation. Applying the same amendments to Part 91 would be impractical and unnecessary because of the many different types of operations conducted under that part and because Part 91 operations do not involve the traveling public.

One commenter who is in favor of the proposal suggests that the definition of critical phases of flight should not include taxi since accidents during taxi are extremely rare. The FAA does not agree. Serious accidents during taxi have occurred, several of which have involved fatalities. For example, on March 27, 1977, a K.L.M. Boeing 747 collided with a taxiing Pan American Boeing 747 at Los Rodeos (Tenerife) Airport killing 583 persons. On December 20, 1972, 10 persons lost their lives when a North Central Airlines DC–9 collided with a taxiing Delta Airlines Convair 880. This commenter is also concerned that certain passenger information announcements by flight crews during taxi will be prohibited by the proposal. Studies of ASRS reports show that cabin announcements made by flight crewmembers during critical phases of flight can be dangerously distracting. The rules are clear. Flight crewmembers shall not make cabin announcements during taxi, unless such announcements are in response to safety related situations such as announcements made to direct passengers to take their seats until the aircraft has arrived at the gate.

One commenter asks if a flight attendant may, for example, enter the cockpit to report an illness on board the aircraft or whether there could be a report made of malfunctioning galley equipment. A flight attendant's decision to enter the cockpit during critical phases of flight to make a report must be tempered by good judgment. Certainly, a flight attendant would not, for example, be prohibited from reporting an illness or disturbance which was of a serious nature. Proper flight attendant training will greatly aid in making the proper decision. Flight attendants shall not enter the cockpit during critical phases of flight to report cabin mechanical malfunctions that are not safety related, such as broken movie projectors or inoperative coffee makers.

One commenter is concerned that the sterile atmosphere generated by the

proposals could mask subtle incapacitation. The FAA does not agree. There are several other symptoms of subtle incapacitation other than the absence of verbal communications and flight crewmembers are trained to recognize them. Another commenter points out that extraneous conversation under certain circumstances enhances safety by assuring alertness of flight crewmembers. There is considerable merit to this comment and the FAA's decision to modify the definition of critical phases of flight is based in part upon this concern. However, in view of this modified definition of critical phases of flight, the FAA has determined that the prohibition against extraneous conversation will not adversely affect safety because of the relatively short period of time during a flight in which such conversation is prohibited.

Similarly the FAA disagrees with the views of another commenter who states that the working conditions which would result from the proposals would encourage an atmosphere of noncommunication and distrust between cockpit crew and cabin attendants. Again, extraneous conversation is to be prohibited for such a relatively short period of total flight time that overall communication between cockpit crew and cabin attendants will not be significantly affected.

One commenter states that good judgment cannot be legislated, and that it must be accomplished by establishment of sound company policy and procedures, and effective training. The FAA agrees that the institution by each operator of proper cockpit sterilization procedures in its manuals and training programs would further the intent of the rules. However, while the FAA supports the existence of such company policy, its existence alone is not sufficient since company policy does not have the effect of law and cannot be enforced by the FAA.

One commenter recommends that the rules address the conduct of nonfunctioning (jumpseat) crewmembers in the cockpit. The FAA agrees that the presence of such persons in the cockpit could be potentially distracting, and therefore the proposals are revised to require that the pilot in command prohibit activity which is distracting to flight crewmembers by any cockpit occupant during critical phases of flight. The FAA does not consider the mere presence of a duly authorized FAA inspector or nonfunctioning crewmember in the cockpit to be a distraction which is in violation of these rules.

Description of the Amendments

These amendments add two new sections to the Federal Aviation Regulations, §§ 121.542 and 135.100. Both sections use identical language in prohibiting the performance of nonessential duties and activities by flight crewmembers or other occupants of the cockpit during critical phases of flight. The following are some examples of flight crewmember duties which are unnecessary for the safe operation of an aircraft: company-required calls made for such nonsafety related purposes as ordering galley supplies and confirming passenger connections; PA announcements made to promote passenger entertainment including announcements pointing out sights of interest; and time spent in the flight crew compartment filling out company paycards and personnel records.

With respect to the prohibition against the performance of nonsafety related activities, the proposals have been revised to reflect that no flight crewmember shall engage in any activity during a critical phase of flight which would distract any flight crewmember from his or her duties or which would interfere in any way with the proper conduct of those duties. In addition, the pilot in command is now required to prohibit any activity by any cockpit occupant during a critical phase of flight which is distracting to a flight crewmember. Notice 80-12 addressed only the conduct of those persons who were required flight crewmembers. The proposals were revised to respond to commenters concerned with disruptive conduct by crewmembers deadheading on board a flight. In addition, the proposals have been revised by adding an example of a nonessential activity; i.e., reading publications not related to the proper conduct of a flight. Critical phases of flight is expanded in the final rules to allow nonessential duties and activities to be conducted above 10,000 feet, and during cruise flight at any altitude. The definition of critical phases of flight is modified in response to those commenters who state that the definition set forth in Notice 80-12 is too stringent for short haul operations.

The proposals have been further revised by adding the word "communications" to the list of those activities which are sometimes prohibited. Such communications may, for example, include interphone exchanges between cabin crew and flight deck crew, and the sounding of bells in the cockpit to summon the attention of flight deck crewmembers.

Adoption of the Amendments

Accordingly, Parts 121 and 135 of the Federal Aviation Regulations (14 CFR 121 and 135) are amended effective May 18, 1981, as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. By adding a new § 121.542 to read as follows:

§ 121.542 Flight crewmember duties.

(a) No certificate holder shall require, nor may any flight crewmember perform, any duties during a critical phase of flight except those duties required for the safe operation of the aircraft. Duties such as company required calls made for such nonsafety related purposes as ordering galley supplies and confirming passenger connections, announcements made to passengers promoting the air carrier or pointing out sights of interest, and filling out company payroll and related records are not required for the safe operation of the aircraft.

(b) No flight crewmember may engage in, nor may any pilot in command permit, any activity during a critical phase of flight which could distract any flight crewmember from the performance of his or her duties or which could interfere in any way with the proper conduct of those duties. Activities such as eating meals, engaging in nonessential conversations within the cockpit and nonessential communications between the cabin and cockpit crews, and reading publications not related to the proper conduct of the flight are not required for the safe operation of the aircraft.

(c) For the purposes of this section, critical phases of flight includes all ground operations involving taxi, takeoff and landing, and all other flight operations conducted below 10,000 feet, except cruise flight.

Note.—Taxi is defined as "movement of an airplane under its own power on the surface of an airport."

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

2. By adding a new § 135.100 to read as follows:

§ 135.100 Flight crewmember duties.

(a) No certificate holder shall require, nor may any flight crewmember perform, any duties during a critical phase of flight except those duties required for the safe operation of the aircraft. Duties such as company

required calls made for such nonsafety related purposes as ordering galley supplies and confirming passenger connections, announcements made to passengers promoting the air carrier or pointing out sights of interest, and filling out company payroll and related records are not required for the safe operation of the aircraft.

(b) No flight crewmember may engage in, nor may any pilot in command permit, any activity during a critical phase of flight which could distract any flight crewmember from the performance of his or her duties or which could interfere in any way with the proper conduct of those duties. Activities such as eating meals, engaging in nonessential conversations within the cockpit and nonessential communications between the cabin and cockpit crews, and reading publications not related to the proper conduct of the flight are not required for the safe operation of the aircraft.

(c) For the purposes of this section, critical phases of flight includes all ground operations involving taxi, takeoff and landing, and all other flight operations conducted below 10,000 feet, except cruise flight.

Note.—Taxi is defined as "movement of an airplane under its own power on the surface of an airport."

(Secs. 313(a) and 601 through 605 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1425); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).

Note.—The Federal Aviation Administration has determined that this document involves regulations which are not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A copy of the regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT."

This rule is a final order of the Administrator of the FAA under the Federal Aviation Act of 1958, as amended [49 U.S.C. 1485]. As such, it is subject to review only by the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia.

Issued in Washington, DC, on January 14, 1981.

Langhorne Bond,

Administrator.

[FR Doc. 81-1824 Filed 1-14-81; 1:32 pm]

BILLING CODE 4910-13-M

federal register

Monday
January 19, 1981

Part XVII

Department of Transportation

Federal Aviation Administration

Access to Flight Data Recorder and Cockpit Voice Recorder Tapes

DEPARTMENT OF TRANSPORTATION

14 CFR Parts 121 and 135

[Docket No. 20661; Notice No. 80-14B]

FAA Access to Flight Data Recorder and Cockpit Voice Recorder Tapes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental Notice of Proposed Rulemaking.

SUMMARY: These proposals, if adopted, would establish the regulatory procedures necessary for the Administrator to obtain flight data recorder information and cockpit voice recorder information. The data are important to the furtherance of aviation safety. The information will be used to study the human factor elements associated with aircraft operation and design to determine what, if any, regulatory changes should be made to enhance aviation safety. The importance of this rulemaking should not be underestimated; the human element is the primary cause of aviation accidents. These proposals would not change the Administrator's policy regarding use of information derived from cockpit voice recorders, but would limit the Administrator's ability to use flight data recorder data in enforcement proceedings. More specifically, cockpit voice recorder data would not be used for enforcement purposes. Flight data recorder data would continue to be used for enforcement purposes but not when such data are removed for the purpose of studies discussed herein.

This supplementary notice discusses a number of comments received in response to Notice of Proposed Rulemaking No. 80-14 (45 FR 57694), and solicits additional comments.

DATE: Comments must be received on or before May 18, 1981.

ADDRESSES: Send comments on the proposals in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No., 800 Independence Avenue SW., Washington, D.C. 20591; or deliver comments in duplicate to: FAA Rules Docket, Room 916, 800 Independence Avenue SW., Washington, D.C.

Comments may be examined in the Rules Docket weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Everett W. Pittman, Regulatory Review Branch (AVS-22), Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 755-8714.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rules by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 20661." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rules. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available in the Rules Docket for examination both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this supplemental notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Background

This supplemental notice of proposed rulemaking is based on Notice of Proposed Rulemaking No. 80-14, published in the **Federal Register** on August 28, 1980 (45 FR 57694). Notice 80-14A was published in the **Federal Register** on October 30, 1980, extending the initial comment period. In response to those notices, 52 comments were received. An analysis of those comments has pointed out several areas where clarification of the proposed rules is needed, and the rules proposed herein have been so modified. More importantly, though, is the misinterpretation of several aspects of the proposals contained in Notice 80-14. Since the FAA is convinced of the importance of industrywide cooperation in the study and analysis of human error, and such cooperation cannot be founded on a basis of misunderstanding, this supplemental notice has been issued. It is hoped that the discussion of intent presented herein, and the modifications to the rules presently proposed, will serve to clarify the original intent of the agency.

Notice 80-14 was issued in response to the FAA's need for more hard statistical data on day-to-day working conditions in the cockpit. Recent aircraft certification experience has revealed that more data exists regarding all factors affecting cockpit functions than the FAA has yet utilized. Data derived from the implementation of these proposals will be used in the FAA's Aviation Human Factors Program which includes a major emphasis on identification and reduction of factors causing crew errors. The FAA's Aviation Human Factors Program is a new initiative designed to improve the man-machine interface element of the aviation system. The program is being developed with the full participation of the world aviation community. A major aspect of the program is a series of open workshops at which the FAA, industry and consumers will meet to dicuss present and future human factors issues, priorities, and optimum courses of action. The inflight data collection set forth in these amendments is one small but essential part of the overall Aviation Human Factors Program. In addition, all other pertinent data sources will be analyzed in the study of the human factors affecting aviation safety.

A number of commenters criticized the proposals set forth in Notice 80-14 because the notice did not set forth a detailed plan for the use of data to be collected. Such criticism is misdirected. The purpose of the proposals in Notice 80-14 was to establish a basis for development of a detailed work plan for this aspect of the agency's human factors program. Development of such a work plan is expected to be time consuming, and involve a large number of representatives from all facets of the international aviation industry. It would have been inappropriate to invest the considerable effort required, on the part of all concerned, in the development of these specific plans if the data required for the analysis—i.e., the cockpit voice and flight data recorder tapes, cannot be made available. Thus, the proposed rule changes were set forth before the detailed plan was developed. In this

connection, it is the specific intent of FAA to involve the international aviation community in the planning of this, and other aspects of the human factors program, through participation in a series of workshops. The first was held in Cambridge, Massachusetts on November 24–25, 1980. The second is being held January 15–16, 1981, during the second FAA/Commuter Airline Synposium at Washington, D.C. The third will be held in March of 1981, on a date to be announced in the Federal Register.

The comment of one major airline union deserves specific discussion at this point. Notice 80–14 is criticized therein for stating that cockpit voice recorder data is expected to reveal more about the Air Traffic Control system and runway/taxi transgressions. The commenter claims that "* * * the FAA already has access to recorded data covering both situations * * *. In the case of runway/taxi transgressions, the FAA already has authority to review flight data recorders and cockpit voice recorders * * *." This comment indicates a serious misunderstanding of existing explicit FAA authority. It is exactly because the FAA does not have explicit access to cockpit voice recorder data for such analysis that Notice 80–14 was proposed. Flight data recorders and air traffic controller tapes do not tell the full story in a runway transgression. To perform a complete analysis of such situations in order to get at the underlying cause, the agency must have access to the cockpit voice recorders, which it does not have at present.

Flight data reorder and cockpit voice recorder data should prove invaluable in a variety of other human factors studies, including assessments of flight crew workload and the impact on workload of FAA-mandated systems. An inflight data base will, for example, provide essential information for the human engineering of new cockpit layouts and cockpit designs. Such data may also be used to address any continuing issues regarding the safety of two-member versus three-member crews. Study of the human factors issues in the cockpit environment through use of cockpit voice recorder and flight data recorder data may also shed light on pilot training effectiveness. These data might be used in evaluating or determining the workload impact and coordination effectiveness between pilot and air traffic controller. Furthermore, with the availability of this data, studies related to aircraft performance and pilot response may be implemented and furthered.

The need to study human factors in the cockpit environment is supported by findings of the National Transportation Safety Board (NTSB) that errors of judgment or management play a major role in airline accidents. Historically, pilot error is a factor in approximately 60 percent of air carrier and 88 percent of general aviation fatal accidents. Although the majority of fatal aviation accidents involve some element of crew error, categorization of accidents as to the nature of the crew error and the identification of underlying human problems has never been accomplished. Utilization of flight data recorder tapes and cockpit voice recorder tapes will enable the FAA to study and analyze the complex interactions in the man-machine environment.

A number of commenters implicitly or explicitly indicate that FAA enroute inspection should be able to provide first-hand data on cockpit workload. The FAA disagrees, principally for two reasons. First, pilots' unions themselves consistently claim that the "real-world" environment is different from that which the FAA believes to be representative. The Air Line Pilots Association (ALPA), in its comment, states that "The most significant data that would be obtainable would reveal how airplanes are flown under operational conditions. In this respect, the data would show how unrealistic many of the certification tests required by FAA really are." The FAA interprets this statement as one of the clearest possible reasons for having access to, and carefully analyzing, flight data and cockpit voice recorder data. Secondly, the FAA has reviewed its data on air carrier enroute inspections since the early 1960's. Nearly half a million inspections have been performed in revenue service, during a time when the number of air carrier flights approached 100 million. An analysis of these data indicates strongly that the operation of air carrier aircraft is conducted in a different manner when an FAA inspector is on-board, compared to when he or she is not. The proof of this claim lies in an examination of the accident rates experienced for the two types (inspector/no inspector) of revenue flights. The only practical way to determine what these differences are is to analyze flight data and cockpit voice recorder tapes. Taken together, these are two powerful arguments in favor of this proposed development in the Aviation Human Factors Program.

There were two major questions raised concerning this program—what is its scope and what is its cost? On November 24 and 25, 1980, the FAA held the opening workshop of its series on Aviation Human Factors. Determinations regarding the use and quantity of information derived from implementation of these proposals, as well as procedural matters involving data collection, processing, and analysis, will be made as the information from these workshops is further developed. Development of the program will, therefore, take place with the full participation and input of all segments of government and private industry. As a result, the number of cockpit voice recorder and flight data recorder tapes analyzed will vary with time. The cost will also vary. However, as the FAA stated in NPRM 80–14A, the FAA fully intends to reimburse the carriers for the direct costs associated with removal and replacement of the units. Thus, the direct cost impact on the public will be minimal, if any. To set the procedures for reimbursement, and to set forth the ministerial details as to actual collection of the data, the FAA will establish an agency order and an advisory circular. Both of these documents will be available to the public. This procedure will assist the agency in coordinating this data collection effort with the Aviation Human Factors Program. In summation, the FAA has fulfilled its obligation to assess the cost impact on the public, and has determined to bear this cost impact itself with funds approved by the Congress.

A final point worthy of discussion is the concern raised about invasion of privacy and self-incrimination. These are discussed more fully below. In summary, however, the FAA intends to ensure, to the fullest extent permitted by law, that personal data is not released to the public as a result of this program. Further, the FAA does not intend to use the flight data recorder and cockpit voice recorder tapes employed in this human factors effort in any civil penalty or certificate action involving any crewmember. Specific guarantees are provided to these ends in the amended rules proposed herein.

Discussion of Comments

The FAA received 52 comments in response to Notice 80–14. These comments represent the views of individuals, flight crewmembers, citizens committees, airline companies, airplane manufacturers, and other government agencies. One commenter states that the NPRM has the potential of becoming one of the most beneficial aids to future aircraft safety improvement in recent regulatory history and volunteers to assist in development of procedures. A citizens committee, in support of the Notice,

concurs with the FAA that the data obtained will be extremely valuable in enhancing the safety of aircraft operations, and an avionics organization, in its comment, wishes to go on record in full support of the proposals. Virtually all of the remaining 49 comments, the majority of which were received from individual flight crewmembers, oppose the proposals.

In general, the objections to the proposals show a remarkable lack of concern for advancing the cause of aviation safety. Commenters mainly object because they allege that the cockpit voice recorders were not installed for the purpose proposed here, and they allege an invasion of privacy. While these objections are dealt with in more detail below, it is important to focus on a central fact—all air carriers, commuters, air taxis and pilots are authorized to operate pursuant to a statute that demands strict adherence to aviation safety. The American public has entrusted this charge to the FAA and to those who operate by virtue of the FAAct. When it is possible to advance aviation safety, protests that the cockpit voice recorder was not intended for the purpose proposed herein have a hollow ring. The science of human factors has advanced, as has the FAA's ability to use this data to make aviation safer. Use of this tool in this scientific endeavor to advance aviation safety is consistent with the state-of-art in the study of human factors.

Turning more specifically to the individual objections, several commenters state that cockpit voice recorders and flight data recorders were intended to be used only as aids in accident investigations, and not as "tools of discipline" with information gathered from them used to aid in enforcement of Federal Aviation Regulations. The Federal Aviation Regulation requiring the installation of cockpit voice recorders contains no provision limiting the use of cockpit voice recorders to accident investigations. That rule only prohibits the use of cockpit voice recorder data in civil penalty or certiticate actions. Flight recorder data, however, are no different form any other record or report required by the regulations, and may be reviewed and used in investigations and enforcement actions pursuant to § 13.7 of the FARs. These proposals will not in any way change the Administrator's policy regarding use of information derived from cockpit voice recorders in enforcement proceedings. However, in order to promote maximum cooperation in this aspect of its human factors effort, and in response to a number of comments received in response to Notice 80–14, the FAA has amended the proposed rules to include an immunity provision. As now phrased, the proposed rules provide that when, for the purposes of human factors research (and only in such cases), both the cockpit voice recorder and flight data recorder are ordered to be removed from an aircraft by the Administrator for human factors analysis, none of the data contained on the flight data recorder may be used by the Administrator in civil penalty or certificate actions. This does not dilute the agency's authority to continue to use flight data recorder records for enforcement purposes outside the human factors program. It does, however, guarantee that records removed for the purpose of human factors research will be used only for that purpose, and not for purposes of enforcement.

The NTSB, in its comment, states that in the case of *Administrator* v. *Rapattoni and Swanson* the FAA is on record that cockpit voice recorder tapes should only be used in connection with accident investigations. The NTSB is incorrect in its assessment of that brief. Any comments made therein must be considerd in light of the issue presented in the brief; that is, the use of cockpit voice recorder tapes in connection with enforcement proceedings. The FAA merely expressed disagreement with use by the NTSB examiner in that case of cockpit voice recorder information in an enforcement action, stating, "It is clear that the FAA, by the language of the disclaimer contained in the rule and by the language used in adopting the rule, did not envision that the recorded information could or would be used by anyone else in an enforcement action." By such statements the FAA did not establish precedent limiting the use of cockpit voice recorder data to accident investigations.

Several commenters object that to allow the FAA unlimited access to cockpit voice recorder data would result in an invasion of a pilot's privacy. One commenter is concerned that only those with a legitimate need to know should ever be aware of the identity of crewmembers who are involved in a particular occurrence. This concern is not justified. Although the FAA will have access to cockpit voice recorder tapes, the identity of those pilots whose voices are recorded will not be available from the tapes. It, therefore, would be unlikely for any invasion of privacy to result from use of the tapes. Furthermore, under our system of law a person's right of privacy must be weighted against the public interest in order to determine whether a valid invasion of privacy claim arises. If the public interest in the material is substantial, and the intrusion upon one's privacy is of a lesser degree, then the public's interest will prevail and no actionable violation of the affected person's right of privacy will result. The public's interest in promoting safety supersedes any slightly possible intrusion into a flight crewmember's privacy.

Two commenters raise questions concerning possible disclosure of the cockpit voice recorder tapes pursuant to the Freedom of Information Act (FOIA) (5 U.S.C. 552). The NTSB suggested that public availability of the tapes could "adversely affect verbal communication procedures and thus reduce the usefulness of the cockpit voice recorder in the investigation of accidents." Another commenter expresses fear that under the FOIA the tapes would be available to the news media with no assurance that the FAA could, or would, protect the anonymity of crewmembers; it is this aspect, says the commenter that "makes the program completely unacceptable to the airlines." The commenter further states that "this aspect of the program is also unacceptable to the crewmember associations."

These concerns are valid. In response, the FAA plans to extract all significant data from the tapes and then erase them as soon as they are accurately transcribed. If partial disclosure is compelled under the FOIA, at least three factors combine to assure that crew anonymity can and will be preserved. First, the crew will not be identifiable through the tape or transcript thereof; although the tapes invariably contain call signs that identify the airline and flight number, they do not contain a date which would be necessary to identify the crew. Second, the agency, in transcribing tapes reviewed under this rule, will not make a verbatim transcript of all statements made by individuals in the cockpit. If extraneous comments are made, a notation will appear on the transcript noting "extraneous comments." The exact words used will not appear. This is similar to notations that appear on accident transcripts. Third, should anonymity nevertheless not be assurable, the FAA will, to the extent necessary to protect the privacy of individual crewmembers, delete personal discussions from any released tape or transcript, under the authority of Exemption 6 of the FOIA (5 U.S.C. 552(b)(6)). That exemption authorizes withholding of information concerning

personal matters unless there is a public interest to be served by disclosure that would outweigh the invasion of privacy that could result from disclosures. It is the FAA's view that a public interest claim would have to be overwhelming to meet that standard since the protectability of the privacy interest is so obviously essential to the accomplishment of FAA's public purpose, i.e., it seems apparent the program cannot succeed if crewmembers must be concerned about disclosure of personal matters outside the FAA. The FAA, for this reason, hereby announces its intention to defend to the fullest extent permitted by law against disclosures from either tapes or transcripts that can be traced to identifiable individuals. In this connection, if it is possible to identify the crew whose conversation is recorded on a cockpit voice recorder tape sought under the FOIA, the FAA will consult the crew as to what should be withheld. Any disclosures resulting from this process are no more likely to result in invasions of privacy than the transcripts of germane matters from cockpit voice recorder tapes made public by the NTSB in its accident investigation reports.

The FAA is also aware that, from time to time, discussions of company or union confidential matters may appear on the tapes. The carrier or union concerned will be consulted, as appropriate, regarding possible withholding of such matters under the authority of Exemption 4 of the FOIA (5 U.S.C. 552(b)(4)).

A number of commenters, including the NTSB, express concern that by allowing an aircraft to fly up to 8 hours without a cockpit voice recorder, valuable information would be lost should an accident occur. The FAA is also concerned about the possibility of an accident occuring during the period when the tapes are removed from an aircraft, and every effort will be made to remove the cockpit voice recorder at an airport where a replacement is available. It should be noted that the FAA does not seek possession of unmanageable numbers of tapes but only of a very small sample as dictated by the statistical design developed under the Human Factors Program. This is likely to result in a review of a very small percentage of all tapes on board aircraft. In the event that immediate replacement of the cockpit voice recorder is not possible under unusual circumstances, the FAA has determined that the public interest in allowing FAA access to these tapes greatly outweighs the loss of information which may occur in the remote possibility of an accident.

One commenter states that the proposals would fit a scheduled service where the airplane is in a maintenance base every 6 flight hours, but will not work for long-range overseas flights or where the aircraft is in charter service. Based on this comment, the FAA has reconsidered its position on allowing an aircraft operating under Part 121 of the FAR to fly only 8 hours with its tapes removed. To enable long range aircraft to fly the longest leg possible this 8-hour flight limitation is changed to 14 hours. Such a revision will enable long aircraft flights, such as westbound flights from New York to Tokyo, to reach a main base where tapes or recorders can be replaced. Again, the agency will make every reasonable attempt to minimize the time during which aircraft are flown without tapes. Data collection procedures will be based on the assumption that the primary removal location will be staffed with enough experienced personnel and spare parts so that recorders can be removed and replaced without interferring with scheduled airlines departures.

Several commenters believe that compliance with the proposals should be made strictly voluntary. One commenter suggests that a pilot who feels that the information compiled from a flight would be valuable for FAA study could call for removal of the tapes, with his or her company's approval, for dispatch to the FAA. The FAA would welcome any tapes removed on a voluntary basis for a human factors study but believes that tapes selected on an on demand basis will more accurately represent a crew's normal performance of its workload. Tapes voluntarily submitted to the FAA would tend to show flight crew behavior at its best since the crew involved knows that its conduct, as reflected in the tape, will be subject to scrutiny.

At least one commenter is concerned about the cost which must be borne by the operator for implementation of the rules. As stated in Notice 80–14A (45 Fr 72017) the FAA will assume the direct costs reasonably related to this program. The FAA will provide funds to reimburse air carriers for the direct costs involved in this data collection effort. Discussion of these costs will be included in an impending agency order and advisory circular.

Several commenters state that satisfactory data can only be obtained by direct observation of the crew at work, since many things are done in the cockpit without a word being spoken. The FAA does not agree. As discussed in Notice 80–14, when FAA inspectors are on board a flight, cockpit work follows standard procedures and workload patterns appear to duplicate those found during certification test flights. Flight crews have charged that workload distributions in actual line operations are higher than those experienced during FAA enroute inspections and line checks. Such charges can not be adequately evaluated without the review of flight data recorder and cockpit voice recorder tapes to confirm the existence and determine the causes of the stated problems. Other commenters suggest that a human factors study should be conducted instead in aircraft simulators operating under line oriented flying procedures since emergency procedures can be added to normal routine in a simulator. Simulators will be used in the study of human factors where appropriate. In addition, the collection of real world data will provide additional credibility and a validation baseline for human factors analysis. Therefore, there is a need to obtain data from aircraft in flight.

Several commenters suggest that there is an already existing body of human factors data which the FAA could analyze to satisfy the requirements of these proposals. They suggest that the FAA look to such things as studies undertaken by aircraft manufacturers and other civil aviation authorities, as well as data obtained by the United Kingdom in its studies. They suggest that parties such as active and retired airline personnel be utilized to establish the needed data base. The FAA agrees that there are many current sources of human factors information; however, this information is not of such magnitude that analysis of additional information should not be sought in the interest of aircraft accident prevention. In fact, the data base of the human factors information presently available has been used to determine that further data is needed. For example, NTSB study of cockpit voice recorder tapes following the Eastern Airlines crash at Charlotte, North Carolina, revealed that the probable cause of the accident was the flightcrew's lack of altitude awareness at critical points during the approach due to poor cockpit discipline. Through a study of the cockpit voice recorder tapes the NTSB found that company required callouts were not made. The NTSB stated that the extraneous conversation conducted by the flightcrew during the descent, as reflected in the tapes, was symptomatic of a lax atmosphere in the cockpit which continued throughout the approach. Similarly, NTSB study of cockpit voice

recorder tapes following the National Airlines crash in Pensacola, Florida, revealed that poor cockpit management and judgment contributed greatly to that accident. The tapes in that crash revealed that the probable cause of the accident was in part the flightcrew's unprofessionally conducted nonprecision instrument approach in that the captain and the crew failed to monitor the descent rate and altitude and the first officer failed to provide the captain with required altitude and approach performance callouts. Further study of inflight data is vital in understanding the nature of such crew errors and in identifying underlying human factors problems. With regard to those comments concerning data compiled by the United Kingdom, such data and other pertinent data surces will also be analyzed to identify human factor safety issues. These other sources may well include information derived from parties such as airline personnel.

At least one commenter points out that since most recorders contain only the last 30 minutes of the flight on tape, it is very doubtful if any departure or any enroute information would be obtainable for study. The FAA does not agree. If the Administrator determines that the cockpit voice recorder recordings of a specific segment of enroute flight are desired for human factors study, the aircraft pilot in command will be notified to disconnect the power source to the recorder. This notification to the pilot in command will include the time and place at which the power source is to be disconnected. For example, the disconnect may be requested immediately by the FAA Principal Operations Inspector or by the Administrator through the certificate holder, or it may be at some specified point in the future such as immediately after completion of the landing roll. At this time, the FAA is not proposing to extend the 30 minute duration of the tape.

Several commenters suggest that the FAA as an enforcement agency cannot be impartial in its study of cockpit voice recorder and flight data recorder tapes. They state that implementation of the proposed program could best be accomplished by an impartial nongovernment agency. The FAA does not agree that its function as a enforcement agency will in any way influence its study of the inflight data. A principal responsibility of the agency is development of effective regulations. Human factors is an important element in aviation safety, and is a regulatory area deserving of application of an improved state-of-the-art. The purpose of the proposed rules is to lay the groundwork for improved understanding of human factors in line operations of commuters and air carriers, so that regulations may be improved to reflect the latest state-of-the-art.

The Air Line Pilots Association (ALPA), in its comment, objects to use of NTSB reports on the Eastern Airlines DC–9 crash at Charlotte, North Carolina, and the National Airlines crash at Pensacola, Florida in support of the proposals, since it claims that it has petitioned the NTSB to reconsider the probable cause of those crashes. Diligent search of NTSB records and contact with NTSB personnel has failed to disclose any petition pending by ALPA for reconsideration of the probable cause of the Eastern Airlines DC–9 crash at Charlotte, North Carolina. In regard to the National Airline's crash at Pensacola, Florida, the FAA does not agree that reference to the NTSB report in that case was in any way inappropriate. Whether ALPA will be able to overturn the NTSB's report is speculative. However, the report referred to in support of Notice 80–14 is currently a proper and valid compilation of the NTSB's findings. Furthermore, the Pensacola crash, whether reconsidered by the NTSB or not, is at the very least an example of the type of unsafe activity which might take place in the cockpit. Study of inflight data will assist in the implementation of regulations and programs designed to prevent the occurrence of such breakdowns in cockpit discipline.

Several commenters are concerned that implementation of the proposals may degrade safety by inhibiting normal cockpit communication. They state that FAA access to every utterance in the cockpit is likely to inhibit normal crewmember behavior and to also destroy the working relationship between pilots and controllers. Cockpit voice recorder equipment has been required since 1966. Given this long period of time in which flight deck crewmembers have worked aware that their cockpit conversations are being recorded, implementation of these proposals will not likely inhibit normal crewmember behavior or in any way affect the routine cockpit work environment. Certainly crewmembers should not be apprehensive about making normal cockpit communications with other crewmembers or controllers.

Several commenters gave their views regarding the logistics of tape exchanges. They commented, for example, on the reasonableness of a cockpit voice recorder or cockpit voice recorder magazine change in a 15- to 30-minute time-frame using qualified personnel. The significance of these comments is appreciated since the FAA does not intend to impose any unreasonable costs or delays on any operator or to allow unqualified persons to remove or replace recorders. The removal and replacement of recorders will be accomplished by air carrier personnel. For the majority of aircraft 30 minutes is a more than sufficient period of time for qualified personnel to change the entire cockpit voice recorder. To prevent possible disruption of airline schedules and the unnecessary delaying of passengers, the FAA intends to remove the cockpit voice recorder at a base where a replacement is available. If under unusual circumstances a replacement recorder is not available, the FAA has increased the number of hours which a long range airplane may fly without a cockpit voice recorder from 8 hours to 14 hours so that airline schedules need not be disrupted.

One commenter states that the proposals could not produce any substantial amount of meaningful data given that the recorders are not designed for rapid acquisition and processing of data for study purposes. The FAA does not envision any rapid processing or quick analysis of the tape information. No attempt will be made to play back the cockpit voice recorder in the field. The cockpit voice recorder will be removed, replaced by a serviceable unit if available, and then carried to a designated readout facility. Qualified personnel will play back the recording. These individuals will take the time needed to accurately and thoroughly review the data.

Several commenters state that the FAA has neither the manpower nor the capability to use flight data recorder and cockpit voice recorder data for the purposes set forth in the Notice. The FAA does not agree. The FAA does indeed have adequate resources to implement the proposals. The FAA Office of Aviation Safety will coordinate development of a system to collect, reduce and analyze collected data. Through interagency agreements with other government agencies and contracts with industry, an effective system for data processing will be established.

Several comments were made regarding the limited number of parameters on the oscillographic flight data recorder which preserves its data by engraving traces on metal foil and which presently account for over 80 percent of the flight data recorders in use. The FAA is aware of the limitations in the older type recorders as compared

to the new and improved expanded parameter Digital Flight Data Recorders (DFDR). However, the FAA still considers the recorded value of dynamic or continually changing parameters such as time, altitude, airspeed, heading, and vertical acceleration, very useful data for the purpose of these proposals, and some commenters concur in this point.

At least one commenter states that the data provided through these proposals will not prove useful in assessing cockpit crew workload since the desired human factors information must be gained in part with the help of performance parameters and measurement instrumentation, including TV cameras, oculometers and head position transducers. The FAA disagrees that flight data recorder and cockpit voice recorder data alone will not be useful in providing a human factors data base. While this commenter's proposal may have some merit, the FAA must not reject every good approach merely because it is not the best possible one. In addition, it may not be compatible with aircraft operations under Parts 121 or 135 of the Federal Aviation Regulations to install and operate the type of equipment suggested, as it would likely be distracting an disruptive to flight deck crewmembers.

One commenter stresses the technical limitations and poor intelligibility of the cockpit voice recorders. The commenter states that these limitations are well known to the FAA since a recent FAA cockpit voice recorder maintenance improvement program revealed widespread problems in cockpit voice recorder maintenance procedures. Discovery of such widespread problems in the recorders by the FAA cockpit voice recorder maintenance improvement program has resulted in numerous corrective actions that have assured better recording performance and recovery intelligibility. In addition, the FAA has recently established a regulatory program to further improve the audio quality and intelligibility of cockpit voice recorders. There are still some technical limitations with the recording equipment, especially in regard to the different environments it is subjected to in different types of aircraft. However, despite such limitations, an invaluable amount of accident investigation information has been obtained by the NTSB from such equipment. The four channel unit that records, for a period of 30 minutes, all radio communications to and from the aircraft, as well as interphone communications, sounds from the flight deck, and signals identifying navigation and approach aids, will provide essential human factors information concerning numerous safety matters.

The NTSB and several other commenters state that it would be difficult to use cockpit voice recorder data to measure crew workload other than the communication workload itself. The FAA does not agree. This inflight data must first be compile and analyzed before such a judgment can be made. Furthermore, the FAA plans to use this inflight data base in a variety of studies, only one of which involves crew workload.

Several commenters support the basic idea behind the proposals; i.e., the gathering of inflight data for the purpose of studying human factors elements involved in daily airline operations, but object that the Notice makes no provision for how its objectives are to be achieved. They ask such questions as what hard data is to be gathered, who is to do the analysis, what role will the computer play, etc. As stated earlier, details regarding such matters as collection and analysis of the inflight data will be determined by the aviation community as a whole, in large part through their participation in the Human Factors workshop series initiated last November. The FAA Human Factors Task Force has been assigned the responsibility of coordinating the formulation of a program to organize and analyze the human factors data obtained through the implementation of these proposals. This group, with the help of interagency agreements with other government agencies and contracts with private industry, is in the process of developing a comprehensive Human Factors Program plan including the study of flight data recorder and cockpit voice recorder data. Furthermore, the inflight data, in addition to furthering studies currently underway, will provide useful information for possible future studies affecting many areas of aviation safety.

These same commenters believe that implementation of the rules as proposed should be re-evaluated annually. The FAA continually re-evaluates and revises regulations and programs. In addition, the public is invited to petition for rulemaking when they believe changes are necessary.

One commenter states that the cockpit voice recorder tape cycle times should be extended beyond the present 30 minutes so as to cover the entire flight. Adequate information will be available with the equipment currently in use given that the Administrator can obtain cockpit voice recorder tapes of any specific segment of a flight simply by notifying the pilot in command to pull a circuit breaker or disconnect the power source to the recorder. As stated earlier, the FAA does not deem that a retrofit of all cockpit voice recorder equipment is necessary at this time to acquire a sufficient human factors data base.

Description of the Proposed Amendments

Sections 121.343, 121.359 and 135.159 of the Federal Aviation Regulations would be amended to require that cockpit voice recorder and flight data recorder information be made available to the Administrator at such time and place as the Administrator may designate for study of the human factors affecting aviation safety. Since the flight data recorder may have many hours remaining on it, the certificate holder would be allowed to continue to use the recorder until reaching a point where it could be replaced. However, if the Administrator determines that the recorded data will be erased or otherwise obliterated, or will be needed before the aircraft reaches a point where the recorder can be replaced, he may request the information immediately.

Since the cockpit voice recorder contains only a 30-minute tape, the Administrator would request in most cases that the power to the recorder be disconnected at a time specified to the pilot in command. In Notice 80–14 the FAA proposed to allow the aircraft to continue to operate for up to 8 hours flight time with the tapes removed. Due to public response the FAA has reconsidered this limitation and the proposed rules would now permit aircraft operating under Part 121 of the FAR to operate up to 14 hours with the tapes removed. However, the proposed rules would also provide that the aircraft may not depart an airport where the tapes can be replaced.

The FAA is concerned that operation of an aircraft without a cockpit voice recorder may result in the loss of valuable data should an accident occur, and therefore will attempt to remove the cockpit voice recorder at an airport where a replacement is available. The proposals further provide that no person may erase or otherwise obliterate the information requested by the Administrator.

As a result of public response to Notice 80–14, an additional subsection was added to each of the proposed rules which states that the information obtained from the cockpit voice recorder will not be used by the Administrator in any civil penalty or certificate action. Flight data recorder data are no different from any other record or report required by the regulations, and information from these recorders may continue to be reviewed and used in

investigations and enforcement proceedings. However, in cases where the Administrator directs removal of a flight data recorder record in conjunction with a cockpit voice recorder record for purposes of analysis in the study of human factors, data contained on the flight data recorder may not be used in any civil penalty or certificate action against any crewmember.

The Proposed Amendments

Accordingly, the Federal Aviation Administration proposes to amend Parts 121 and 135 of the Federal Aviation Regulations (14 CFR 121 and 135) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. By revising § 121.343 by inserting the words "and (e)" after the words "paragraph (d)" in the first and last sentence of paragraph (c); by redesignating paragraphs (d), (e), (f), and (g) as (e), (f), (g), and (h) respectively, and adding a new paragraph (d) to read as follows:

§ 121.343 Flight recorders.

* * * * *

(d) The recorded data prescribed in paragraph (a) of this section shall be made available to the Administrator at such time and place as the Administrator may designate.

* * * * *

2. By revising § 121.359 by adding new paragraphs (f), (g), (h), (i), (j), and (k) to read as follows:

§ 121.359 Cockpit voice recorders.

* * * * *

(f) The recorded data prescribed by this section shall be made available to the Administrator at such time and place as the Administrator may designate.

(g) Notwithstanding paragraph (a) of this section, an airplane which has had its cockpit voice recorder or cockpit voice recorder magazine removed under paragraph (f) or disabled in compliance with paragraph (h) of this section, in order for the Administrator to obtain the recorded data, may be operated without an operative cockpit voice recorder for 14 flight hours following removal or disabling provided the airplane does not depart an airport where a replacement cockpit voice recorder or cockpit voice recorder magazine is available.

(h) The pilot-in-command shall ensure that—

(1) Upon notification by the Administrator or the certificate holder, the power soure to the cockpit voice recorder is disconnected at the time and place designated, and

(2) The previously recorded information is not erased or otherwise obliterated.

(i) No person may erase or otherwise obliterate recorded data which the Administrator has requested.

(j) The Administrator will not use the information obtained from the cockpit voice recorder in any civil penalty or certificate action.

(k) If the Administrator orders the removal, for the purpose of analysis of the information in the study of human factors, of both the cockpit voice recorder or cockpit voice recorder magazine under § 121.343(d) and the flight data recorder under § 121.359(f), then the Administrator will not use the information obtained from the flight data recorder in any civil penalty or certificate action.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

3. By revising § 135.151 by adding new paragraphs (c), (d), (e), (f), and (g) to read as follows:

§ 135.151 Cockpit voice recorders.

* * * * *

(c) The recorded data prescribed by this section shall be made available to the Administrator at such time and place as the Administrator may designate.

(d) Notwithstanding paragraph (a) of this section, an airplane which has had its cockpit voice recorder or cockpit voice recorder magazine removed under paragraph (c) or disabled in compliance with (e) of this section, in order for the Administrator to obtain the recorded data, may be oprated without an operative cockpit voice recorder for 8 flight hours following removal or disabling provided the airplane does not depart an airport where a replacement cockpit voice recorder or cockpit voice recorder magazine is available.

(e) The pilot-in-command shall ensure that—

(1) Upon notification by the Administrator or the certificate holder, the power source to the cockpit voice recorder is disconnected at the time and place designated, and

(2) The previously recorded information is not erased or otherwise obliterated.

(f) No person may erase or otherwise obliterate recorded data which the Administrator has requested.

(g) The Administrator will not use the information obtained from the cockpit voice recorder in any civil penalty or certificate action.

(Secs. 313(a) and 601 through 605 of the Federal Aviation Act of 1958, as amended (49 U.S.C. §§ 1354(a), 1421, and 1424); Sec. 6(c), Department of Transportation Act (49 U.S.C. § 1655(c)); and 14 CFR Part 11.45)

Note.—The Federal Aviation Administration has determined that this document involves proposed regulations which are not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, D.C., on January 14, 1981.

Langhorne Bond,

Administrator.

[FR Doc. 81-1825 Filed 1-14-81; 1:33 pm]

BILLING CODE 4910-13-M

federal register

Monday
January 19, 1981

Part XVIII

Department of Energy

Office of Minority Economic Inpact

Loans for Bid or Proposal Preparation by Minority Business Enterprises Seeking DOE Contracts and Assistance; Proposed Rulemaking

DEPARTMENT OF ENERGY

Office of Minority Economic Impact

10 CFR Part 800

Loans for Bid or Proposal Preparation by Minority Business Enterprises Seeking DOE Contracts and Assistance; Proposed Rulemaking and Request for Written Comments

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The National Energy Conservation Act, Pub. L. 95–619 dated November 9, 1978, which amended the Department of Energy Organization Act (Pub. L. 95–91) of August 4, 1977 by adding Section 211 establishing the Office of Minority Economic Impact authorized the Department of Energy (DOE) to provide financial assistance in the form of loans to minority business enterprises to assist such enterprises in participating fully in research, development and demonstration efforts acquired or supported with financial assistance by the Department of Energy. This notice sets forth, as a proposal, rules under which DOE will provide loans for bid or proposal preparation by minority business enterprises seeking DOE contracts and assistance, and requests public comments on the proposed rule.

DATES: Written comments in response to this notice are requested on or before March 20, 1981.

ADDRESSES: Submit comments to: Juventino Rodriguez, Director, Assistance Programs Staff, Office of Minority Economic Impact, Mail Stop 5B–110, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–8383.

FOR FURTHER INFORMATION CONTACT:

James Hirahara, Office of Financial Incentives, Mail Stop 1J–009, 1000 Independence Avenue, S.W., Washington, D.C. 20582, (202) 252–1426.

George Samels, Office of General Counsel, Mail Stop 4A–139, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–6967.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of the Proposed Rule
A. General
B. Requirements
C. Qualification Process for Loans
D. Loan Application
E. Loan Administration
III. Period for Public Comment
IV. Comment Procedures

I. Background

The Act provides authority for DOE to provide direct loans to minority business enterprises for bid or proposal preparation under such rules as the Secretary of Energy, acting through the Office of Minority Economic Impact, may prescribe. Such loans to any recipient may not exceed 75 percent of bid or proposal costs. This proposal is the first rule promulgated by DOE to implement Section 211 of the Act and concerns direct loans only.

II. Discussion of the Proposed Rule

This proposal, which sets forth the guidelines and procedures to be used for the Office of Minority Economic Impact loan program, consists of five subparts as follows:

A. General

Subpart A of the proposed rule provides general information relative to the loan program and defines the parameters within which loan requests will be considered. Though comments are desired relative to any aspect of the proposed rules, comments are especially sought in the following areas of this subpart:

Subsection 800.006 attempts to illustrate eligible and ineligible costs. Comments are requested from prospective applicants concerning the list of eligible and ineligible costs and whether any such includable or excludable costs pose significant problems for the loan contemplated.

Subsection 800.007 identifies DOE or other Federal Agency as being responsible for loan servicing but reserves the right for DOE to contract out for such services. Comments are requested from prospective applicants concerning the desirability of contracting out for such services. In addition, comments are requested from prospective minority enterprises or other servicing agents who may be interested in providing loan servicing functions in connection with this program. DOE is considering such interested parties in an effort to foster working business relations betwen minority business enterprises and financial services firms, particularly commercial banks.

B. Requirements

Subpart B of the proposed rule contains the general guidelines for selection of loan applications, requirements and conditions of the loan agreement, and findings and determinations which will have to be made by DOE relative to any loan application.

Subsection 800.100, which contains the guidelines for Selection of Loan Applications, contemplates a two-step process. The first step will involve submission of an application to establish the applicant as a viable, qualified minority business enterprise. The second step will involve submission of an application for a specific loan request. The two-step process is introduced in recognition of the fact that a timely response to a loan request is essential relative to competitive solicitations because of firmly established submission dates. The two-step approach will permit a thorough evaluation during the first step. The second step, with reliance on the evaluation already completed in the first step, would focus on the specifics of a loan request and makes possible a timely decision by DOE.

Subsection 800.101, which contains requirements and conditions for loan agreements, is a particularly important section of the regulation for the public to review because it describes the proposed structure of the loan, including collateral, repayment, maturity, interest, and disbursement provisions. DOE intends to provide loans on favorable terms to assist minority business enterprises in participating fully in research, development and demonstration activities of the Department. Particular comments are requested from prospective applicants concerning the classification of different maturities depending on amounts of money borrowed, and whether the proposed schedule of maturities appears excessive in length.

C. Qualification Process for Loans

Subpart C provides detailed guidelines for the first step of the two-step process described in *Subpart B.* The qualification process includes (1) submission of an application containing information set forth in § *800.201,* (2) evaluation of applications in accordance with the criteria contained in § *800.202,* and (3) approval for qualification. Once an applicant is found to be qualified, such finding will be relied on by DOE in reviewing applications for direct loans. Though applicants are encouraged to follow the two-step qualification/loan application process, provisions are made for the simultaneous submission and review of qualification and loan applications.

D. Loan Application

Subpart D provides detailed guidelines for the second step of the two-step process described in *Subpart B.* In order to expedite closing of approved loans, DOE is developing a

"form of loan agreement" referenced in § *800.300*. It is planned that the form will serve a dual purpose of (1) an application submission form to be signed by the applicant and (2) a loan agreement when and if it is approved and signed by the Contracting Officer. At this time, a final form has not been developed and comments on the planned approach are requested.

E. Loan Administration

Subsections 800.400, Loan Servicing Agent, and § *800.401* Loan Servicing Responsibilities (of a designated loan servicing agent) will be applicable if DOE decides to use the loan servicing agent approach. Otherwise, the DOE or other Federal agency will service the loans. As noted in the earlier discussion of the proposed rule relating to § *800.007*, comments and expressions of interest from prospective loan servicing agents are requested.

III. Period for Public Comment

A 60-day period is being provided for public review and comment on this proposed rule-making.

IV. Procedures for Comment

Intersted persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to today's rule. Comments should be submitted by March 20, 1981, to the address indicated in the beginning of the preamble. Comments should be identified on the outside of the envelope and on documents submitted to DOE with the designation "OMEI Loan Program". Ten copies should be submitted. All comments received will be available for public inspection in the DOE Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., between 8:00 a.m. and 4:00 p.m., Monday through Friday.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy, and fifteen copies from which information claimed to be confidential has been deleted. In accordance with the procedures established in 10 CFR 1004.11, DOE shall make its own determination with regard to any claim that information submitted be exempt from public disclosure.

In consideration of the foregoing, DOE hereby proposes to amend Chapter II of Title 10, Code of Federal Regulations, by establishing Part 800 as set forth below.

Issued in Washington, D.C., January 12, 1981.

Louis F. Moret,

Director, Office of Minority Economic Impact.

PART 800—LOANS FOR BID OR PROPOSAL PREPARATION BY MINORITY BUSINESS ENTERPRISE SEEKING DOE CONTRACTS AND ASSISTANCE

Subpart A—General

Sec.

800.001 Purpose.
800.002 Definitions.
800.003 Program management.
800.004 Financial assistance—general.
800.005 Eligibility.
800.006 Allowable costs.
800.007 Loan servicing.
800.008 Deviations and contract modification.

Subpart B—Requirements

800.100 Guidelines for selection of loan applications.
800.101 Loan agreement requirements and conditions.
800.102 Findings and determinations.

Subpart C—Qualification Process for Loans

800.200 General.
800.201 Applications for qualification.
800.202 Evaluation for qualification.
800.203 Approval for qualification.

Subpart D—Loan Application

800.300 Submission.
800.301 Applications for loans.
800.302 Evaluation.
800.303 Approval of loans.
800.304 Closing and award.

Subpart E—Loan Administration

800.400 Loan servicing agent.
800.401 Loan servicing responsibilities.
800.402 Reduction or withdrawal of loan.
800.403 Assignment or transfer of loan.
800.404 Appeal.
800.405 Default.

Authority: Section 211(e) of the Department of Energy (DOE) Organization Act, Pub. L. 95–91, Title II, as amended by Pub. L. 95–619, Title VI, Section 641, November 9, 1978, 92 Stat. 3284, Codified at 42 U.S.C.A. 7141.

Subpart A—General

§ 800.001 Purpose.

The purpose of this regulation is to set forth policies and procedures for the award and administration of financial assistance in the form of loans to minority business enterprises to assist such enterprises in participating fully in research, development, and demonstration activities of the Department of Energy, and demonstration activities of the Department of Energy. Issuance of direct loans under this regulation is limited to the extent funds are provided in advance in appropriation acts. This regulation implements the authority for providing such loans as contained in Section 211(e) of the Department of Energy (DOE) Organization Act, Pub. L. 95–91, Title II, as amended by Pub. L. 95–619, Title VI, § 641, November 9, 1978, 92 Stat. 3284, Codified at 42 U.S.C.A. 7141.

§ 800.001 Definitions.

For the purpose of this regulation:

"Act" means the National Energy Conservation Policy Act, Pub. L. 95–619, amending Title II of Pub. L. 95–91, the Department of Energy (DOE) Organization Act.

"Applicant" means an eligible minority business enterprise which is seeking a loan under this regulation.

"Application Approving Official" means the Director of the Office of Minority Economic Impact.

"Application Evaluation Panel") Also referred to as "the Panel") means a team of Federal employees appointed by the Application Approving Official to evaluate loan applications and make approval or disapproval recommendations regarding such applications.

"Bid or Proposal Costs" means the costs incurred in preparing, submitting and supporting bids or proposals, whether solicited or not, for DOE business.

"Borrower" means an applicant who enters into a loan agreement with DOE.

"Contracting Officer" means the DOE official warranted and authorized to contractually bind the Department of Energy and execute written agreements that are binding on the Department.

"Default" means the actual failure by the borrower to make payment of principal or interest in accordance with the terms and conditions of a loan issued under this regulation, or the failure of the borrower to meet other requirements specified as a default condition in the loan agreement.

"Director" means the Director of the Office of Minority Economic Impact (OMEI).

"Loan", in reference to a loan made pursuant to this regulation, means a transaction in which a contractual instrument ("loan agreement") is executed between the United States, as lender, acting through the Secretary of Energy, and a borrower. The instrument must obligate the United States to provide the borrower with a specified amount(s) of United States funds for a specified period and must obligate the borrower to use the moneys to bid for and attempt to obtain contracts and other agreements relating to DOE research, development, demonstration and contract activities, and to repay the moneys at a specified time(s) at a specified rate(s) of interest. The words

"loan", "loan agreement" and 'transaction' include (where the context does not require otherwise) the terms and conditions of related documents, such as the borrower's note or bond or other evidence of, or security for, the borrower's indebtedness.

"Minority Business Enterprise (MBE)" means a firm, corporation, association, or partnership which is at least 50 percent owned or controlled by a member of a minority or group of members of a minority. For the purpose of this definition, "control" means direct or indirect possession of the power to direct, or cause the direction of, management and policies, whether through the ownership of voting securities, by contract or otherwise.

"Minority": an individual who is a citizen of the United States and who is a Negro, Puerto Rican, American Indian, Eskimo, Oriental, or Aleut, or is a Spanish speaking individual of Spanish descent, is a member of a "minority" as used in this regulation.

"Operating Contractors" means contractors under DOE prime contracts:

(a) For the management of Government-owned laboratories, production plants, and research facilities located on Government-owned or leased sites, where the programs being conducted are considered of a long-term, continuing nature; or

(b) For the operation of Government-owned facilities located on contractor-owned or leased sites where the programs being conducted are of a long-term, continuing nature. An example of this category would be those contracts with universities for the operation of Government-owned laboratories and facilities, located on university-owned sites, for the purpose of conducting long-term basic research programs.

"Secretary" means the Secretary of the Department of Energy or his delegate.

§ 800.003 Program management.

Program management responsibility for financial assistance awarded under this regulation has been assigned to the office of Minority Economic Impact.

§ 800.004 Financial assistance—General.

Assistance under this regulation is available to eligible enterprises, as defined in § 800.005, in the form of direct loans. Assistance is limited to providing loans to cover allowable costs incurred by such enterprises to prepare bids or proposals for contracts or other agreements including subcontracts with DOE Operating Contractors in order to participate fully in research, development, demonstration, and contract activities of the Department of Energy. Loans will be repayable regardless of whether borrowers are successful or unsuccessful in receiving awards pursuant to the bids or proposals developed with loan proceeds. Additionally, the amount of financial assistance to any recipient is limited to not more than 75 percent of allowable bid or proposal preparation costs.

§ 800.005 Eligibility.

In order to be eligible for a loan, an applicant must:

(a) Be a minority business enterprise, as defined in § 800.002,

(b) Be a citizen or a national of the United States. A national includes a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

§ 800.006 Allowable costs.

(a) Except as provided in paragraph (b), of this section, those reasonable and customary costs that have been incurred, or are expected to be incurred, and which are directly related to bid or proposal preparation necessary to obtain a DOE contract or agreement or subcontract with DOE Operating Contractors shall be allowable costs for purposes of this regulation. In determining whether costs are directly related to bid or proposal preparation, a strict standard will be applied since the purpose of this program is to encourage bid or proposal preparation rather than to finance engineering feasibility studies or like activity which have broader application than a particular bid or proposal. Examples of allowable costs may include, but are not limited to the following:

(1) Bid bond premiums,

(2) Financial, accounting and legal services costs,

(3) Professional services and fees associated with preparing an application or proposal,

(4) Printing and reproduction costs associated with preparing an application or proposal,

(5) Other necessary and reasonable costs as determined by the Secretary.

(b) Costs that are not considered as allowable costs include the following:

(1) Fees and commissions charged to the borrower, including finders fees, for obtaining Federal funds,

(2) Expenses not paid or incurred by the applicant, and

(3) Costs that are excessive or are not directly required to prepare a bid or proposal as determined by the Secretary.

(c) The Secretary shall have the right to audit any or all cost elements included in the estimated bid and proposal cost, or for which loan proceeds are used and reserves the right to exclude or reduce the amount of any cost which the Secretary determines to be unnecessary or excessive. The borrower will make available records and other data necessary to permit the Secretary to carry out such an audit. In carrying out this responsibility, the Secretary may utilize employees of other Federal agencies or may direct the borrower to submit to a review performed by an independent public accountant or other competent authority.

§ 800.007 Loan Servicing.

The servicing of loans awarded by DOE under these regulations will be performed by DOE or by another Federal agency. However, DOE reserves the right to contract for such services. If the DOE chooses to contract out for such services, the servicing entity will be designated by DOE. Preference will be given to minority enterprises or other servicing agents with established records of providing minority firms with financial services. Loan servicing, if contracted out, would include but not be limited to functions listed in § 800.401.

§ 800.008 Deviations and Contract Modifications.

(a) To the extent that such requirements are not specified by the Act, relevant Appropriations Acts, or in other applicable statutes, the Director, OMEI, may deviate on an individual application basis from the requirements of this regulation upon a finding endorsed by the Contracting Officer that a deviation is necessary and warranted in the individual case to the accomplishment of program objectives and unique circumstances in the loan application make a deviation clearly in the best interest of the Government.

(b) The Contracting Officer may, subject to approval or agreement by other necessary parties, modify or amend the terms and conditions in a loan agreement, collateral agreements, or other documents provided that such modifications will not deviate from provisions in this regulation.

Subpart B—Requirements

§ 800.100 Guidelines for Selection of Loan Applications.

(a) *General.* Interested applicants will be evaluated in a two-step process. The first step will involve submission of an application to establish the applicant as a viable, qualified minority business enterprise with an interest in seeking direct loans to become involved in DOE procurement or assistance activities as contemplated by this regulation. The

second step will involve submission of an application for a specific loan involving preparation costs for one or more known bids or proposals. The two-step process makes possible a timely decision by DOE on a loan request, which is essential relative to competitive solicitations because of firmly established submission dates. DOE prefers that an applicant comply with the two-step procedure. However, applicants may, at their option, submit qualification and loan applications simultaneously.

(b) *Application Process.* The application process will consist of the following:

(1) The continuing solicitation of applications as described in this regulation or otherwise as provided in paragraph (c) of this section;

(2) Submission of an application for qualification which complies with § 800.201 of this regulation;

(3) Preliminary review and screening of applications;

(4) Clarification discussions, as required;

(5) Evaluation;

(6) Selection of applications from applicants considered eligible and qualified for receiving loans under this program;

(7) Submission of a loan application which complies with §§ 800.300 and 800.301 of this regulation;

(8) Evaluation of loan application;

(9) Loan approval and award.

(c) *Solicitation Announcement.* The Secretary will periodically, normally once a year, issue a solicitation announcement which shall at a minimum be published in the Federal Register and synopsized in the Commerce Business Daily. A Solicitation Announcement will provide more detailed information as to funds availability, application instructions, and any applicable restrictions. The Solicitation Announcement will indicate some or all of (but will not be limited to) the following as applicable:

(1) Identification of statutory authority and relevant regulations;

(2) Any special requirements or constraints applicable;

(3) Location(s) to which application must be submitted;

(4) General qualification criteria;

(5) Interest rates, maturities, and other key loan terms;

(6) The extent to which appropriations are currently available for direct loans.

§ 800.101 Loan Agreement requirements and conditions.

A loan may be made pursuant to this regulation only if the loan agreement contains provisions satisfactory to the Secretary and which meet the following requirements:

(a) All financial and legal documentation necessary to close the lending transaction are satisfactory to the Secretary in both form and content;

(b) DOE may require the applicant to pledge collateral as security for the loan. Security or collateral agreements will be required if the value of a single loan is greater than $25,000, or if the value of loans outstanding will exceed $25,000 in the aggregate. DOE will require property insurance on tangible assets, including real property pledged to secure a loan, with DOE shown as the loss payee under such policies;

(c) The orderly repayment of the loan in accordance with loan size and maturity shall be a provision of the loan agreement.

(d) Repayment of principal and interest to begin within 90 days of loan approval. If a single loan is in excess of $25,000, DOE may defer principal payments for an additional 180 days. Repayment, after any permissible delay or deferment of principal, shall be in equal monthly installments, applied to interest first, then principal, over the period of the loan;

(e) After repayments begins a period of grace of 60 days from the date the principal or interest payment is due will be allowed;

(f) Maturity dates will vary depending on the loan value as follows:

Loan Value and Maximum Repayment Period

$0 to $5,000—3 Year
$5,000 to $25,000—5 Year
Excess of $25,000—8 Year

(g) The rate of interest charged for a loan will be established in consultation with the Secretary of the Treasury. The rates will be the current rates of outstanding government (U.S. Treasury) issues of the same maturity as a particular loan. The rates will be adjusted monthly consistent with Treasury rate fluctuation to reflect change in these costs of borrowing. However, once a loan is approved, the applicable interest rate at the time will be the rate charged over the life of the loan;

(h) For loans under $10,000, loan funds will be provided in a single disbursement. Over $10,000, loan funds will be disbursed in increments of not less than $5,000 in accordance with a schedule matching funds required;

(i) The borrower shall have an option to accelerate payment or to prepay the loan without prepayment penalties;

(j) The borrower shall have appropriate opportunities as determined by DOE to cure any default, failure, or breach of any of the covenants, conditions and obligations undertaken by the borrower pursuant to the provisions of the loan agreement and other documents relevant to the financing transaction;

(k) The Government shall have the right to accelerate and demand full payment of the entire indebtedness in the event of the occurrence of identifiable occasions of default on the part of the borrower;

(l) The borrower will be required to maintain its legal entity in good standing with applicable federal, state, and local laws and requirements regulating the conduct of its business, including the payment of all taxes, fees and other charges, and the maintenance of all requisite licenses and any other government authorization necessary for the continued operation of the project;

(m) The borrower will be required to return funds disbursed and not used to DOE immediately upon completion of proposal preparation or receipt of notices contemplated by subpart D, § 800.402;

(n) The borrower will be required to permit access to DOE and the Comptroller General or their duly authorized representatives, for the purpose of audit and examination, to any pertinent books, documents, papers, and records related to the loan; and

(o) Such other terms and conditions determined necessary by the Secretary for the protection of the interest of the United States.

§ 800.102 Findings and Determinations.

In addition to meeting the requirements set forth in other subparts of this regulations, a loan shall be issued only after the Secretary is satisfied that the following requirements have been met:

(a) The amount of the loan is sufficient to prepare the bid or proposal planned;

(b) There is reasonable assurance of replayment of principal and interest of the loan by the borrower, regardless of whether or not the borrower's bid or proposal is selected by DOE for award;

(c) The loan is for bid and proposal costs of eligible applicants which falls within the purposes and objectives of this regulation;

(d) For any single firm that has received an aggregate of $100,000 in loan awards in any one year, a specific finding that additional awards to such a firm is in the best interest of the government;

(e) The borrower has met such additional requirements as determined to be reasonable and necessary by the

Secretary for the protection of the interest of the United States;

(f) The borrower has provided evidence satisfactory to DOE that the borrower's share of bid or proposal costs is available.

Subpart C—Qualification Process for Loans

§ 800.200 General.

Applications for Qualification should be filed in accordance with the two-step process described in Subpart B, § 800.100 of this regulation. The application must contain most current data available and be adequate for the Secretary to properly evaluate the applicant's qualifications or loan requests. Applications must contain the information specified in § 800.201. Applications shall be filed with one original and four legible copies to:

Department of Energy
Washington, D.C. 20585
Attention: Announcement No. DE–PS60–MI

§ 800.201 Applications for Qualification.

(a) Each application must contain the following information submitted in a brief but precise manner:

(1) Applicant name and address (this name should be referred to in the application for loan);

(2) Statement of eligibility;

(3) Statement of capability, past experience, and nature of interest in Department of Energy contract or assistance activities;

(4) Financial statements for the past three years of the applicant, or such lesser period as the applicant has been in existence;

(5) A description of the applicant's organization;

(6) A listing of assets which may serve as collateral for the loan;

(7) Credit references;

(8) Such additional information which the applicant may consider pertinent.

(b) Information contained in applications will be received in confidence and will be used only for evaluation purposes except to the extent such information is generally available to the public.

§ 800.202 Evaulation for Qualification.

(a) Evaluation of applications under this section will be performed by an Application Evaluation Panel (hereinafter referred to as the Panel) which will consider applciations as they are received. The Panel will be appointed by the Application Approving Official and is responsible for preliminary review and screening, clarification discussions with applicants, evaluations, and presentation of its findings and recommendations to the Application Approving Official. The Panel membership will include, at a minimum, representation from the Office of Minority Economic Impact and the Contracting Officer.

(b) Preliminary review and screening of all applications received shall be conducted to determine which applications should be considered for further evaluations. The Panel shall review the applications to determine whether each application:

(1) Complies with eligibility requirements of the Act;

(2) Contains sufficient information to enable the Panel to perform an adequate evaluation; and

(3) Is signed by an authorized official of the applicant organization.

(c) After preliminary review and screening, remaining applications will be subjected to a more thorough evaluation by the Panel. The Panel shall consider the following in the evaluation of applications:

(1) Adequacy of Organization

(i) Corporate and personnel experience,

(ii) Management organization,

(iii) Key personnel,

(iv) Past experience;

(2) Financial Resources

(i) Adequacy of capitalization, cash flow, working capital, and other financial capability,

(ii) Financial condition of applicant and other principals;

(3) Ability of applicant to comply with requirements of this regulation

The Panel may conduct further discussions with applicants regarding qualifications or make requests for additional information either orally or in writing in order to complete its evaluation.

(d) The Panel shall then present to the Application Approving Official its findings and recommendations in a written report which represents evaluations and judgments prior to final decision making.

§ 800.203 Approval for Qualification.

(a) The Application Approving Official will consider the findings and recommendations and such other information as the Application Approving Official determines to be relevant pursuant to the provisions of this regulation in selecting applicants considered to be qualified to apply for loans under this program.

(b) Upon a decision by the Application Approving Official, the Application Approving Official shall authorize a Contracting Officer to notify applicants of approval or disapproval. Applications which have been approved will be assigned a file number and retained by DOE for future reference.

(c) Annual updates will be required for each applicant found to be qualified. Review procedures will be the same as those followed for a new Application for Qualification. The Application Approving Official will have the right to cancel an applicant's qualification status due to adverse changes in data upon which prior qualification was determined.

Subpart D—Loan Application

§ 800.300 Submission.

(a) Applications for loans should be accompanied by all documentation necessary for closing including a form of loan agreement to be made available by DOE and collateral agreements if required. In order to expedite closing of approved loans, a loan will be closed by executing a form of loan agreement provided to the applicant by DOE which will also be used as an application submission form.

(b) Applications should be submitted to the address identified in § 800.200, with one original and four legible signed copies.

§ 800.301 Applications for Loans.

(a) Applications for loans must contain the information listed below. Applications must be submitted in prescribed forms:

(1) Applicant name and address

(2) Applicant File Number

(3) Summary of the award being sought through bid or proposal including:

(i) Title

(ii) Brief description of work

(iii) Sponsoring DOE office, including solicitation number, if any. If an unsolicited proposal is planned, an application should include sufficient information to indicate applicant has consulted with DOE program personnel, and the potential for the proposal to be supported exists.

(iv) Type of award (competitive, set-asides pursuant to Section 8(a) of the Small Business Act, unsolicited proposal) and schedule for proposal preparation and submission.

(4) Requested loan amount, not to exceed 75 percent total bid and proposal costs, requested loan maturity, detailed disbursement schedule (e.g. labor, reproduction costs, professional fees, etc.), deferrals.

(5) Loan servicing agent, if previously designated by DOE, in accordance with § 800.007.

(6) Notification of any changes to information provided in the Application for Qualification.

(7) List total outstanding debt and maturity of debt.

§ 800.302 Evaluation.

(a) The evaluation of applications for specific loans will be performed by an Application Evaluation Panel designated by the Application Approving Official and written findings and recommendations will be provided to the Application Approving Official or designee. The process of evaluating applications for specific loans is intended to be very brief, with acceptance of and reliance upon findings previously made during the Qualification Process in Subpart C of this regulation. Because of established submission dates which exist in competitive solicitations, priority will be given to considering applications for loans to prepare bids and proposals being submitted in response to competitive solicitations. In the case of a proposal to be prepared in response to a competitive solicitation, the Panel may defer action until five days after the solicitation has been announced in the Commerce Business Daily to provide all interested and qualified firms an opportunity to apply for loans.

(b) The factors to be considered in the evaluation of a loan application include the following:

(1) Compliance with the requirements set forth in § 800.102 of this regulation.

(2) Reasonableness of the estimated cost of preparing a bid or proposal relative to the goods or services to be supplied.

(3) Likelihood of being a successful offeror. Normally, *not more than three loans* for a single anticipated competitive award will be approved.

(4) Optimum utilization of remaining program funds available for loans.

(5) The need for the loan to permit the applicant to participate in research, development, demonstration, and contract activities of DOE.

(c) The Panel shall present to the Application Approving Official its findings and recommendations in a written report which represents evaluations and judgments prior to final decision making.

§ 800.303 Approval of Loans.

(a) The Application Approving Official will consider the findings and recommendations and such other information as the Application Approving Official determines to be relevant pursuant to the provisions of this regulation in selecting successful loan applicants.

(b) Upon a decision by the Application Approving Official, the Application Approving Official shall authorize a Contracting Officer to notify applicants of approval or disapproval. The Contracting Officer will be responsible for executing all instruments necessary for the loan.

(c) Non-written Representations. No representation or modifications thereof shall be binding on the Department of Energy unless made in writing and approved by a Contracting Officer.

§ 800.304 Closing and Award.

Loan closing will occur when a mutually acceptable loan agreement, supported by necessary documentation, has been executed by the parties.

Subpart E—Loan Administration

§ 800.400 Loan servicing agent.

In the event that DOE elects to contract out the loan servicing functions, applicants may be required to conduct loan transactions through a servicing agent designated by DOE to administer the loan. Servicing agents may include commercial banks, brokers, financial institutions, etc., qualified to exercise diligence in the disbursement, servicing and collection of the loan.

§ 800.401 Loan servicing responsibilities.

(a) The designated loan servicing agent will service the loan in accordance with these regulations, and the terms and conditions of the loan. In this regard, the servicing agent is generally expected to undertake those servicing responsibilities that a reasonable and prudent lender would undertake in a similar transaction under a commercial loan. It is anticipated that specific responsibilities relative to a loan, which would otherwise be performed by DOE, will include:

(1) Loan disbursements as set forth in the loan agreement.

(2) Collection of principal and interest payments on a monthly basis for forwarding to the Treasury Department as directed by DOE.

(3) Maintain records on loan accounts.

(4) Notification of the Secretary without delay:

(i) that the initial disbursement or loan draw-down is ready to be made, together with evidence from the borrower that the bid and proposal preparation has begun or is about to begin;

(ii) Of the date and amount of each subsequent disbursement under the loan;

(iii) Of any nonreceipt of payment within 10 days after the date specified for payment, together with evidence of appropriate notification to the borrower;

(iv) Of any known failure by the borrower to comply with the terms and conditions as set forth in the loan agreement;

(v) Of evidence that the borrower may fall within any of the default conditions set forth in the loan agreement or the borrower may not be able to meet any future scheduled payment of principal or interest; or

(5) Submit to the Secretary periodic (semi-annually or annually) financial reports on the status and conditions of the loan, including the financial ability of the borrower to assume more debt.

§ 800.402 Reduction or withdrawal of loan.

(a) The Secretary may withdraw the loan by written notice to the borrower if it is determined that initiation of bid and proposal preparation has not occurred within the period of time set forth in the loan application, and such failure has materially affected the purpose of the Government in issuing the loan.

(b) The Secretary may limit the loan by written notice to the borrower to those amounts already disbursed under the loan if it is determined that the borrower has failed to comply with material terms and conditions as set forth in the loan agreement. The Secretary will notify the borrower that the loan shall be limited only to the amount that has been received by the borrower to the date of the written notice.

§ 800.403 Assignment or transfer of loan.

Assignment or transfer by the borrower of a loan made by DOE under this program could only be allowed with the prior written consent of the Secretary.

§ 800.404 Appeals.

The loan agreement shall include a provision which specifies that any dispute concerning a question of fact arising under the agreement shall be decided in writing by the Contracting Officer. The borrower may request the Contracting Officer to reconsider any such decision. If not satisfied with the Contracting Officer's final decision, the borrower upon receipt of such written decision may appeal the decision within 30 days, in writing to the Chairman, Financial Assistance Appeal Board (FAAB), Department of Energy, Washington, D.C. 20585. The Board shall proceed in accordance with the Department of Energy's rules and regulations for such purpose. The decision of the Board with respect to such appeals shall be the final decision of the Secretary.

§ 800.405 Default.

(a) In the event that the borrower fails to perform the terms and conditions of the loan agreement or any related document, the borrower shall be in default and the Secretary shall have the right, at the Secretary's option, to accelerate the indebtedness and demand full payment of all principal and interest amounts outstanding under the loan;

(b) No failure on the part of the Secretary to make demand at any time shall constitute a waiver of the rights held by the Secretary;

(c) Upon demand by the Secretary, the borrower shall have a period of not more than 30 days from the date of receipt of the Secretary's demand to make payment in full;

(d) In the event that the failure on the part of the borrower to perform the terms and conditions of the loan agreement, or related document, does not constitute an intentional act, but is brought about as a result of circumstances largely beyond the control of the borrower, the Secretary may elect, at the Secretary's option, to defer such performance and/or restructure the repayment required by the loan agreement in any manner the Secretary determines. Circumstances beyond the control of the borrower may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be without the fault or negligence of the borrower;

(e) Should the borrower fail to pay after demand as provided in paragraph (c) of this section, the Secretary shall undertake collection in accordance with the terms of the loan agreement and the applicable law.

[FR Doc. 81-1773 Filed 1-16-81; 8:45 am]
BILLING CODE 6450-01-M

federal register

Monday
January 19, 1981

Part XIX

Department of Education

State Vocational Rehabilitation and Independent Living Rehabilitation Programs; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 361, 365, and 370

State Vocational Rehabilitation and Independent Living Rehabilitation Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary adopts final regulations to implement Title I and Part A of Title VII of the Rehabilitation Act of 1973, as amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602). These regulations cover the requirements for carrying out State vocational rehabilitation and independent living service programs under approved State plans.

EFFECTIVE DATE: These regulations are expected to be effective forty-five days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the **Federal Register.** The effective date is changed if the Congress takes certain adjournments. If you want to know the effective date of these final regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Harold F. Shay, Director, Division of Manpower Development, Rehabilitation Services Administration, Room 3221, Mary E. Switzer Building, 330 C Street, SW., Washington, D.C. 20201. Telephone: (202) 245–0079 or TTY: (202) 245–0591.

SUPPLEMENTARY INFORMATION: The Secretary of Health, Education, and Welfare published a Notice of Proposed Rulemaking in the **Federal Register** on November 29, 1979 (44 FR 68564). The proposed regulations covered the new vocational rehabilitation and independent living rehabilitation authorities contained in the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602) and, in addition, revised certain existing regulations implementing the Rehabilitation Act of 1973 (Pub. L. 93–112), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516).

These final regulations make some revisions to the regulations as originally proposed, and adopt requirements of the Education Department General Administrative Regulations, now applicable to Rehabilitation Services Administration programs as a result of the Rehabilitation Services Administration becoming part of the Department of Education.

These regulations also include provision for the designation of a substitute agency to carry out a State's vocational rehabilitation service program when the Commissioner of the Rehabilitation Services Administration has withdrawn all funds from the previously designated State agency. This provision, which also is derived from a newly authorized provision under the Rehabilitation, Comprehensive Services and Developmental Disabilities Amendments of 1978, had been published in the **Federal Register** on September 29, 1979 as a final regulation with a comment period (44 FR 55878).

The Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 significantly extended the scope of public and voluntary agency programming in providing rehabilitation services to handicapped individuals. These changes expanded the ongoing vocational rehabilitation service programs in each State, extended the range of special categories of project support and other assistance available directly from the Federal Government under the Rehabilitation Act of 1973, and authorized the establishment of new State independent living service programs for severely handicapped individuals.

Insofar as State vocational rehabilitation programming is concerned, the proposed regulations revised the State vocational rehabilitation service plan requirements in line with the 1978 Amendments to include provisions—

—To expand and improve the use of rehabilitation facilities in the delivery of vocational rehabilitation services;

—To ensure the availability of vocational rehabilitation personnel able to communicate in clients' native languages or able to communicate to clients who rely on special modes of communication;

—To ensure coordination with State special education agencies in the delivery of vocational rehabilitation services;

—To provide newly specified vocational rehabilitation services, including telecommunications systems, recorded material for blind individuals, and captioned materials for deaf individuals; and

—To establish and maintain information and referral programs.

Other proposed regulatory revisions to the State vocational rehabilitation service programs under the 1978 Amendments were:

—The identification of the "designated State unit" as the administering organizational unit responsible for directly carrying out the State vocational rehabilitation service program under the Rehabilitation Act;

—The conversion of the State plan for vocational rehabilitation services from an annual plan to a three-year plan;

—The establishment of a mechanism for selecting a substitute agency to carry out the vocational rehabilitation service program in a State when necessary because funds have been withheld; and

—The revision of procedures affecting individualized written rehabilitation programs to require both that the director of the designated State unit establish procedures for the review of any decision with which a client is dissatisfied and that the Secretary of Education make recommendations to the State unit director about the disposition of any case still unresolved after the director's review.

The 1978 Amendments also added an extensive new State/Federal formula grant program for providing independent living rehabilitation services to severely handicapped individuals in order to assist them to achieve a higher level of independence in their functioning within their communities and their families.

The proposed regulations not only covered all statutory changes required for the State plans under the 1978 Amendments but also included a number of revised regulations in other areas of program practice in order to update them and remove unnecessary regulatory burden.

After the proposed regulations were published, Rehabilitation Services Administration staff conducted 10 briefing meetings throughout the country to ensure that interested persons in the rehabilitation community had an opportunity to become thoroughly familiar with the content of the proposed regulations. Special emphasis in the briefing meetings was given to changes in the proposed regulations from the regulatory provisions in effect. These briefing meetings were held in Atlanta, Boston, Chicago, Dallas, Denver, Kansas City, New York, San Francisco, Seattle and Washington, D.C. and were attended by approximately 1,000 people. Participants represented State vocational rehabilitation agencies, voluntary rehabilitation agencies and organizations, rehabilitation facilities, self-advocacy support groups, consumers and other persons with an interest in the rehabilitation of severely physically and mentally disabled individuals.

Written comments and suggestions on the proposed regulations were invited from the public until February 27, 1980.

Approximately 600 letters were received in response to the proposed regulations and three letters were received concerning the earlier published provision concerning the designation of a substitute State agency. The letters contained approximately 3,500 specific comments on individual items in the proposed regulations.

All comments were carefully reviewed and were fully considered. As a result of this review, a number of revisions were made to the regulations, as originally proposed.

The most significant areas of comment on the proposed regulations for the State rehabilitation programs and the conclusions reached after review of the individual comments are summarized in Appendix A to these regulations on a section-by section basis.

On May 4, 1980, the Department of Education was established and the Rehabilitation Services Administration became part of the Office of Special Education and Rehabilitative Services within this new Department. These final regulations for the Rehabilitation Act do not yet fully conform with the format used in other Department of Education programs. These regulations are being published without making these format changes in order to ensure the orderly administration of ongoing State vocational rehabilitation and independent living rehabilitation program activities. An additional review of these regulations will also be undertaken, however, to bring about conformity with other Department of Education regulations. These State plan regulations in Parts 361 and 365 will therefore be reorganized and republished in the revised format at a later time.

The Notice of Proposed Rulemaking had also included new and revised requirements for the discretionary Federal grant programs and related assistance authorized under the Rehabilitation Act of 1973, as amended. Regulations for these programs are not being published at this time. These regulations will be published separately in the Federal Register in the near future.

Subpart D of Part 361, covering Payment of Costs of Vocational Rehabilitation Services for Disabled Beneficiaries from the Social Security Trust Funds, and Subpart E governing Vocational Rehabilitation Services for Supplemental Security Income Recipients are not being revised at this time. The administrative responsibility for these programs has been altered, however, by Section 201(a)(4)(A) of the Department of Education Organization Act (Pub. L. 96-88) which did not transfer to the Department of Education those administrative functions which had been assigned to the Secretary of Health, Education, and Welfare under Sections 222 and 1615 of the Social Security Act. The regulations for these programs will be revised after the specific operating arrangements have been defined in an interagency agreement currently being developed by the Department of Education and the Department of Health and Human Services.

It is also noted that these regulations remove from the Code of Federal Regulations Part 370 which had previously included the Secretary's General Standards for Evaluation. Although no longer required by statute to be published as regulations, the General Standards for Evaluation will be published in a slightly revised form as a Notice in the Federal Register and they will continue to be used as a general guidance in the evaluation of vocational rehabilitation programs and activities.

References to EDGAR

Readers will note that references to the Education Department General Adminstrative Regulations (EDGAR) cite Title 34 of the Code of Federal Regulations. EDGAR was transferred to Title 34 through final regulations published in the Federal Register on November 21, 1980 (45 FR 77368).

However, EDGAR was initially published in the Federal Register on April 3, 1980 (45 FR 22494) under Title 45 of the Code of Federal Regulations (CFR). For readers wishing to refer to that EDGAR document, the following cross-references will be helpful:

—45 CFR Part 74 is now 34 CFR Part 74.

—45 CFR Part 100a is now 34 CFR Part 75.

—45 CFR Part 100b in now 34 CFR Part 76.

—45 CFR Part 100c in now 34 CFR Part 77.

Citation of Legal Authority

A citation of statutory authority is placed in parentheses on the line following each substantive provision of the regulations. The first citation is the appropriate section of the Rehabilitation Act of 1973, as amended, and it is followed by a citation to the same provision in the United States Code.

(Catalog of Federal Domestic Assistance Program Numbers 84.126, 84.132, State Vocational Rehabilitation and Independent Living Rehabilitation Programs)

Dated: January 12, 1981.

Shirley M. Hufstedler,

Secretary of Education.

1. Accordingly, the Secretary amends Title 34 of the Code of Federal Regulations by revising Subparts A, B, C, F, and G of Part 361 to read as follows:

PART 361—THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

Subpart A—General

Sec.

361.1 The State vocational rehabilitation services program.

Subpart B—State Plans for Vocational Rehabilitation Services

State Plan Content: Administration

361.2 The State plan: General requirements.
361.3 State plan approval.
361.4 Withholding of funds.
361.5 State agency for administration.
361.6 Organization of the State agency.
361.7 Designation of substitute State vocational rehabilitation agency.
361.8 State unit director.
361.9 Local administration.
361.10 Methods of administration.
361.11 Shared funding and administration of special joint projects or programs.
361.12 Waiver of Statewideness.
361.13 Cooperative programs involving funds from other public agencies.
361.14 Staffing of the State's vocational rehabilitation program.
361.15 Affirmative action plan for handicapped individuals.
361.16 Staff development.
361.17 State studies and evaluations.
361.18 Policy development consultation.
361.19 Cooperation with other public agencies.
361.20 Establishment and maintenance of information and referral resources.
361.21 State plan for rehabilitation facilities.
361.22 Utilization of rehabilitation facilities.
361.23 Reports.
361.24 General administrative and fiscal requirements.

State Plan Content: Provision and Scope of Service

361.30 Processing referrals and applications.
361.31 Eligibility for vocational rehabilitation services.
361.32 Evaluation of vocational rehabilitation potential: Preliminary diagnostic study.
361.33 Evaluation of vocational rehabilitation potential: Thorough diagnostic study.
361.34 Extended evaluation to determine vocational rehabilitation potential.
361.35 Certification: Eligibility, extended evaluation to determine vocational rehabilitation potential; ineligibility.
361.36 Order of selection for services.
361.37 Services to civil employees of the United States.

361.38 Services to handicapped American Indians.
361.39 The case record for the individual.
361.40 The individualized written rehabilitation program: Procedures.
361.41 The individualized written rehabilitation program: Content.
361.42 Scope of State unit program: Vocational rehabilitation services for individuals.
361.43 Individuals determined to be rehabilitated.
361.44 Authorization of services.
361.45 Standards for facilities and providers or services.
361.46 Rates of payment.
361.47 Participation by handicapped individuals in the costs of vocational rehabilitation services.
361.48 Administrative review of State unit action and fair hearing; review by Secretary.
361.49 Protection, use, and release of personal information.
361.50 Scope of State unit program: Management services and supervision for small business enterprises for severely handicapped individuals.
361.51 Scope of State unit program: Establishment of rehabilitation facilities.
361.52 Scope of State unit program: Construction of rehabilitation facilities.
361.53 Scope of State unit program: Facilities and services for groups of handicapped individuals.
361.54 Scope of State unit program: Telecommunications systems.
361.55 Scope of State unit program: Special materials for blind individuals and for deaf individuals.
361.56 Utilization of community resources.
361.57 Utilization of profitmaking organizations for on-the-job training in connection with selected projects.
361.58 Periodic review of extended employment in rehabilitation facilities.

Subpart C—Financing of State Vocational Rehabilitation Programs

Federal Financial Participation

361.70 Effects of State rules.
361.71 Vocational rehabilitation services to individuals.
361.72 Management services and supervision for small business enterprises for severely handicapped individuals.
361.73 Establishment of rehabilitation facilities.
361.74 Construction of rehabilitation facilities.
361.75 Other vocational rehabilitation services for the benefit of groups of handicapped individuals.
361.76 State and local funds.
361.77 Shared funding and administration of joint projects or programs.
361.78 Waiver of Statewideness.

Allotment and Payment

361.85 Allotment of Federal funds for vocational rehabilitation services.
361.86 Payments for allotments for vocational rehabilitation services.
361.87 Methods of computing and making payments.
361.88 Refunds.
361.89 Determining to which fiscal year expenditures are chargeable.
361.90 Audits.
361.91 Appeals procedures and expenditures settlement.

* * * * *

Subpart F—Grants for Innovation and Expansion of Vocational Rehabilitation Services

361.150 Purpose.
361.151 Special project requirements.
361.152 Allotment of Federal funds.
361.153 Payments from allotments.
361.154 Methods of computing and making payments.
361.155 Reports.

Subpart G—Procedures for Hearings on State Plan Conformity and Compliance

361.170 General provisions.
361.171 How to request a hearing.
361.172 Hearing issues.
361.173 What the purpose of a hearing is.
361.174 Who presides.
361.175 How to be a party or an amicus curiae to a hearing.
361.176 What happens to a petition.
361.177 Rights of parties and amicus curiae.
361.178 Authority of presiding officer.
361.179 Discovery.
361.180 How evidence is handled.
361.181 What happens to unsponsored written material.
361.182 What the record is.
361.183 Posthearing briefs.
361.184 Decisions.
361.185 When a decision is effective.
361.186 How the State may appeal.

Authority: Section 12(c) of the Rehabilitation Act of 1973, (29 U.S.C. 711(c)).

Subpart A—General

§ 361.1 The State vocational rehabilitation services program.

(a) *General.* Part 361 includes all requirements relative to the conduct of State vocational rehabilitation service programs under State plans for vocational rehabilitation services authorized under Title I of the Rehabilitation Act of 1973, as amended. Part 361 covers procedures to be followed by a State vocational rehabilitation agency in submitting a State plan for approval by the Secretary and the required scope and content of an appropriate State plan. Part 361 also specifies those costs under State plans for which Federal financial participation is available.

(b) *Regulations which apply to the State vocational rehabilitation service program.* The following regulations apply to the State plan for vocational rehabilitation services program:

(1) The Education Division General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-administered programs) and 34 CFR Part 77 (Definitions); and

(2) The regulations in this Part 361.

(c) *Definitions which apply to the state vocational rehabilitation service program.*

(1) The following terms used in this Part 361 are defined in 34 CFR Part 77:

"EDGAR"
"Fiscal year"
"Nonprofit"
"Private"
"Public"
"Secretary"
"State"
"Work of Art"

(2) The following definitions also apply to this Part 361:

"Act" means the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) as amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602).

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"American Indian" means a person who is a member of an Indian tribe.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Blind" or "blind individual" means a person who is blind within the meaning of the law relating to vocational rehabilitation in each State.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Commissioner" means the Commissioner of the Rehabilitation Services Administration.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Construction of a rehabilitation facility" means:

(i) The construction of new buildings, the acquisition of existing buildings, or the expansion, remodeling, alteration or renovation of existing buildings which are to be utilized for rehabilitation facility purposes; or

(ii) The acquisition of initial equipment of such new, newly acquired, newly expanded, newly remodeled, newly altered or newly renovated buildings.

(Section 7(1) of the Act; 29 U.S.C. 706(1))

"Designated State unit" or "State unit" means either:

(i) The State agency vocational rehabilitation bureau, division, or other organizational unit which is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of handicapped individuals and which is responsible for the administration of the vocational rehabilitation program of the State agency; or

(ii) The independent State commission, board, or other agency which has vocational rehabilitation, or vocational and other rehabilitation as its primary function.

(Section 7(3) of the Act; 29 U.S.C. 706(d))

"Eligible" or "eligibility," when used in relation to an individual's qualification for vocational rehabilitation services, refers to a certification that:

(i) An individual has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment, and

(ii) Vocational rehabilitation services may reasonably be expected to benefit the individual in terms of employability.

(Section 7(7) of the Act; 29 U.S.C. 706(7))

"Employability" refers to a determination that the provision of vocational rehabilitation services is likely to enable an individual to enter or retain employment consistent with his capacities and abilities in the competitive labor market; the practice of a profession; self-employment; homemaking; farm or family work (including work for which payment is in kind rather than in cash); sheltered employment; homebound employment; or other gainful work.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Establishment of a rehabilitation facility" means:

(i) The acquisition, expansion, remodeling, or alteration of existing buildings, necessary to adapt them or increase their effectiveness for rehabilitation facility purposes;

(ii) The acquisition of initial or additional equipment for these buildings essential for providing vocational rehabilitation services; or

(iii) The initial or additional staffing of a rehabilitation facility for a period, in the case of any individual staff person, not longer than 4 years and 3 months.

(Section 7(4) of the Act; 29 U.S.C. 706(4))

"Evaluation of vocational rehabilitation potential" means, as appropriate, in each case:

(i) A preliminary diagnostic study to determine that an individual is eligible for vocational rehabilitation services;

(ii) A thorough diagnostic study consisting of a comprehensive evaluation of pertinent factors bearing on the individual's handicap to employment and vocational rehabilitation potential, in order to determine which vocational rehabilitation services may be of benefit to the individual in terms of employability;

(iii) Any other goods or services necessary to determine the nature of the handicap and whether it may reasonably be expected that the individual can benefit from vocational rehabilitation services in terms of employability;

(iv) Referral to other agencies or organizations, when appropriate; and

(v) The provision of vocational rehabilitation services to an individual during an extended evaluation of rehabilitation potential for the purpose of determining whether the individual is a handicapped individual for whom a vocational goal is feasible.

(Section 7(5) of the Act; 29 U.S.C. 706(5))

"Family member" or "member of the family" means any relative by blood or marriage of a handicapped individual and other individual living in the same household with whom the handicapped individual has a close interpersonal relationship.

(Section 103(a)(3) of the Act; 29 U.S.C. 723(a)(3))

"Handicapped individual" except in § 361.15(b), §361.51(e), and § 361.52(g) means an individual:

(i) Who has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment; and

(ii) Who can reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services, or for whom an extended evaluation of vocational rehabilitation potential is necessary to determine whether he or she might reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services;

(Section 7(7)(A) of the Act; 29 U.S.C. 706(7)(A))

"Handicapped individual," for purposes of § 361.15(b), § 361.51(e), and § 361.52(g), means an individual:

(i) Who has a physical or mental impairment which substantially limits one or more major life activities;

(ii) Who has a record of such an impairment; or

(iii) Who is regarded as having such an impairment.

(Section 7(7)(B) of the Act; 29 U.S.C. 706(7)(B))

"Local agency," unless the context clearly indicates differently, means an agency of a unit of general local government or of an Indian tribal organization (or combination of such units or organizations) which has the sole responsibility under an agreement with the State agency to conduct a vocational rehabilitation program in the locality under the supervision of the State agency in accordance with the State plan.

(Section 7(8) of the Act; 29 U.S.C. 706(8)

"Physical and mental restoration services" means:

(i) Medical or corrective surgical treatment;

(ii) Diagnosis and treatment for mental or emotional disorders by a physician skilled in the diagnosis and treatment of such disorders or by a psychologist licensed or certified in accordance with State laws and regulations;

(iii) Dentistry;

(iv) Nursing services;

(v) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(vi) Convalescent or nursing home care;

(vii) Drugs and supplies;

(viii) Prosthetic, orthotic or other assistive devices including hearing aids, essential to obtaining or retaining employment;

(ix) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids, prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;

(x) Podiatry;

(xi) Physical therapy;

(xii) Occupational therapy;

(xiii) Speech or hearing therapy;

(xiv) Psychological services;

(xv) Therapeutic recreation services;

(xvi) Medical or medically related social work services;

(xvii) Treatment of either acute or chronic medical complications and emergencies which are associated with or arise out of the provision of physical and mental restoration services; or which are inherent in the condition under treatment;

(xviii) Special services for the treatment of individual suffering from end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

(xix) Other medical or medically related rehabilitation services including art therapy, dance therapy, music therapy and psychodrama.

(Section 103(a)(4) of the Act; 29 U.S.C. 723(a)(4))

"Physical or mental disability" means a physical or mental condition which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's employment activities or vocational functioning.

(Section 7(7)(A)(i) of the Act; 29 U.S.C. 706(7)(A)(i))

"Rehabilitation facility" means a facility which is operated for the primary purpose of providing vocational rehabilitation services to handicapped individuals, and which provides singly or in combination one or more of the following services for handicapped individuals:

(i) Vocational rehabilitation services, including under one management, medical, psychiatric, psychological, social, and vocational services;

(ii) Testing, fitting, or training in the use of prosthetic and orthotic devices;

(iii) Prevocational conditioning or recreational therapy;

(iv) Physical and occupational therapy;

(v) Speech and hearing therapy;

(vi) Psychological and social services;

(vii) Evaluation of rehabilitation potential;

(viii) Personal and work adjustment;

(ix) Vocational training with a view toward career advancement (in combination with other rehabilitation services);

(x) Evaluation or control of specific disabilities;

(xi) Orientation and mobility services and other adjustment services to blind individuals; and

(xii) Transitional or extended employment for those handicapped individuals who cannot be readily absorbed in the competitive labor market.

(Section 7(11) of the Act; 29 U.S.C. 706(11))

"Reservation" means a Federal or State Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by incorporated Native groups, regional corporations and village corporations under the provisions of the Alaska Native Claims Settlement Act.

(Section 130(e) of the Act, 29 U.S.C. 750(e))

"Severely handicapped individual" means a handicapped individual:

(i) Who has a severe physical or mental disability which seriously limits one or more functional capacities (mobility, communication, self-care, self-direction, work tolerance, or work skills) in terms of employability; and

(ii) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(iii) Who has one or more physical or mental disabilities resulting from amputation, arthritis, blindness, cancer, cerebral palsy, cystic fibrosis, deafness, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, and end-stage renal disease, or another disability or combination of disabilities determined on the basis of an evaluation of rehabilitation potential to cause comparable substantial functional limitation.

(Section 7(13) of the Act; 29 U.S.C. 706(13))

"State agency" means the sole State agency designated to administer (or supervise local administration of) the State plan for vocational rehabilitation services. The term includes the State agency for the blind, if designated as the sole State agency with respect to that part of the plan relating to the vocational rehabilitation of blind individuals.

(Section 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

"State plan" means the State plan for vocational rehabilitation services, or the vocational rehabilitation services part of a consolidated rehabilitation plan under § 361.2(d) of this part.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Substantial handicap to employment" means that a physical or mental disability (in light of attendant medical, psychological, vocational, educational, and other related factors) impedes an individual's occupational performance, by preventing his obtaining, retaining, or preparing for employment consistent with his capacities and abilities.

(Sections 7(7)(A)(i) and 12(c) of the Act; 29 U.S.C. 706(7)(A)(i) and 711(c))

"Vocational rehabilitation services" when provided to an individual, means those services listed in § 361.42 of this part.

(Section 103(a) of the Act, 29 U.S.C. 723(a))

"Vocational rehabilitation services" when provided for the benefit of groups of individuals, also means:

(i) In the case of any type of small business enterprise operated by severely handicapped individuals under the supervision of the State unit, management services, and supervision and acquisition of vending facilities or other equipment, and initial stocks and supplies;

(ii) The establishment of a rehabilitation facility;

(iii) The construction of a rehabilitation facility;

(iv) The provision of other facilities and services, including services provided at rehabilitation facilities, which promise to contribute substantially to the rehabilitation of a group of individuals but which are not related directly to the individualized written rehabilitation program of any one handicapped individual;

(v) The use of existing telecommunications systems; and

(vi) The use of services providing recorded material for blind persons and captioned films or video cassettes for deaf persons.

(Section 103(b) of the Act; 29 U.S.C. 723(b))

"Workshop" means a rehabilitation facility, or that part of a rehabilitation facility, engaged in production or service operation for the primary purpose of providing gainful employment as an interim step in the rehabilition process for those who cannot be readily absorbed in the competitive labor market or during such time as employment opportunities for them in the competitive labor market do not exist.

(Sections 7(11) and 12(c) of the Act; 29 U.S.C. 706(11) and 711(c))

Subpart B—State Plans for Vocational Rehabilitation Services

State Plan Content: Administration

§ 361.2 The State plan: General requirements.

(a) *Purpose.* In order for a State to be eligible for grants from the allotment of funds under Title I of the Act, it must submit an approvable State plan covering a three-year period and meeting Federal requirements. The State plan must provide for financial participation by the State, or if the State chooses, by the State and local agencies jointly, and must provide that it will be in effect in all political subdivisions of the State, except as specifically provided in § 361.11 (Shared funding and administration of special joint projects or programs) and § 361.12 (Waiver of Statewideness).

(b) *Form and content.* The State plan must contain, in the form prescribed by the Secretary a description of the State's vocational rehabilitation program, the plans and policies to be followed in carrying out the program and other information requested by the Secretary. The State plan must consist of:

(1) A part providing detailed commitments specified by the Secretary which must be amended or reaffirmed every three years; and

(2) A part containing a fiscal year progammming description, based on the findings of the continuing Statewide studies (§ 361.17), the annual evaluation of the effectiveness of the State's program (§ 361.17) and other pertinent

reviews and studies. This annual programming description must include:

(i) Changes in policy resulting from the continuing Statewide studies and the annual evaluation of the effectiveness of the program;

(ii) Estimates of the number of handicapped individuals who will be served with funds provided under the Act;

(iii) A description of the methods used to expand and improve services to those individuals who are the most severely handicapped;

(iv) A description of the order of selection (§ 361.36) of groups of handicapped individuals to whom vocational rehabilitation services will be provided (unless the designated State unit assures that it is serving all eligible handicapped individuals who apply); and

(v) A statement of the general outcome and service goals to be achieved for handicapped individuals in each priority category within the order of selection in effect in the State and the time within which these goals may be achieved. These goals must include those objectives, established by the State unit and consistent with those set by the Secretary in instructions concerning the State plan, which are measurable in terms of service expansion or program improvement in specified program areas, and which the State unit plans to achieve during a specified period of time.

(c) *Separate part relating to rehabilitation of the blind.* If a separate State agency for the blind administers or supervises the administration of that part of the State plan relating to the rehabilitation of blind individuals, that part of the State plan must meet all requirements applicable to a separate State plan.

(d) *Consolidated rehabilitation plan.* The State may choose to submit a consolidated rehabilitation plan which includes the State plan for vocational rehabilitation services and either the State plan for independent living rehabilitation services or the State's plan for its program for persons with developmental disabilities, or both. If the State's plan for persons with developmental disabilities is included, the State planning and advisory council for developmental disbilities and the agency or agencies administering the State's program for persons with developmental disabilities must have concurred in the submission of the consolidated rehabilitation plan. A consolidated rehabilitation plan must comply, and be administered in accordance with, this Act and the Developmental Disabilities Assistance and Bill of Rights Act. The Secretary may approve the consolidated rehabilitation plan to serve as the substitute for the separate plans which would otherwise be required.

(e) *Designation of a new State agency or a new State unit.* Before designating a new State agency or a new State unit, the chief administrative officer of the State agency must assure the Secretary in writing that the vocational rehabilitation program will continue to operate in conformity with the most recent approved State plan, until a new State plan is submitted. The State agency must submit a new State plan within 90 days following the designation of a new State agency or a new State unit.

(f) *Transition to new State agency or State unit.* When a new State agency or a new State unit is designated under paragraph (e) of this section, the State agency must turn over to that agency program and financial records and other pertinent information and resources necessary for the effective conduct of the vocational rehabilitation program.

(Sections 6 and 101(a) of the Act; 29 U.S.C. 705 and 721(a))

§ 361.3 State plan approval.

The State plan must be submitted for approval for each three-year period no later than July 1 of the year preceding the first fiscal year for which the State plan is submitted.

(Section 101(b) of the Act; 29 U.S.C. 721(b))

§ 361.4 Withholding of funds.

(a) *When withheld.* Payments under sections 111 or 121 of the Act may be withheld, suspended, or limited as provided by section 101(c) of the Act, when after a reasonable notice and opportunity for hearing has been given to the State agency, the Commissioner finds that:

(1) The State plan has been so changed that it no longer conforms with the requirements of section 101(a) of the Act, or

(2) In the administration of the State plan, there is a failure to comply substantially with any provision of such plan.

(b) *Notification to State agency.* The State agency is notified of the decision.

(c) *Judicial review.* The decision to withhold, suspend, or limit payments described in paragraph (a) of this section may be appealed to the U.S. Court of Appeals for the circuit in which the State is located, in accordance with section 101(d) of the Act.

(d) *Informal discussions.* Hearings described in paragraph (a) of this section are not called until after reasonable effort has been made to resolve the questions involved by conference and discussion with State officials.

(Sections 101(c)(1) and 101(d) of the Act; 29 U.S.C. 721(c)(1) and 721(d))

§ 361.5 State agency for administration.

(a) *Designation of sole State agency.* The State plan must designate a State agency as the sole State agency to administer the State plan, or to supervise its administration in a political subdivision of the State by a sole local agency. In the case of American Samoa, the State plan must designate the Governor; in the case of the Trust Territory of the Pacific Islands, the State plan must designate the High Commissioner.

(b) *Sole State agency.* The State plan must provide that the sole State agency, except for American Samoa, and the Trust Territory of the Pacific Islands, and except for a sole State agency for the blind as specified in paragraph (c) of this section, must be:

(1) A State agency primarily concerned with vocational rehabilitation, or vocational and other rehabilitation of handicapped individuals. This agency must be an independent State commission, board, or other agency, which has as its major function vocational rehabilitation, or vocational and other rehabilitation of handicapped individuals. The agency must have the authority, subject to the supervision of the Office of Governor, when appropriate, to define the scope of the vocational rehabilitation program within the provision of State and Federal law, and to direct its administration without external administrative controls; or

(2) The State agency administering or supervising the administration of education or vocational education in the State; or

(3) A State agency which includes at least two other major organizational units, each of which administers one or more of the State's major programs of public education, public health, public welfare, or labor.

(c) *Sole State agency for the blind.* Where the State commission for the blind or other agency which provides assistance or services to the blind is authorized under State law to provide vocational rehabilitation services to blind individuals, this agency may be designated as the sole State agency to administer the part of the plan under which vocational rehabilitation services are provided for the blind or to supervise its administration in a political subdivision of the State by a sole local agency.

(d) *Authority.* The State plan must set forth the legal basis for administration by sole local rehabilitation agencies, if applicable.

(e) *Responsibility for administration.* The State plan must assure that all decisions affecting eligibility for, the nature and scope of available vocational rehabilitation services, and the provision of these services are made by the State agency through its designated State unit, or by a designated vocational rehabilitation unit of a local agency under the supervision of the designated State unit. This responsibility may not be delegated to any other agency or individual.

(Sections 101(a)(1) and 101(a)(2) of the Act; 29 U.S.C. 721(a)(1) and 721(a)(2))

§ 361.6 Organization of the State agency.

(a) *Organization.* The State plan must describe the organizational structure of the State agency, including a description of organizational units, the programs and functions assigned to each, and the relationships among these units within the State agency. These descriptions must be accompanied by organizational charts reflecting:

(1) The relationship of the State agency to the Governor and his or her office and to other agencies administering major programs of public education, public health, public welfare, or labor of parallel stature within the State government; and

(2) The internal structure of the State agency and the designated State unit, if applicable. The organizational structure must provide for all the vocational rehabilitation functions for which the State agency is responsible, and for clear lines of administrative and supervisory authority.

(d) *Designated State unit.* Where the designated State agency is of the type specified in § 361.5(b) (2) or (3), or § 361.5(c), the State plan must assure that the agency (or each agency, where two agencies are designated), includes a vocational rehabilitation bureau, division or other organizational unit which:

(1) Is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation of handicapped individuals, and is responsible for the administration of the State agency's vocational rehabilitation program, which includes the determination of eligibility for; the determination of the nature and scope of; and the provision of vocational rehabilitation services under the State plan;

(2) Has a full time director in accordance with § 361.8; and

(3) Has a staff, all or almost all of whom are employed full time on the rehabilitation work of the organizational unit.

(c) *Location of designated State unit.* (1) The State plan must assure that the designated State unit, specified in paragraph (b) of this section, is located at an organizational level and has an organizational status within the State agency comparable to that of other major organizational units of the agency, or in the case of an agency described in § 361.5(b)(2), the unit must be so located and have that status, or the director of the unit must be the executive officer of the State agency.

(2) In the case of a State which has not designated a separate State agency for the blind as provided for in § 361.5 the State may assign responsibility for the part of the plan under which vocational rehabilitation services are provided to blind individuals to one organizational unit of the State agency and may assign responsibility for the rest of the plan to another organizational unit of the agency, with the provisions of paragraphs (b) and (c)(1) of this section applying separately to each of these units.

(Section 101(a)(2) of the Act; 29 U.S.C. 721(a)(2))

§ 361.7 Designation of substitute State vocational rehabilitation agency.

(a) *General Provisions.* (1) If the Secretary has withheld all funding from a State under § 361.4, designate another agency to substitute for the State agency in carrying out the State's program of vocational rehabilitation services. Funds are considered to be withheld when a final administrative decision under § 361.4 is in effect and funds either are not granted to a State agency or are granted to the State agency to enable it to operate the program on a temporary basis pending the orderly transition of responsibility to a substitute agency.

(2) Any public agency or nonprofit organization or agency within the State or any political subdivision of the State may apply for designation as a substitute agency.

(3) To be eligible for designation as a substitute agency, the applicant must submit a proposal for a substitute State plan which meets the requirements of this part.

(4) The substitute State plan covers a three-year period or the remaining portion of the period covered by the previously approved State plan. The Secretary may not make a grant to a substitute agency until he approve its plan.

(b) *Proposal submittal.* a proposal for submitting a substitute State plan must be in the format required by the Secretary.

(c) *Factors considered in evaluating proposals.* In selecting a substitute agency, the Secretary considers the following factors:

(1) The program and financial capacity of the applicant agency for carrying out a program of vocational rehabilitation services, including the source of funds to be contributed in order to match Federal funds;

(2) The organizational structure of the applicant agency;

(3) The qualifications to be required of the applicant agency staff; and

(4) The extent to which the proposed State vocational rehabilitation service program is comparable to the program which had been carried out under the most recent previously approved State plan in the State.

(d) *Review of proposals.* In selecting a substitute agency, the Secretary evaluates the relative merit of all proposals which are submitted.

(e) *Substitute agency matching share.* The Secretary shall not make any payment to the substitute agency unless it has provided assurances that it will contribute the same proportion of the total amount of funds as the State would have been obligated to contribute if the State agency were carrying out the vocational rehabilitation service program.

(f) *State agency re-designation.* If the State agency changes its State plan or agrees to change its administration of the plan to comply with Federal requirements, the State agency is redesignated as the agency to operate the vocational rehabilitation program. The State agency resumes its operation of the program either at the end of the three-year period for which the substitute State plan has been approved or on any earlier date determined by the Secretary after agreement by the substitute agency and the State agency.

(Section 101(c)(2) of the Act; 29 U.S.C. 721(c)(2))

§ 361.8 State unit director.

The State plan must assure that there will be a full-time director who directs the State agency specified in § 361.5(b)(1) or the designated State unit specified in § 361.6(b).

(Sec. 101(a)(2)(A) of the Act; 29 U.S.C. 721(a)(2)(A))

§ 361.9 Local administration.

(a) *Scope of written agreement.* The State plan must assure that any local administration of the plan by a sole local agency is based on a written agreement between the local agency and

the designated State unit with the concurrence of the State agency which:

(1) Indicates that the local agency will conduct a vocational rehabilitation program through its designated unit under the supervision of the designated State unit in accordance with the State plan and in compliance with Statewide standards established by the designated State unit;

(2) Assures that the designated unit of the local agency will be responsible for carrying out the vocational rehabilitation program and will meet the requirements for this unit specified in § 361.6(b);

(3) Describes the methods to be followed by the designated State unit in its supervision of the local agency's vocational rehabilitation program;

(4) Indicates the basis on which the designated State unit participates financially in its locally administered vocational rehabilitation programs;

(5) Indicates whether the local unit will utilize another local public or nonprofit agency in providing vocational rehabilitation services to handicapped individuals, and the arrangements to be made; and

(6) Assures that the sole local agency will be responsible through its designated unit for the administration of the vocational rehabilitation program and will employ staff for carrying out the vocational rehabilitation program including a full-time director.

(b) *Responsibility of local agency.* If the State plan provides for local administration, it must assure that the sole local agency is responsible through its designated unit for the administration of the program within the political subdivision which it serves. A separate local agency serving the blind may administer that part of the plan relating to vocational rehabilitation of the blind, under the supervision of the designated State unit for the blind.

(Sec. 101(a)(1)(A) of the Act; 29 U.S.C. 721(A)(1)(A))

§ 361.10 Methods of administration.

The State plan must assure that the State agency and the designated State unit employ those methods found necessary by the Secretary for the proper and efficient administration of the plan, and for carrying out all functions for which the State is responsible under the plan and this part.

(Sec. 101(a)(6) of the Act; 29 U.S.C. 721(a)(6))

§ 361.11 Shared funding and administration of special joint projects or programs.

(a) *Procedural requirements.* In order to carry out a special joint project or program to provide services to handicapped individuals, the State unit with the concurrence of the State agency must request the Secretary to authorize it to share funding and administrative responsibility for a joint project or program with another agency or agencies of the State, or with a local agency. The Secretary approves a request for the shared funding and administration of a special joint project or program which he has determined will more effectively accomplish the purpose of the Act and may also waive the provisions of § 361.2(a) that the State plan must be in effect in all political subdivisions of the State.

(b) *Scope of written agreement.* The State plan must assure that each special joint project or program is based on a written agreement which:

(1) Describes the nature and scope of the joint project or program, the services to be provided, the respective roles of each participating agency in the provision of services and in their administration, and the share of the costs to be assumed by each;

(2) Specifies the period of the joint project or program, and plans for anticipated continuation;

(3) Provides a budget showing for each fiscal year the financial participation by the State unit and each participating agency;

(4) Provides written assurance that funds will be legally available for purposes of the joint project or program;

(5) Provides that the State unit shall annually evaluate the effectiveness of each project or program with special attention to its vocational rehabilitation objectives;

(6) Assures that the State unit and each participating agency will furnish information and reports required by the Secretary to determine whether the activities are achieving the purposes of the project or program and warrant continuation; and

(7) Assures that the State unit's portion of the joint project or program will comply with applicable requirements of the Act and this part.

(Section 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

§ 361.12 Waiver of Statewideness

(a) *Purpose of waiver.* If the State unit desires to carry out activities in one or more political subdivisions through local financing in order to promote the vocational rehabilitation of substantially larger numbers of handicapped individuals with particular types of disabilities, the State plan must identify the types of activities to be carried out in this manner.

(b) *Procedural requirements.* The State plan must assure in these cases that the State unit:

(1) Obtains a written description of any activity to be carried out in a particular political subdivision;

(2) Obtains written assurance from the political subdivision that the non-Federal share of funds is available to the State;

(3) Requires that its approval be given to each proposal before the proposal is put into effect in a political subdivision;

(4) Has sole responsibility for administration (or supervision of locally administered vocational rehabilitation programs if the vocational rehabilitation program is administered by local agencies) of the program in a particular local political subdivision in accordance with § 361.6, except to the extent that funding and administrative responsibility is shared with respect to a joint program under § 361.12.

(5) Assures that all requirements of the State plan apply to these activities, except the requirement that the program be in effect in all political subdivisions of the State, and except that the provisions of § 361.78 may be applicable for Federal financial participation in expenditures for carrying out these activities; and

(6) Furnishes other information and reports required by the Secretary.

(Section 101(a)(4) of the Act; 29 U.S.C. 721(a)(4))

§ 361.13 Cooperative programs involving funds from other public agencies.

(a) *Scope of written agreement.* The State plan must assure that, when the State's share of the cost of a cooperative program for providing or administering vocational rehabilitation services is made available in whole or in part by a State or local public agency other than the designated State unit, the cooperative program is based on a written agreement which:

(1) Describes program goals and the activities to be undertaken to achieve these goals;

(2) Assures only individuals eligible for vocational rehabilitation services will be served;

(3) Assures that the vocational rehabilitation services are not services of the cooperating agency to which the handicapped individual would be entitled if he were not an applicant or client of the designated State unit and represent new services or new patterns of services of the cooperating agency.

(4) Provides for an annual budget;

(5) Provides that expenditures for vocational rehabilitation services and the administration of these services will

be under the direct control and at the discretion of the designated State unit.

(6) Assures that the costs of administrative activities are not costs which are attributable to the general expense of the State or locality in carrying out the administrative functions of the State or local government;

(b) *Annual review.* The State unit must review each cooperative program annually to determine its effectiveness and to assure that it is being operated in compliance with the requirements of the written agreement.

(Section 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

§ 361.14 Staffing of the State's vocational rehabilitation program.

(a) *General staffing requirement.* The State plan must assure that staff in sufficient number and with appropriate qualifications is available to carry out all functions required under this part, including program planning and evaluation, staff development, rehabilitation facility development and utilization, medical consultation, and rehabilitation counseling services for severely handicapped individuals.

(b) *Special communication needs staffing.* The State plan must further assure that the designated State unit includes on its staff or makes available personnel able to communicate in the native languages of applicants for service and State unit clients with limited English-speaking ability from ethnic groups which represent substantial segments of the population of the State. The State plan must assure that the State unit includes on its staff or arranges to have available individuals able to communicate with applicants for service and State unit clients individuals who rely on special modes of communication such as manual communication, tactile, oral, and non-verbal communication devices.

(Section 101(a)(7) of the Act; 29 U.S.C. 721(a)(7))

§ 361.15 Affirmative action plan for handicapped individuals.

(a) [Reserved]

(b) The State plan must also assure that the State unit develops and implements a plan to take affirmative action to employ and advance in employment qualified handicapped individuals. This plan must provide for specific action steps, timetables, and complaint and enforcement procedures necessary to assure affirmative action.

(Sections 101(a)(6) and 101(a)(7) of the Act; 29 U.S.C. 721(a)(6) and 721(a)(7))

§ 361.16 Staff development.

The State plan must assure that there is a program of staff development for all classes of positions which are involved in the administration and operation of the State's vocational rehabilitation program. The staff development program must include, as a minimum:

(a) A systematic determination of training needs to improve staff effectiveness and a system for evaluating the effectiveness of the training activities provided;

(b) An orientation program for new staff; and

(c) An operating plan for providing training opportunities for all classes of positions consistent with the determination of training needs.

(Section 101(a)(7) of the Act; 29 U.S.C. 721(a)(7))

§ 361.17 State studies and evaluations.

(a) *General provisions.* The State plan must assure that the State unit conducts continuing Statewide studies of the needs of handicapped individuals within the State, including the State's need for rehabilitation facilitities, and the methods by which these needs may be most effectively met.

(b) *Scope of Statewide studies.* The continuing Statewide studies must:

(1) Determine the relative needs for vocational rehabilitation services of different significant segments of the population of handicapped individuals, with special reference to the need for expanding services to individuals with the most severe handicaps;

(2) Review a broad variety of means and methods to provide, expand, and improve vocational rehabilitation services in order to determine which means and methods are the most effective;

(3) Review the appropriateness of the criteria used by the designated State unit in determining individuals to be ineligible for vocational rehabilitation services;

(4) Determine the capacity and condition of rehabilitation facilities and rehabilitation facility services within the State and identify ways in which the overall effectiveness of rehabilitation facility services within the State might be improved; and

(5) Otherwise contribute to the orderly and effective development of vocational rehabilitation services and rehabilitation facilities within the State.

(c) *Annual evaluation.* The State plan must assure that the State conducts an evaluation of the effectiveness of the State's vocational rehabilitation program in achieving service goals and priorities, as established in the plan. This evaluation must measure the adequacy of State unit performance in providing vocational rehabilitation services especially to those individuals with the most severe handicaps and must be conducted according to the general standards for evaluation developed by the Secretary. Findings derived from the annual evaluation must be reflected in the State plan, its amendments and in the development of plans and policies for the provision of vocational rehabilitation services either directly by the State unit or within rehabilitation facilities.

(Sections 101(a)(15) and (a)(19) of the Act; 29 U.S.C. 721(a)(15) and (a)(19))

§ 361.18 Policy development consultation.

(a) *General provisions.* The State plan must assure that the designated State unit, or as appropriate, the State unit and any vocational rehabilitation unit of a local agency, seeks and takes into account, in connection with matters of general policy development and implementation arising in the administration of the State plan, the views of individuals and groups. Matters of general policy development and implementation include, but need not be limited to, program planning, development and evaluation; development of legislative and budgetary proposals; assessing research and service proposals; and affirmative action for employment of qualified handicapped individuals. The individuals and groups whose opinions are sought and considered are:

(1) Current or former recipients of vocational rehabilitation services, or as appropriate, their parents, guardians, or other representatives;

(2) Providers of vocational rehabilitation services; and

(3) Others active in vocational rehabilitation.

(b) *Public access.* The State plan must further assure that the State unit establishes and maintains a written description of the methods used to obtain and consider views on policy development and implementation. This description must be available to the public for review and inspection, as well as a report of activities which were actually undertaken in this regard during the previous fiscal year.

(Section 101(a)(18) of the Act; 29 U.S.C. 721(a)(18))

§ 361.19 Cooperation with other public agencies.

(a) *General provisions.* The State plan must assure that, where appropriate, the State unit enters into cooperative arrangements or cooperative agreements with, and utilizes the services and facilities of, the State and local agencies

administering the State's social services and financial assistance programs; other programs for handicapped individuals such as the State's developmental disabilities program, veterans' programs, health and mental health programs, education programs, including adult education, higher education, special education and vocational education programs, workers' compensation programs, manpower programs and public employment offices; the Social Security Administration; the Office of Workers' Compensation Programs of the Department of Labor, the Veterans' Administration; and other Federal, State and local public agencies providing services related to the rehabilitation of handicapped individuals.

(b) *Coordination with education programs.* The State plan must also assure that specific arrangements or agreements are made for the coordination of services for any individual who is eligible for vocational rehabilitation services and is also eligible for services under Part B of the Education of Handicapped Children Act or the Vocational Education Act.

(c) *Coordination with veterans' programs.* The State plan must also assure that there will be maximum coordination and consultation with programs relating to the rehabilitation of disabled veterans.

(d) *Reciprocal referral services with separate agency for the blind.* Where there is a separate State unit for the blind, the two State units must establish reciprocal referral services, utilize each other's services and facilities to the extent feasible, jointly plan activities to improve services to the handicapped individuals in the State, and otherwise cooperate to provide more effective services.

(Section 101(a)(11) of the Act; 29 U.S.C. 721(a)(11))

§ 361.20 Establishment and maintenance of information and referral resources.

(a) *General Provisions.* The State plan must assure the establishment and maintenance of information and referral programs adequate to ensure that handicapped individuals within the State are given accurate information about State vocational rehabilitation services and independent living services, vocational rehabilitation services available from other agencies, organizations, and rehabilitation facilities, and, to the extent possible, other Federal and State services and programs which assist handicapped individuals. The State plan must also assure that the State unit will refer handicapped individuals to other appropriate Federal and State programs which might be of benefit to them. The State plan must further assure that the State unit will utilize existing information and referral systems in the State to the greatest extent possible.

(b) *Special information and referral resources.* The State plan must further assure that, to the greatest extent possible, information and referral services utilize interpreters for the deaf, existing telecommunication systems, specialized media systems for handicapped persons and special materials for blind individuals, deaf individuals, and deaf-blind individuals, as needed.

(Section 101(a)(22) of the Act; 29 U.S.C. 721(a)(22))

§ 361.21 State plan for rehabilitation facilities.

The State plan must assure that the designated State unit maintains a State rehabilitation facilities plan which includes an inventory of rehabilitation facilities and rehabilitation facility services available within the State and a description of the utilization patterns of the facilities and their utilization potential. The inventory must also include a determination of needs for new, expanded or otherwise modified rehabilitation facilities or rehabilitation facility services and a prioritized list of facility projects necessary to achieve short-range State unit goals. The State plan must also assure that the inventory of facilities is developed with the active participation of a representative group of providers and recipients of vocational rehabilitation services and is available to the public for review and inspection.

(Section 101(a)(15) of the Act; 29 U.S.C. 721(a)(15))

§ 361.22 Utilization of rehabilitation facilities.

The State plan must assure that the designated State unit utilizes existing rehabilitation facilities to the maximum extent feasible to provide vocational rehabilitation services to handicapped individuals in accordance with the State plan for rehabilitation facilities under § 1361.21. The State plan must describe the methods used to ensure appropriate use of these facilities and must provide for appropriate means for entering into agreements with the operators of these facilities for the provision of vocational rehabilitation services.

(Sections 101(a)(12) and (a)(15) of the Act; 29 U.S.C. 721(a)(12) and (a)(15))

§ 361.23 Reports.

The State plan must assure that the State agency or the designated State unit, as appropriate, submits reports in the form and detail and at the time required by the Secretary, including reports required under special evaluation studies. The State agency or the designated State unit, as appropriate must also comply with any requirements necessary to assure the correctness and verification of reports.

(Section 101(a)(10) of the Act; 29 U.S.C. 721(a)(10))

§ 361.24 General administrative and fiscal requirements.

(a) *General provisions.* The State plan must assure that the State agency and the designated State unit adopt policies and methods pertinent to the fiscal administration and control of the vocational rehabilitation program, including sources of funds, incurrence and payment of obligations, disbursements, accounting, and auditing. The State plan must assure that the State agency and the designated State unit maintain accounts and supporting documents necessary for an accurate and expeditious determination at any time of the status of Federal grants, including the disposition of monies received and the nature and amount of charges claimed against these grants.

(b) *Awards made by State agency.* The State plan must assure that the State agency or the designated State unit, as appropriate adopt policies and methods necessary to assure sound administration and control of funds awarded by the State agency or the State unit to any public or other nonprofit agency or organization to carry out a program of vocational rehabilitation services.

(c) *Applicability of 34 CFR Part 74.* The provisions of 34 CFR Part 74 establishing uniform administrative requirements and cost principles, apply to all grants made under this part except for the requirement concerning in-kind contributions under Subpart G of 34 CFR Part 74.

(d) *Applicability of Department of Health and Human Services regulations.* Several Department of Health and Human Services regulations apply under this part. These include:

45 CFR Part 19—Limitations on Payment or Reimbursement for Drugs
45 CFR Part 46—Protection of human subjects
45 CFR Part 75—Informal grant appeals procedures (Indirect cost rates and other cost allocations)

(Sections 11 and 12(c) of the Act; 29 U.S.C. 710 and 711(c))

State Plan Content: Provision and Scope of Service

§ 361.30 Processing referrals and applications.

The State plan must assure that the State unit establishes and maintains

written standards and procedures to assure expeditious and equitable handling of referrals and applications for vocational rehabilitation services.

(Sections 101(a)(60 of the Act; 29 U.S.C. 721(a)(6))

§ 361.31 Eligibility for vocational rehabilitation services.

(a) *General provisions.* (1) The State plan must assure that eligibility requirements are applied by the designated State unit without regard to sex, race, age, creed, color, or national origin of the individual applying for service. The State plan must also assure that no group of individuals is excluded or found ineligible solely on the basis of type of disability. With respect to age, the State plan must assure that no upper or lower age limit is established which will, in and of itself, result in a finding of ineligibility for any handicapped individual who otherwise meets the basic eligibility requirements specified in paragraph (b) of this section.

(2) The State plan must assure that no residence requirement, durational or other, is imposed which excludes from services any individual who is present in the State.

(b) *Basic conditions.* The State plan must assure that eligibility is based only upon:

(1) The presence of a physical or mental disability which for the individual constitutes or results in a substantial handicap to employment; and

(2) A reasonable expectation that vocational rehabilitation services may benefit the individual in terms of employability.

(c) *Interim determination of eligibility.* The State plan may provide for vocational rehabilitation services to be initiated for an individual on the basis of an interim determination of eligibility. If the State chooses this approach, it must identify the criteria established for making an interim determination of eligibility, the procedures to be followed, the services which may be provided, and the period, not to exceed 90 days, during which services may be provided until a final determination of eligibility is made.

(Sections 7(7)(A), 12(c), 101(a)(6) and 101(a)(14) of the Act; 29 U.S.C. 706(7)(A), 711(c), 721(a)(6), and 721(a)(14))

§ 361.32 Evaluation of vocational rehabilitation potential: Preliminary diagnostic study.

(a) *Basic conditions.* The State plan must assure that, in order to determine whether any individual is eligible for vocational rehabilitation services, there is a preliminary diagnostic study to determine:

(1) Whether the individual has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment; and

(2) Whether vocational rehabilitation services may reasonably be expected to benefit the individual in terms of employability, or whether an extended evaluation of vocational rehabilitation potential is necessary to make this determination.

(b) *Scope of diagnostic study.* The State plan must assure that the preliminary diagnostic study includes examinations and diagnostic studies to make the determinations specified in paragraph (a) of this section. In all cases, the evaluation places primary emphasis upon determining the individual's potential for achieving a vocational goal.

(c) *Specific evaluations.* The State plan must also assure that the preliminary diagnostic study includes an appraisal of the current general health status of the individual based, to the maximum extent possible, on available medical information. The State plan must further assure that in all cases of mental or emotional disorder, an examination is provided by a physician skilled in the diagnosis and treatment of such disorders, or by a psychologist licensed or certified in accordance with State laws and regulations, in those States where laws and regulations pertaining to the practice of psychology have been established.

(Sections 7(5) and 103(a)(1) of the Act; 29 U.S.C. 706(5) and 723(a)(1))

§ 361.33 Evaluation of vocational rehabilitation potential: Thorough diagnostic study.

(a) *General provision.* The State plan must assure that, as appropriate in each case, when an individual's eligibility for vocational rehabilitation services has been determined, there is a thorough diagnostic study to determine the nature and scope of services needed by the individual. This study consists of a comprehensive evaluation of pertinent medical, psychological, vocational, educational, and other factors relating to the individual's handicap to employment and rehabilitation needs.

(b) *Scope of thorough diagnostic study.* The thorough diagnostic study includes in all cases to the degree needed, an appraisal of the individual's personality, intelligence level, educational achievement, work experience, personal, vocational, and social adjustment, employment opportunities, and other pertinent data helpful in determining the nature and scope of services needed. The study also includes, as appropriate for each individual, an appraisal of the individual's patterns of work behavior, ability to acquire occupational skill and capacity for successful job performance.

(Section 7(5) of the Act; 29 U.S.C. 706(5))

§ 361.34 Extended evaluation to determine vocational rehabilitation potential.

(a) *Basic conditions.* The State plan must assure that the furnishing of vocational rehabilitation services under an extended evaluation to determine vocational rehabilitation potential is based only upon:

(1) The presence of a physical or mental disability which for the individual constitutes or results in a substantial handicap to employment; and

(2) An inability to make a determination that vocational rehabilitation services might benefit the individual in terms of employability unless there is an extended evaluation to determine vocational rehabilitation potential.

(b) *Duration and scope of services.* Vocational rehabilitation services necessary for determination of rehabilitation potential, including those provided within a thorough diagnostic study, may be provided to a handicapped individual for a total period not longer than 18 months.

(c) *Other conditions.* (1) The extended evaluation period begins on the date of certification for extended evaluation to determine rehabilitation potential required in § 361.35(b). Only one 18-month maximum period is permitted during the time that the case is open. If a case has been closed because of a determination that the handicapped individual's needs have changed, the case may be re-opened and a subsequent evaluation of vocational rehabilitation potential may be carried out.

(2) Vocational rehabilitation services, authorized after the expiration of the extended evaluation period, are provided only if the certification of eligibility required in § 361.35(a) has been executed by an appropriate State unit staff member.

(d) *Review.* The State plan must assure a thorough assessment of the individual's progress as frequently as necessary but at least once every 90 days during the extended evaluation period. This assessment includes periodic reports from the facility, or person providing the services, to determine the results of the services and to determine whether the individual may

be determined to be eligible or ineligible.

(e) *Termination.* The State plan must assure that at any time before the end of an 18-month extended evaluation period, the extended evaluation must be terminated when:

(1) The individual is found eligible for vocational rehabilitation services since there is a reasonable assurance that he or she can be expected to benefit in terms of employability from vocational rehabilitation services; or

(2) The individual is found ineligible for any additional vocational rehabilitation services since it has been determined on the basis of clear evidence that he or she cannot be expected to benefit in terms of employability from vocational rehabilitation services. In this case, the procedures described in § 361.40(d) are to be followed and the individual is referred for services under the State's independent living rehabilitation program under Part 1363 of this chapter.

(Section 7(5) of the Act; 29 U.S.C. 706(5))

§ 361.35 Certification: Eligibility; extended evaluation to determine vocational rehabilitation potential; ineligibility.

(a) *Certification of eligibility.* The State plan must assure that, before or at the same time that the State unit accepts a handicapped individual for vocational rehabilitation services, there must be a certification that the individual has met the basic eligibility requirements specified in § 361.31(b). The State plan must further assure that the certification of eligibility is dated and signed by an appropriate State unit staff member.

(b) *Certification for extended evaluation to determine vocational rehabilitation potential.* The State plan must assure that before, and as a basis for providing an extended evaluation to determine vocational rehabilitation potential, there must be a certification that the individual has met the requirements in § 361.34(a). The State plan must further assure that the certification is dated and signed by an appropriate State unit staff member.

(c) *Certification of ineligibility.* (1) The State plan must assure that, whenever the State unit determines on the basis of clear evidence that an applicant or recipient of vocational rehabilitation is ineligible for services, there must be a certification dated and signed by an appropriate designated State unit staff member.

(2) The State plan must further assure that the certification indicates the reasons for the ineligibility determination and is made only after full consultation with the individual or, as appropriate, his or her parent, guardian, or other representative, or after giving a clear opportunity for this consultation. The designated State unit notifies the individual in writing of the action taken and informs the individual of his or her rights and the means by which he or she may express and seek remedy for any dissatisfaction, including the procedures for administrative review and fair hearings under § 361.48. When appropriate, the individual is provided a detailed explanation of the availability of the resources within a client assistance project established under Section 112 of the Act, and referral is made to other agencies and facilities, including when appropriate, the State's independent living rehabilitation program under Part 365.

(d) *Review of ineligibility determination.* The State plan must further assure that when an applicant for vocational rehabilitation services has been determined on the basis of the preliminary diagnostic study to be ineligible because of a finding that he or she cannot be expected to achieve a vocational goal, the ineligiblity determination will be reviewed within 12 months. This review need not be conducted in situations where the individual has refused it, the individual is no longer present in the State, his or her whereabouts are unknown, or his or her medical condition is rapidly progressive or terminal.

(e) *Closure without eligibility determination.* The State plan must provide that the State unit may close a case without any determination of eligibility when an applicant is unavailable during an extended period of time to complete an evaluation of vocational rehabilitation potential and the State unit has made repeated effort to contact the individual and to encourage his or her participation.

(Sections 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6))

§ 361.36 Order of selection for services.

(a) *General provisions.* The State plan must show the order to be followed in selecting groups of handicapped individuals to be provided vocational rehabilitation services at any time when these services cannot be provided to all eligible individuals.

(b) *Priority for severely handicapped individuals.* The State plan must assure that those groups of individuals with the most severe handicaps are selected for service before any other groups of handicapped individuals.

(c) *Disabled public safety officers.* The State plan must also assure that special consideration will be given to those handicapped individuals whose handicapping condition arose from a disability sustained in the line of duty while performing as public safety officer and the immediate cause of such disability was a criminal act, apparent criminal act, or a hazardous condition resulting directly from the officer's performance of duties in direct connection with the enforcement, execution, and administration of law or fire prevention, firefighting, or related public safety activities.

(Section 101(a)(5)(A) of the Act; 29 U.S.C. 721(a)(5)(A))

§ 361.37 Services to civil employees of the United States.

The State plan must assure that vocational rehabilitation services are available to civil employees of the U.S. Government who are disabled in line of duty, under the same terms and conditions applied to other handicapped individuals.

(Section 101(a)(13)(A) of the Act; U.S.C. 721(a)(13)(A))

§ 361.38 Services to handicapped American Indians.

The State plan must assure that vocational rehabilitation services are provided to handicapped American Indians residing in the State to the same extent that these services are provided to other significant groups of the State's handicapped population. The State plan must further assure that the designated State unit continues to provide vocational rehabilitation services to handicapped American Indians on reservations served by a special tribal program under Section 130 of the Act, if the population estimates used for determining the State's allotment include the population of Indians residing on these reservations.

(Section 101(a)(20) of the Act; 29 U.S.C. 721(a)(20))

§ 361.39 The case record for the individual.

The State plan must assure that the designated State unit maintains for each applicant for, and recipient of, vocational rehabilitation services a case record which includes, to the extent pertinent, the following information:

(a) Documentation concerning the preliminary diagnostic study supporting the determination of eligibility, the need for an extended evaluation of vocational rehabilitation potential, and, as appropriate, documentation concerning the thorough diagnostic study supporting the nature and scope of vocational rehabilitation services to be provided;

(b) In the case of an individual who has applied for vocational rehabilitation services and has been determined to be ineligible, documentation specifying the

reasons for the ineligibility determination, and noting a review of the ineligibility determination carried out not later than twelve months after the determination was made;

(c) Documentation supporting any determination that the handicapped individual is a severly handicapped individual;

(d) Documentation as to periodic assessment of the individual during an extended evaluation of vocational rehabilitation potential;

(e) An individualized written rehabilitation program as developed under § 361.40 and § 361.41 and any amendments to the program;

(f) In the event that physical and mental restoration services are provided, documentation supporting the determination that the clinical status of the handicapped individual is stable or slowly progressive unless the individual is being provided an extended evaluation of rehabilitation potential;

(g) Documentation supporting any decision to provide services to family members;

(h) Documentation relating to the participation by the handicapped individual in the cost of any vocational rehabilitation services if the State unit elects to condition the provision of services on the financial need of the individual;

(i) Documentation relating to the eligibility of the individual for any similar benefits, and the use of any similar benefits;

(j) Documentation that the individual has been advised of the confidentiality of all information pertaining to his case, and documentation and other material concerning any information released about the handicapped individual with his or her written consent;

(k) Documentation as to the reason for closing the case including the individual's employment status and, if determined to be rehabilitated, the basis on which the employment was determined to be suitable;

(l) Documentation of any plans to provide post-employment services after the employment objective has been achieved, the basis on which these plans were developed, and a description of the services provided and the outcomes achieved;

(m) Documentation concerning any action and decision involving the handicapped individual's request for an administrative review of agency action or fair hearing under § 361.48; and

(n) In the case of an individual who has been provided vocational rehabilitation services under an individualized written program but who has been determined after the initiation of these services to be no longer capable of achieving a vocational goal, documentation of any reviews of this determination in accordance with § 361.40(d).

(Sections 101(a)(6) and 101(a)(9) of the Act; 29 U.S.C. 721(a)(6) and 721(a)(9))

§ 1361.40 The individualized written rehabilitation program: Procedures.

(a) *General Provisions.* The State plan must assure that an individualized written rehabilitation program is initiated and periodically updated for each eligible individual and for each individual being provided services under an extended evaluation to determine rehabilitation potential. The State plan must also assure that vocational rehabilitation services are provided in accordance with the written program. The individualized written rehabilitation program must be developed jointly by the designated State unit staff member and the handicapped individual or, as appropriate, his or her parent, guardian or other representative. The State unit must provide a copy of the written program, and any amendments, to the handicapped individual or, as appropriate, his or her parent, guardian, or other representative and must advise each handicapped individual, or his or her representative of all State unit procedures and requirements affecting the development and review of individualized written rehabilitation programs.

(b) *Initiation of program.* The individualized written rehabilitation program must be initiated after certification of eligibility under § 361.35(a) or certification for extended evaluation to determine rehabilitation potential under § 361.35(b).

(c) *Review.* The State must assure that the individualized written program will be reviewed as often as necessary but at least on an annual basis. Each handicapped individual, or, as appropriate, his or her parent, guardian on other representative must be given an opportunity to review the program and, if necessary, jointy redevelop and agree to its terms.

(d) *Review of ineligibility determination.* The State plan must assure that if services are to be terminated under a written program because of a determination that the handicapped individual is not capable of achieving a vocational goal and is therefore no longer eligibile, or if in the case of a handicapped individual who has been provided services under an extended evaluation of vocational rehabilitation potential, services are to be terminated because of a determination that the individual cannot be determined to be eligible , the following conditions and procedures will be met or carried out.

(1) This decision is made only with the full participation of the individual, or, as appropriate, his or her parent, guardian, or other representative, unless the individual has refused to participate, the individual is no longer present in the State or his or her whereabouts are unknown, or his or her medical condition is rapidly progressive or terminal. When the full participation of the individual or a representative of the individual has been secured in making the decision, the views of the individual are recorded in the individualized written rehabilitation program;

(2) The rationale for the ineligibility decision is recorded as an amendment to the individualized written rehabilitation program certifying that the provision of vocational rehabilitation services has demonstrated that the individual is not capable of achieving a vocational goal, and a certification of ineligibility under § 361.35(c) is then executed; and

(3) There will be a periodic review, at least annually, of the ineligibility decision in which the individual is given opportunity for full consultation in the reconsideration of the decision, except in situations where a periodic review would be precluded because the individual has refused services or has refused a periodic review, the individual is no longer present in the State, his or her whereabouts are unknown, or his or her medical condition is rapidly progressive or terminal. The first review of the ineligibility decision is initiated by the State unit. Any subsequent reviews, however, are undertaken at the request of the individual.

(Section 101(a)(9) of the Act; 29 U.S.C. 721(a)(9))

§ 361.41 The individualized written rehabilitation program: Content.

(a) *Scope of content.* The State plan must assure that the individualized written rehabilitation program places primary emphasis on the determination and achievement of a vocational goal, and as appropriate includes, but is not necessarily limited to, statements concerning:

(1) The basis on which the determination of eligibility has been made, or the basis on which a determination has been made that an extended evaluation of vocational rehabilitation potential is necessary to make a determination of eligibility;

(2) The long-range and intermediate rehabilitation objectives established for the individual;

(3) The determination of the specific vocational rehabilitation services to be provided in order to achieve the established rehabilitation objectives;

(4) The projected date for the initiation of each vocational rehabilitation service, and the anticipated duration of each service;

(5) A procedure and schedule for periodic review and evaluation of progress toward achieving rehabilitation objectives based upon objective criteria, and a record of these reviews and evaluations;

(6) The views of the handicapped individual, or, as appropriate, his or her parent, guardian, or other representative, concerning his or her goals and objectives and the vocational rehabilitation services being provided;

(7) The terms and conditions for the provision of vocational rehabilitation services including responsibilities of the handicapped individual in implementing the individualized written rehabilitation program, the extent of client participation in the cost of services if any, the extent to which the individual is eligible for similar benefits under any other programs; and the extent to which these similar benefits have been used;

(8) An assurance that the handicapped individual has been informed of his or her rights and the means by which he or she may express and seek remedy for any dissatisfaction, including the opportunity for an administrative review of State unit action, fair hearing or review by the Secretary under § 361.48;

(9) Where appropriate, assurance that the handicapped individual has been provided a detailed explanation of the availability of the resources within a client assistance project established under Section 112 of the Act;

(10) The basis on which the individual has been determined to be rehabilitated under § 361.43; and

(11) Any plans for the provision of post-employment services after a suitable employment goal has been achieved and the basis on which such plans are developed.

(b) *Coordination with education agencies.* When services are being provided to a handicapped individual who is also eligible for services under the Education for Handicapped Children Act, the individualized written rehabilitation program is prepared in coordination with the appropriate education agency and includes a summary of relevant elements of the individualized education program for that individual.

(Sections 101 (a)(9) and (a)(11) of the Act; 29 U.S.C. 721 (a)(9) and (a)(11))

§ 361.42 Scope of State unit program: Vocational rehabilitation services for individuals.

(a) *Scope of services.* The State plan must assure that, as appropriate to the vocational rehabilitation needs of each individual, the following vocational rehabilitation services are available:

(1) Evaluation of vocational rehabilitation potential, including diagnostic and related services incidental to the determination of eligibility for, and the nature and scope of services to be provided;

(2) Counseling and guidance, including personal adjustment counseling, to maintain a counseling relationship throughout a handicapped individual's program of services, and referral necessary to help handicapped individuals secure needed services from other agencies;

(3) Physical and mental restoration services, necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive;

(4) Vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials except that no training or training services in institutions of higher education (universities, colleges, community/junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid for with funds under this part unless maximum efforts have been made by the State unit to secure grant assistance in whole or in part from other sources;

(5) Maintenance, including payments, not exceeding the estimated cost of subsistence and provided at any time after vocational rehabilitation services have begun through the time when postemployment services are being provided. Maintenance covers a handicapped individual's basic living expenses, such as food, shelter, clothing, and other subsistence expenses which are necessary to support and derive the full benefit of the other vocational rehabilitation services being provided;

(6) Transportation, including necessary travel and related expenses including subsistence during travel (or per diem payments in lieu of subsistence) in connection with transporting handicapped individuals and their attendants or escorts for the purpose of supporting and deriving the full benefit of the other vocational rehabilitation services being provided. Transportation may include relocation and moving expenses necessary for achieving a vocational rehabilitation objective;

(7) Services to members of a handicapped individual's family when necessary to the vocational rehabilitation of the handicapped individual;

(8) Interpreter services and note-taking services for the deaf, including tactile interpreting for deaf-blind individuals;

(9) Reader services, rehabilitation teaching services, note-taking services and orientation and mobility services for the blind;

(10) Telecommunications, sensory and other technological aids and devices;

(11) Recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement and other appropriate public service employment;

(12) Placement in suitable employment;

(13) Post-employment services necessary to maintain suitable employment;

(14) Occupational licenses, including any license, permit or other written authority required by a State, city or other governmental unit to be obtained in order to enter an occupation or enter a small business, tools, equipment, initial stocks (including livestock) and supplies; and

(15) Other goods and services which can reasonably be expected to benefit a handicapped individual in terms of employability.

(b) *Written policies.* The State plan must also assure that the State unit establishes and maintains written policies covering the scope and nature of each of the vocational rehabilitation services specified in paragraph (a) of this section, and the conditions, criteria, and procedures under which each service is provided.

(c) *Special requirements.* In the case of telecommunications, sensory, and other technological aids and devices, the written policies must ensure that individualized prescriptions and fittings are performed only by individuals licensed in accordance with State licensure laws, or by appropriate certified professionals. Any hearing aid recommended on the basis of an evaluation of the auditory system must be fitted in accordance with the specifications of the findings obtained under § 361.33. Newly developed aids and devices not requiring individualized fittings must meet any engineering and safety standards recognized by the Secretary.

(Sections 101(a)(6) and 103(a) of the Act; 29 U.S.C. 721(a)(6) and 723(a))

§ 361.43 Individuals determined to be rehabilitated.

(a) *Minimum requirements.* The State plan must assure that an individual determined to be rehabilitated, must have been, as a minimum:

(1) Determined to be eligible under § 361.35(a);

(2) Provided an evaluation of vocational rehabilitation potential, and counseling and guidance as essential vocational rehabilitation services;

(3) Provided appropriate and substantial vocational rehabilitation services in accordance with the individualized written rehabilitation program developed under § 361.40 and § 361.41; and

(4) Determined to have achieved and maintained a suitable employment goal for at least 60 days.

(b) *Post-employment services.* The State plan must also assure that after an individual has been determined to be rehabilitated, the State unit will provide post-employment services when necessary to assist an individual to maintain suitable employment

(Sections 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6))

361.44 § Authorization of services.

The State plan must assure that written authorization is made, either before or at the same time as the purchase of services. Where a State unit employee is permitted to make oral authorization in an emergency situation, there must be prompt documentation and the authorization must be confirmed in writing and forwarded to the provider of the services.

(Sections 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6))

§ 361.45 Standards for facilities and providers of services.

(a) *General provisions.* The State plan must assure that the designated State unit adopts and maintains written minimum standards for the various types of facilities and providers of services utilized by the State unit in providing vocational rehabilitation services. The State unit must make these standards readily available to unit personnel and to the public.

(b) *Rehabilitation facility standards.* The State unit must establish written standards covering physical plant, equipment, and safety for rehabilitation facilities. For workshops, the State unit must also establish standards applicable to health conditions, wages, hours, working conditions, and worker's compensation or liability insurance for handicapped persons employed in the workshop. These standards must incorporate applicable standards established by the Secretary and must conform with regulations of the Secretary of Labor relating to occupational safety and health standards for rehabilitation facilities. These standards must also assure that all medical and related health services provided in a rehabilitation facility are prescribed by, or under the formal supervision of persons licensed to prescribe or supervise the provision of these services in the State. State unit standards must assure that any rehabilitation facility to be utilized in the provision of vocational rehabilitation services complies with the requirements of the Architectural Barriers Act of 1968 and, the "American Standards Specification for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," No. A117.1–1961, as amended, and its implementing standards 41 CFR Part 101–19.6 et seq.

(c) *Rehabilitation facility personnel and providers of services.* The Secretary exercises no authority concerning the selection, method of selection, tenure of office, or compensation of any individual employed in any facility or personnel utilized in providing service.

(Sections 12(c) and 101(a)(7) of the Act; 29 U.S.C. 711(c) and 721(a)(7))

§ 361.46 Rates of payment.

The State plan must assure that the State unit establishes and maintains written policies to govern rates of payment for all purchased vocational rehabilitation services. Any vendor providing services authorized by the State unit must agree not to make any charge to or accept any payment from the handicapped individual or his or her family for the service unless the amount of the charge or payment is previously known and, where applicable, approved by the State unit.

(Sections 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6))

§ 361.47 Participation by handicapped individuals in the cost of vocational rehabilitation services.

(a) *Financial need.* (1) There is no Federal requirement that the financial need of a handicapped individual be considered in the provision of any vocational rehabilitation services.

(2) If the State unit chooses to consider the financial need of handicapped individuals for purposes of determining the extent of their participation in the costs of vocational rehabilitation services, the State unit must maintain written policies covering the determination of financial need, and the State plan must specify the types of vocational rehabilitation services for which the unit has established a financial needs test. These policies must be applied uniformly so that equitable treatment is accorded all handicapped individuals in similar circumstances.

(3) The State plan must assure that no financial needs test is applied as a condition for furnishing the following vocational rehabilitation services:

(i) Evaluation of rehabilitation potential, except for those vocational rehabilitation services other than of a diagnostic nature which are provided under an extended evaluation of rehabilitation potential under § 361.34;

(ii) Counseling, guidance, and referral services; and

(iii) Placement.

(b) *Consideration of similar benefits.* (1) The State plan must assure that, in all cases, the State unit gives full consideration to any similar benefits available to a handicapped individual, or to members of a handicapped individual's family, under any program to meet, in whole or in part, the cost of any vocational rehabilitation services except the following:

(i) Evaluation of vocational rehabilitation potential except as provided under paragraph (b)(4) of this section;

(ii) Counseling, guidance and referral;

(iii) Vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials, which are not provided in institutions of higher education (§ 361.42(a)(4));

(iv) Placement; and

(v) Post-employment services consisting of the services listed under paragraphs (b)(1) (i)–(iv) of this section.

(2) The State plan must assure that the designated State unit gives full consideration to any similar benefits available under any other program to a handicapped individual to meet, in whole or in part, the cost of physical and mental restoration services and maintenance unless it would significantly delay the provision of services to an individual;

(3) The State plan must also assure that when an individual is eligible for similar benefits, these benefits must be utilized insofar as they are adequate and do not interfere with achieving the rehabilitation objective of the individual.

(4) The State plan must also assure that the State unit gives full consideration to any similar benefits available to a handicapped individual being provided an extended evaluation of vocational rehabilitation potential in a manner consistent with paragraphs (b)(1) through (b)(3) of this section.

(Sections 12(c) and 101(a)(8) of the Act; 29 U.S.C. 711(c) and 721(a)(8))

§ 361.48 Appeal procedures.

(a) *Administrative review and fair hearing.* The State plan must assure that when an applicant for vocational rehabilitation services or an individual being provided vocational rehabilitation services is dissatisfied with any action concerning the furnishing or denial of these services, he or she may file a request for an administrative review and a redetermination of that action by the supervisory staff of the designated State unit. The State plan must also provide that an individual, who is dissatisfied with the finding of this administrative review, is given an opportunity for a fair hearing before the State unit director or his designee.

(b) *Additional requirements and procedures in connection with an individualized written rehabilitation program.* (1) When an administrative review and fair hearing have been completed with regard to any decision or determination made in connection with an individualized written rehabilitation program, the final decision made on the basis of the fair hearing must be made in writing by the State unit director. The procedures established by the State unit in this regard must provide that the responsibility for making the final decision may not be delegated to any other officer or employee of the State unit.

(2) When an individual being provided vocational rehabilitation services is dissatisfied with the final decision resulting from the fair hearing under paragraph (a) of this section, the individual may request the Secretary to review the decision. When this request is made, the Secretary or the Secretary's designee reviews the State unit director's decision and makes recommendations to the director concerning action to be taken to resolve the issue and dispose of the matter. Within 60 days of receiving these recommendations, the director advises the handicapped individual and the Secretary of the final disposition of the matter.

(c) *Informing affected individuals.* Each applicant or individual being provided vocational rehabilitation services must be informed of the opportunities available under this section, including the names and addresses of individuals with whom appeals may be filed.

(Sections 12(c), 101(a)(6), and 102(d) of the Act; 29 U.S.C. 711(c), 721(a)(6) and 722(d))

§ 361.49 Protection, use and release of personal information.

(a) *General provisions.* The State plan must assure that the State agency and the State unit will adopt and implement policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures must assure that:

(1) Specific safeguards protect current and stored personal information;

(2) All applicants, clients, representatives of applicants or clients, and, as appropriate, service providers, cooperating agencies, and interested persons are informed of the confidentiality of personal information and the conditions for accessing and releasing this information;

(3) All applicants or their representatives are informed about the State unit need to collect personal information and the policies governing its use, including:

(i) Identification of the authority under which information is collected;

(ii) Explanation of the principal purposes for which the State unit intends to use or release the information;

(iii) Explanation of whether the individual's providing the information is mandatory or voluntary and the effects of not providing requested information to the State unit;

(iv) Identification of those situations where the State unit requires or does not require informed written consent of the individual before information may be released; and

(v) Identification of other agencies to which information is routinely released.

(4) Persons who are unable to communicate in English or who rely on special modes of communication must be provided explanations about State policies and procedures affecting personal information through methods that can be adequately understood by them;

(5) These policies and procedures must prevail over less stringent State laws and regulations; and

(6) The State agency or the State unit may establish reasonable fees to cover extraordinary costs of duplicating records or making extensive searches, and must establish policies and procedures governing access to records.

(b) *State program use.* All personal information in the possession of the State agency or the designated State unit must be used only for purposes directly connected with the administration of the vocational rehabilitation program. Information containing identifiable personal information may not be shared with advisory or other bodies which do not have official responsibility for administration of the program. In the administration of the program, the State unit may obtain personal information from service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under paragraphs (c), (d) and (e) of this section;

(c) *Release to involved individuals.* (1) When requested in writing by the involved individual or his or her representative, the State unit must make all information in the case record accessible to the individual or release it to him or her or a representative in a timely manner. Medical, psychological, or other information which the State unit believes may be harmful to the individual may not be released directly to the individual but must be provided through his or her representative, a physician or a licensed or certified psychologist;

(2) When personal information has been obtained from another agency, or organization, it may be released only by, or under the conditions established by, the other agency or organization.

(d) *Release for audit, evaluation, and research.* Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the vocational rehabilitation program, or for purposes which would significantly improve the quality of life for handicapped persons, and only if the organization, agency, or individual assures that:

(1) The information will be used only for the purposes for which it is being provided;

(2) The information will be released only to persons officially connected with the audit, evaluation or research;

(3) The information will not be released to the involved individual;

(4) The information will be managed in a manner to safeguard confidentiality; and

(5) The final product will not reveal any personal identifying information without the informed written consent of the involved individual, or his or her representative.

(e) *Release to other programs or authorities.* (1) Upon receiving the informed written consent of the individual, the State unit may release to another agency or organization for its program purposes only that personal information which may be released to the involved individual, and only to the extent that the other agency or organization demonstrates that the information requested is necessary for

its program. Medical or psychological information which the State unit believes may be harmful to the individual may be released when the other agency or organization assures the State unit that the information will be used only for the purpose for which it is being provided and will not be further released to the involved individual;

(2) The State unit must release personal information if required by Federal law;

(3) The State unit must release personal information in response to investigations in connection with law enforcement, fraud, or abuse, (except where expressly prohibited by Federal or State laws or regulations), and in response to judicial order; and

(4) The State unit may also release personal information in order to protect the individual or others when the individual poses a threat to his or her safety or to the safety of others (Sections 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6)).

(f) *Release to the Secretary or the Secretary's designee.* Where the individual or his or her representative has requested the Secretary to review the final decision of the State Unit Director under § 361.48, the State unit, upon request of the Secretary or the Secretary's designee, will provide to the Secretary or the Secretary's designee a complete and officially certified copy of the case record of the individual, including the record and transcripts of the Fair Hearing decision made by the State Unit Director.

§ 361.50 Scope of State unit program: Management services and supervision for small business enterprises for severely handicapped individuals.

(a) *General provisions.* The State plan may provide for establishing small business enterprises operated by severely handicapped individuals and may also provide for management services and supervision for these enterprises. "Management services and supervision" includes inspection, quality control, consultation, accounting, regulating, in-service training, and related services provided on a systematic basis to support and improve small business enterprises operated by severely handicapped individuals. "Managment services and supervision" does not include those services or costs which pertain to the ongoing operation of the individual business enterprise after the initial establishment period.

(b) *Special policies.* If the State plan provides for management services and supervision, it must assure that the State unit maintains:

(1) A description of the types of small business enterprises to be established;

(2) A description of the policies governing the acquisition of vending facilities or other equipment and initial stocks (including livestock) and supplies for business enterprises;

(3) A description of the policies governing the management and supervision of the program;

(4) A description of how management and supervision will be accomplished either by the State unit or by some other organization as the nominee of the unit subject to its control; and

(5) An assurance that only severely handicapped individuals will be selected to participate in this supervised program.

(c) *Set-aside funds.* If the State unit chooses to set aside funds from the proceeds of the operation of business enterprises, the State plan must also assure that the State unit maintains a description of the methods used in setting aside funds, and the purpose for which funds are set aside. Funds may be used only for small business enterprises program purposes and any benefits for operators must be provided on an equitable basis.

(Sections 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721(a)(6) and 723(b))

§ 361.51 Scope of State unit program: Establishment of rehabilitation facilities.

If the State plan provides for the establishment of public or other nonprofit rehabilitation facilities, it must assure that:

(a) The State unit will determine that the need for the establishment of any rehabilitation facility assisted under this section has been demonstrated in the State's inventory of rehabilitation facilities under § 361.21;

(b) Any rehabilitation facility to be established will meet the State unit's standards for rehabilitation facilities maintained under § 361.45;

(c) The primary purpose of any rehabilitation facility to be established is to provide vocational rehabilitation services or transitional or extended employment to handicapped individuals;

(d) Initial or additional staffing assistance will be available only for personnel who are engaged in new or expanded program activities of the rehabilitation facility; and

(e) Any rehabilitation facility established under this part will develop and implement a plan to take afffirmative action to employ and advance in employment qualified handicapped individuals which provides for specific action steps, timetables, and complaint and enforcement procedures.

(Sections 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721(a)(6) and 723(b))

§ 361.52 Scope of State unit program: Construction of rehabilitation facilities.

If the State plan provides for the construction of public or other nonprofit rehabilitation facilities, it must assure that:

(a) The State unit will determine that the need for the construction of any rehabilitation facility assisted under this section has been demonstrated in the State's inventory of rehabilitation facilities under § 361.21;

(b) Any rehabilitation facility to be constructed will meet the State unit's standards for rehabilitation facilities maintained under § 361.45;

(c) The primary purpose of any rehabilitation facility to be constructed under this section is to provide vocational rehabilitation services or transitional or extended employment to handicapped individuals;

(d) The total Federal financial participation in the expenditures for the construction of rehabilitation facilities for a fiscal year will not exceed 10 percent of the State's allotment for that year under section 110 of the Act;

(e) For each fiscal year the amount of the State's share of expenditures for vocational rehabilitation services under the plan, other than for the construction of rehabilitation facilities and the establishment of rehabilitation facilities, will be at least equal to the average of its expenditures for the other vocational rehabilitation services for the preceding three fiscal years;

(f) In addition to any other requirement imposed by law, each proposal will be subject to the requirements for the construction of a rehabilitation facility under Title III of the Act and the condition that the applicant will furnish and comply with all assurances set forth in the application; and

(g) Any rehabilitation facility constructed under this part will develop and implement a plan to take affirmative action to employ and advance in employment qualified handicapped individuals which provides for specific action steps, timetables and complaint and enforcement procedures.

(Sections 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721(a)(6) and 723(b))

§ 361.53 Scope of State unit program: Facilities and services for groups of handicapped individuals.

The State plan may provide for facilities and services, including services provided at rehabilitation facilities, which may be expected to contribute substantially to the

vocational rehabilitation of a group of individuals, but which are not related directly to the individualized rehabilitation program of any one handicapped individual. If the State plan includes these facilities and services, it must assure that the State unit establishes and maintains written policies covering their provision.

(Sections 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721(a)(6) and 723(b))

§ 361.54 Scope of State unit program: Telecommunications systems.

The State plan may provide for the use of existing telecommunications systems which have the potential for substantially improving vocational rehabilitation service delivery methods and developing appropriate programming to meet the particular needs of handicapped individuals, especially those who are homebound, those who live in rural areas, and those who rely on special modes of communication. These telecommunications systems shall include telephone, television, satellite, tactile-vibratory devices, and similar systems, as appropriate. If the State plan includes these systems, it must assure that the State unit establishes and maintains written policies covering their use.

(Sections 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721(a)(6) and 723(b))

§ 361.55 Scope of State unit program; special materials for blind individuals and for deaf individuals.

The State plan may provide for the use of special services available to provide recorded material for blind individuals, captioned television, films or video cassettes for deaf individuals, tactile materials for deaf-blind individuals, and other special materials providing tactile, vibratory, auditory, and visual readout. If the State plan includes these materials, it must assure that the State unit establishes and maintains written policies covering their provision. These policies must ensure that the special communication services are available in the native languages of handicapped individuals from ethnic groups which represent substantial segments of the population of the State.

(Sections 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721 (a)(6) and 723(b))

§ 361.56 Utilization of community resources.

The State plan must assure that, in providing vocational rehabilitation services, maximum utilization is made of public or other vocational or technical training facilities or other appropriate community resources.

(Section 101(a)(12)(A) of the Act; 29 U.S.C. 721(a)(12)(A))

§ 361.57 Utilization of profitmaking organizations for on-the-job training in connection with selected projects.

The State plan must assure that the State unit has the authority to enter into contracts with profitmaking organizations for the purpose of providing on-the-job training and related programs for handicapped individuals under Section 621 of the Act (projects with industry) or Section 622 of the Act (business opportunities for handicapped individuals). The State plan must also assure that profitmaking organizations are utilized by the State unit when it has been determined that they are better qualified to provide needed services than nonprofit agencies, organizations, or facilities in the State.

(Section 101(a)(21) of the Act; 29 U.S.C. 721(a)(21))

§ 361.58 Periodic review of extended employment in rehabilitation facilities.

The State plan must assure periodic review and re-evaluation at least annually, of the status of those handicapped individuals who have been placed by the State unit in extended employment in rehabilitation facilities, to determine the feasibility of their employment or their training for future employment in the competitive labor market. The State plan must assure that maximum effort is made to place these individuals in competitive employment or training for competitive employment whenever feasible.

(Section 101(a)(16) of the Act; 29 U.S.C. 721(a)(16))

Subpart C—Financing of State Vocational Rehabilitation Programs

Federal Financial Participation

§ 361.70 Effect of State rules.

Subject to the provisions and limitations of the Act and this part, Federal financial participation is available in expenditures made under the State plan (including the administration thereof) in accordance with applicable State laws, rules, regulations, and standards governing expenditures by State and local agencies.

(Section 111(a) of the Act; 29 U.S.C. 731(a))

§ 361.71 Vocational rehabilitation services to individuals.

(a) Federal financial participation is available in expenditures made under the State plan for providing an evaluation of vocational rehabilitation potential, and for providing specifed vocational rehabilitation services to handicapped individuals as appropriate. Other goods and services not specified under this part and necessary to determine the vocational rehabilitation potential of a handicapped individual or to be of benefit in terms of his or her employability may also be provided. (This may include expenditures for short periods of medical care for acute conditions arising during the course of rehabilitation, which, if not cared for, would constitute a hazard to the evaluation of vocational rehabilitation potential or to the achievement of the rehabilitation objective.)

(b) Federal financial participation may also be available for costs necessary to determine an individual's eligibility to participate in the business opportunity program under Section 622 of the Act and the costs of native healing practitioners who are recognized as such by an Indian tribe when services are being provided to handicapped American Indians under the State plan and when the native healing practitioner services are necessary to achieve a handicapped individual's vocational rehabilitation objective.

(c) Federal financial participation is not available in any expenditure made, either directly or indirectly, for the purchase of any land, or for the purchase or erection of any building (except for a shelter under § 361.72) for any one handicapped individual or for a group of handicapped individuals under § 361.75.

(Sections 12(c) and 103(a) of the Act; 29 U.S.C. 711(c) and 723(a))

§ 361.72 Management services and supervision for small business enterprises for serverely handicapped individuals.

(a) Federal financial participation is available in expenditures made under the State plan for the acquisition of equipment, and initial stocks (including livestock) and supplies for small business enterprises (including vending facilities) for severely handicapped individuals, and management services and supervision provided by the State unit to improve the operation of these small business enterprises (including vending facilities). "Equipment" includes shelters, which are those facilities for a business undertaking which are customarily furnished to the operator of a similar business occupying premises under a short-term lease. Federal financial participation is not available in any expenditure for the purchase of any land, nor for the purchase or erection of any building. This exclusion with respect to buildings does not apply to shelters as described in this paragraph.

(b) Federal financial participation is available for expenditures specified under paragraph (a) of this section, which are made from funds set-aside by the State unit from the proceeds of the operation of small business enterprises for the most severely handicapped individuals under its management and supervision.

(Sections 12(c) and 103(b) of the Act; 29 U.S.C. 711(c) and 723(b))

§ 361.73 Establishment of rehabilitation facilities.

(a) Federal financial participation is available in expenditures made under the State plan for the establishment of public and other nonprofit rehabilitation facilities for the following types of expenditures, except as limited in paragraph (b) of this section:

(1) Acquisition of existing buildings, and where necessary, the land in connection therewith;

(2) Remodeling and alteration of existing buildings;

(3) Expansion of existing buildings;

(4) Architect's fees;

(5) Site survey and soil investigation;

(6) Initial and additional fixed or movable equipment of existing building;

(7) Initial and additional staffing of rehabilitation facilities; and

(8) Such other direct expenditures as are appropriate to the establishment project.

(b) Federal financial participation is not available in any expenditure:

(1) For the acquisition of an existing building when the Federal share of the cost of acquisition of the building under this section is more than $300,000.

(2) For the rental of land, or rental of buildings in connection with the establishment of rehabilitation facilities;

(3) For the remodeling or alteration of an existing building when the estimated cost of remodeling or alteration exceeds the fair market value of the building prior to its remodeling or alteration;

(4) For the expansion of an existing building which has not been completed in all respects;

(5) For the expansion of an existing building to the extent that the total size of the resultant expanded building, determined in square footage of usable space, will be greater than twice the size of the original existing building; or

(6) For the expansion of an existing building if the method of joining the expanded portion of the existing building indicates that, in effect, a separate structure is involved.

(c) The amount of Federal financial participation in the establishment of a rehabilitation facility, including initial and additional equipment, and initial and additional staffing for a period not longer than 4 years and 3 months, shall be 80 per cent.

(d) Funds made available to a private nonprofit agency for the establishment of a rehabilitation facility must be expended by that agency in accordance with procedures and standards equivalent to those of the State unit in making direct expenditures for similar purposes.

(Sec. 7(4), 12 (c) and 103(b) of the Act; 29 U.S.C. 706(4), 711(c), and 723(b))

§ 361.74 Construction of rehabilitation facilities.

(a) Federal financial participation is available in expenditures made under the State plan for the construction of public or other nonprofit rehabilitation facilities for the following types of expenditures:

(1) Acquisition of land in connection with the construction of a rehabilitation facility;

(2) Acquisition of existing buildings;

(3) Remodeling, alteration or renovation of existing buildings;

(4) Construction of new buildings and expansion of existing buildings when the expansion is extensive enough to be tantamount to new construction;

(5) Architect's fees;

(6) Site survey and soil investigation;

(7) Initial fixed or movable equipment of such new, newly acquired, expanded, remodeled, altered or renovated buildings;

(8) Works of art in an amount not to exceed 1 per cent of the total cost of the project; and

(9) Other direct expenditures appropriate to the construction project, except that Federal financial participation is not available for costs of off-site improvements.

(b) The amount of Federal financial participation in the construction of a rehabilitation facility may not be more than 50 percent of the total cost of the project.

(c) Funds made available to a private nonprofit agency for the construction of a rehabilitation facility must be expended by that agency in accordance with procedures and standards equivalent to those of the State unit in making direct expenditures for similar purposes.

(Sections 7(1), 12(c), and 103(b) of the Act; 29 U.S.C. 706(1), 711(c) and 723(b))

§ 361.75 Other vocational rehabilitation services for the benefit of groups of handicapped individuals.

Federal financial participation is available in expenditures made under a State plan for the provision of other facilities and services including services provided at rehabilitation facilities which may be expected to contribute substantially to the vocational rehabilitation of a group of handicapped individuals but which are not related directly to the rehabilitation of any one handicapped individual. Federal financial participation is also available in expenditures for the use of existing telecommunications systems and for the use of special materials for blind individuals, deaf individuals and deaf-blind individuals.

(Sections 12(c) and 103(b) of the Act; 29 U.S.C. 711(c) and 723(b))

§ 361.76 State and local funds.

For purpose of this part, "State or local funds" means:

(a) Funds made available by appropriation directly to the State or local agency, funds made available by allotment or transfer from any other unit of State or local government, or expenditures made by any unit of State or local government under a cooperative program under § 361.13.

(b) Contributions by private organizations or individuals, which are deposited in the account of the State or local agency in accordance with State law, for expenditure by, and at the sole discretion of, the State or local agency. Contributions earmarked for meeting the State's share for providing particular services, for serving certain types of disabilities, for providing services for special groups identified on the basis of criteria which would be acceptable for the earmarking of public funds, or for carrying on types of administrative activities so identified may be considered to be State funds, if permissible under State law, except that Federal financial participation will not be available in expenditures that revert to the donor's use or facility;

(c) Funds set aside pursuant to § 361.72(b); or

(d) Contributions by private agencies, organizations or individuals deposited in the account of the State or local agency in accordance with State law, which are earmarked, under a condition imposed by the contributor, for meeting (in whole or in part) the State's share for establishing or constructing a particular rehabilitation facility, if permissible under State law. These funds may be used to earn Federal funds only with respect to expenditures for establishing or constructing the particular rehabilitation facility for which the contributions are earmarked.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 361.77 Shared funding and administration of joint projects or programs.

Where the Secretary approves a request by the State unit to participate in a joint project or program with another agency or agencies of the State, or with a local agency in accordance with § 361.11. Federal financial participation is available in the State unit share of costs for which there is Federal participation under the Act.

(Sections 12(c) and 101(a)(1)(A) of the Act; 29 U.S.C. 711(c) and 721(a)(1)(A))

§ 361.78 Waiver of Statewideness.

If the approved State plan provides for activities to be carried out in one or more political subdivisions through local financing (§ 361.12), Federal financial participation is available in expenditures made under the State plan for vocational rehabilitation services and administration in connection with these activities except that funds made available to the State unit by these political subdivisions of the State (including funds contributed to such a subdivision by a private agency, organization or individual) may be earmarked for use within a specific geographical area or for use within a specific facility or for the benefit of a group of individuals with a particular disability. Nothing in this paragraph, however, authorizes the further earmarking of funds for a particular individual or for members of a particular organization, and Federal financial participation is not available in expenditures that revert to the donor's use of facility where the donor is a private agency, organization or individual.

(Sections 12(c) and 101(a)(4) of the Act; 29 U.S.C. 711(c) and 721(a)(4))

Allotment and Payment

§ 361.85 Allotment of Federal funds for vocational rehabilitation services.

(a) The allotment of the Federal funds for vocational rehabilitation services for each State is computed in accordance with the requirements of section 110 of the Act.

(b) Where the State plan designates separate agencies to administer (or supervise the administration of) the part of the plan under which vocational rehabilitation services are provided for the blind, and the rest of the plan, respectively, the division of the State's allotment is a matter for State determination.

(c) The total Federal financial participation in the expenditures for construction for a fiscal year may not exceed 10 percent of the State's allotment for that year. The amount of the State's share of expenditures for vocational rehabilitation services other than for the establishment of rehabilitation facilities or the construction of rehabilitation facilities must be at least equal to the average of its expenditures for those other vocational rehabilitation services for the preceding 3 fiscal years.

(d) When a special project has been awarded for the provision of vocational rehabilitation services to handicapped American Indians residing on a reservation under Section 130 of the Act, and the State unit does not intend to continue to provide vocational rehabilitation services to these American Indians, the allotment for the State in which the reservation is located is computed by subtracting from the population under paragraph (a) of this section:

(1) 33 percent of the total number of American Indians residing on the reservation to be served in the first full fiscal year during which the special project is in operation;

(2) 66 percent of such American Indians in the second full fiscal year during which the special project is in operation; and

(3) 100 percent of such American Indians in the third full fiscal year during which the special project is in operation.

(Sections 12(c), 110, and 130(c) of the Act; 29 U.S.C. 711(c), 730 and 750(d))

§ 361.86 Payments from allotments for vocational rehabilitation services.

(a) Except as provided in § 361.85(c), the Secretary pays to each State an amount computed in accordance with the requirements of Section 111 of the Act. The Federal share for each State is 80 percent (except for the cost of construction of rehabilitation facilities).

(b) Amounts otherwise payable to a State under this section for any fiscal year are reduced by the amount (if any) by which expenditures from non-Federal sources, as specified in § 361.76 (except for expenditures with respect to which the State is entitled to payments under Subpart F of this part) for that fiscal year under the State's approved plan for vocational rehabilitation services are less than expenditures under the plan for the fiscal year ending June 30, 1972. If a reduction in payments for any fiscal year is required in the case of a State where separate agencies administer (or supervise the administration of) the part of the plan under which vocational rehabilitation services are provided for blind individuals, and the rest of the plan, respectively, the reduction is made in direct relation to the amount by which expenditures from non-Federal sources under each part of the plan are less than they were under that part of the plan during the fiscal year ending June 30, 1972.

(Sections 12(c) and 111 of the Act; 29 U.S.C. 711(c) and 731)

§ 361.87 Method of computing and making payments.

(a) *Estimates.* Before the beginning of each fiscal quarter or other prescribed period, the Secretary estimates the amount to be paid to each State from its allotment for vocational rehabilitation services under section 110 of the Act, and its allotment for innovation and expansion projects under section 120 of the Act. This estimate is based on records of the State and information furnished by it, and any other investigation found necessary by the Secretary.

(b) *Payments.* The Secretary pays, from the allotment available, the amount estimated for the determined period. In making any payment, additions and subtractions are made as necessary in balancing the Federal-State account for any prior period on the basis of the State's accounting. Payments are made prior to audit or settlement through a Letter of Credit system.

(Section 12(c) and 111 of the Act; 29 U.S.C. 711(c) and 731)

§ 361.88 Refunds.

Any amount refunded or repaid by the State is credited to the Federal account in proportion to the Federal participation in the expenditures by reason of which the refunds or repayments were made. These sums are considered as granted from the State's allotment.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 361.89 Determining to which fiscal year expenditures are chargeable.

In determining to which Federal fiscal year expenditures are chargeable, States are governed by the following:

(a) Expenditures are chargeable to a particular fiscal year in accordance with State laws or regulations. In the absence of applicable provisions of State laws or regulations, the actual date of the expenditure is controlling;

(b) In the event that a State's fiscal year does not coincide with the Federal fiscal year, appropriate State laws or regulations governing the recording of expenditures govern;

(c) In those States which appropriate funds for a biennium, the principles provided in State laws, regulations and practices for determining to which year of the biennium an expenditure is charged apply.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 361.90 Audits.

(a) Whenever considered necessary and appropriate, the operations of the State program are audited. These audits are made to determine whether the State program is being operated in a manner that:

(1) Encourages prudent use of program funds; and

(2) Provides a reasonable degree of assurance that funds are being properly expended for the purpose for which appropriated and provided under the Act and the State plan.

(b) Final determination as to action to be taken as a result of an audit is made by the Secretary.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 361.91 Appeals procedures and expenditures settlement.

The State agency has the right to appeal proposed audit exceptions in which it has not concurred. When expenditures have not been accepted by the Secretary and the State has not made proper restitution, the claim is deducted from subsequent grants made to the State agency.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

* * * * *

Subpart F—Grants for Innovation and Expansion of Vocational Rehabilitation Services

§ 361.150 Purpose.

Under section 121(a) of the Act, grants may be made for the purpose of paying a portion of the cost of planning, preparing for, and initiating special programs under the State plan in order to expand vocational rehabilitation services, including:

(a) Programs to initiate or expand services to individuals who are the most severely handicapped, or

(b) Special programs to initiate or expand services to classes of handicapped individuals who have unusual and difficult problems in connection with their rehabilitation, particulary handicapped individuals who are poor and the responsibility for whose treatment, education, and rehabilitation is shared by the designated State unit with other agencies.

(Section 121(a) of the Act; 29 U.S.C. 741(a))

§ 361.151 Special project requirements.

(a) All project activities to be performed under this subpart must either be included within the scope of the approved State plan, or the State plan must be amended to include them.

(b) Grants may be made to a State agency or at the option of the State agency to a public or nonprofit organization or agency.

(c) The approval of the appropriate State agency must be secured before funds may be granted to any organization or agency other than the State agency for the provision of direct services to handicapped individuals or for establishing or maintaining facilities which provide direct services to handicapped individuals.

(d) Written program descriptions of activities to be conducted under grants under this subpart, including a budget, must be submitted in detail and according to the procedures required by the Secretary.

(e) Federal financial participation in the cost of any project uder this subpart is not available for any period longer than 36 months.

(f) The construction of a rehabilitation facility may not be undertaken unless it has been demonstrated to be essential to carrying out a project for providing services under this subpart. In addition, the need for the facility must have been demonstrated in the State's inventory of rehabilitation facilities under § 361.23.

(g) Grants may not be made solely for the purpose of planning or determining the feasibility of initiating a vocational rehabilitation service program.

(h) In order to receive assistance, a public or other nonprofit organization or agency, including a public or other nonprofit rehabilitation facility, must develop and implement an affirmative action plan for equal employment opportunity and advancement opportunity for qualified handicapped individuals. The affirmative action plan must provide for specific action steps, time tables, and complaint and enforcement procedures.

(Sections 12(c), 121(a) and 121(b) of the Act; 29 U.S.C. 711(c), 741(a) and 741(b))

§ 361.152 Allotment of Federal funds.

(a) The allotment and any reallotment of Federal funds under this subpart is computed in accordance with the requirements of section 120 of the Act.

(b) If at any time after the start of any fiscal year, or after a review after May 1 of that fiscal year, the Secretary determines that any amount will not be utilized by a State in carrying out the purpose of this subpart, he makes that amount available to one or more other States which he determines will be able to use additional amounts during the fiscal year. Any amount made available to any State under this paragraph of this section is regarded as an increase in the State's allotment for the year.

(c) Where the State plan designates separate agencies to administer (or supervise the administration of) the part of the plan under which vocational rehabilitation services are provided for the blind, and the rest of the plan, respectively, the division of the State's allotment is a matter for State determination.

(d) Within each State's allotment, the Secretary may require that up to 50 percent of available funds must be expended in connection with projects which he has first approved. If the Secretary so requires, he notifies the States of any established program priorities at least 90 days prior to the beginning of each fiscal year.

(Sections 12(c), 120 and 121 of the Act; 29 U.S.C. 711(c), 740 and 741)

§ 361.153 Payments from allotments.

From the sums allotted under § 361.152, the Secretary pays to each State for any project approved under this subpart, an amount up to 90 percent of the costs of the project, (except for a project for construction of a rehabilitation facility where the amount is no more than 50 percent of the total cost of the project) consistent with annual instructions or program guidelines. The amount of Federal financial participation in the costs of construction of a rehabilitation facility is the same percentage specified in § 361.74(b).

(Sections 7(6) and 121(b) of the Act; 29 U.S.C. 706(6) and 741(b))

§ 361.154 Methods of computing and making payments.

Computing and making payments are done in accordance with § 361.87. The provisions of § 361.88 through § 361.91 also apply.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 361.155 Reports.

A grantee must submit reports required by the Secretary and must comply with any requirements necessary to assure the correctness and verification of these reports. These reports include an annual report of program accomplishments reflecting the extent to which programs of vocational rehabilitation services have been initiated or expanded for severely handicapped individuals or for other individuals who have unusual and difficult problems in connection with their rehabilitation.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

Subpart G—Procedures for Hearings on State Plan Conformity and Compliance

§ 361.170 General provisions.

(a) *Scope.* These hearing procedures apply to notice and opportunity for a hearing on:

(1) Disapproval of a State plan or amendment; and

(2) Determination that the State agency has failed in the administration of its approved plan to comply substantially with the provisions of its plan.

(b) *Negotiations.* Nothing in this subpart limits negotiations between the Rehabilitation Services Administration and the State. Negotiations on hearing issues are not part of the hearing and are not subject to the rules in this subpart.

(c) *How to get records.* Papers filed in connection with a hearing may be inspected and copied in the office of the Rehabilitation Services Administration Hearing Clerk. Individuals may direct inquiries to the Rehabilitation Services Administration Hearing Clerk, Department of Education, 330 C Street SW., Washington, D.C. 20201.

(d) *How to file and serve papers.* (1) Anyone who wishes to submit papers for the docket shall file with the Rehabilitation Services Administration Hearing Clerk an original and two copies except that only originals of exhibits and testimony transcripts need be filed.

(2) Anyone who wishes papers to be part of the record shall also serve copies on the parties by personal delivery or by mail, and file proof of this service with the Rehabilitation Services Administration Hearing Clerk. Service on a party's designated attorney is the same as service on the party.

(e) *When rules are suspended.* After notifying the parties, the Secretary or the individual designated as presiding officer may modify or waive any rule in this subpart if it is decided that the action is equitable and will not unduly prejudice the rights of any party.

(Sections 12(c), 101(b) and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

§ 361.171 How to request a hearing.

(a) *Time limit.* A State agency has 60 days from receipt of the Secretary's written notice of proposed disapproval of a State plan or plan amendment, or intended compliance action to request a hearing. The agency shall make its request in writing to the Secretary.

(b) *What happens if a State agency does not request a hearing.* If the State agency does not request a hearing within the time allowed by paragraph (a) of this section, the Secretary makes a final determination and notifies the agency by letter of the decision to withhold either all further payments under the plan or only payments for those portions of the plan affected.

(c) *How request is acknowledged*—(1) *Notice of hearing.* Within 30 days of receiving a hearing request, the Secretary notifies the State agency in writing of the date, time, and place of the hearing and of the issues to be considered. The Secretary publishes the hearing notice in the **Federal Register.** The hearing will be held in a setting with accommodations necessary to make it free from architectural, communication and other barriers to the participation of handicapped persons.

(2) *When a hearing is held.* The date set for a hearing is 20 to 60 days from the date the State agency receives the hearing notice. However, the State agency and the presiding officer may agree in writing to a different date.

(Sections 12(c), 101(b) and 101(c) of the Act; 29 U.S.C. 711(c), 21(b) and 721(c))

§ 361.172 Hearing issues.

(a) *What the hearing issues are.* The issues at a hearing are those included in the Secretary's notice to the State agency.

(b) *How the Secretary may add issues.* At least 20 days before a hearing, the Secretary notifies the agency by letter of any additional issues to be considered. The Secretary publishes this notice in the **Federal Register.** If the agency does not receive its notice of additional issues in the required time, any party may request that the presiding officer postpone the hearing. If a request is made, the presiding officer sets a new hearing date that is 20 to 60 days from the date the agency received the notice of additional issues.

(c) *How actions by the State may cause the Secretary to add, modify, or remove issues.* The Secretary may add, modify, or remove issues if the State agency:

(1) Conforms its plan to Federal requirements; or

(2) Changes its practices or organization to comply with its approved State plan.

(d) *What happens if State action causes the Secretary to add, modify, or remove issues.* (1) If the Secretary specifies new or modified issues, the hearing proceeds on these issues.

(2)(i) If the Secretary removes an issue, the hearing proceeds on the remaining issues. If the Secretary removes all issues, the Secretary terminates the hearing proceedings. The Secretary may terminate hearing proceedings or remove issues before, during, or after the hearing.

(ii) Before removing an issue, the Commissioner notifies the parties other than the Rehabilitation Services Administration and the State agency of the issue and the reasons for removing the issue. Within 20 days of the date of this notice, the parties may submit comments in writing on the merits of the proposed removal. The Secretary considers these comments and they become part of the record.

(Sections 12(c), 101(b) and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

§ 361.173 What the purpose of a hearing is.

The purpose of the hearing is to receive factual evidence and testimony, including expert opinion testimony, related to the issues. The presiding officer may not allow argument as evidence.

(Sections 12(c), 101(b) and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

§ 361.174 Who presides.

The presiding officer at a hearing is the Commissioner or a person the Commissioner designates. If the Commissioner designates a presiding officer, the Commissioner sends copies of the designation notice to the parties.

(Sections 12(c), 101(b) and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

§ 361.175 How to be a party or an amicus curiae to a hearing.

(a) *Rehabilitation Services Administration and State agency.* The Rehabilitation Services Administration and the State agency are parties to a hearing without having to request participation.

(b) *Other parties or amicus curiae.* An individual or group wishing to be a party or amicus curiae to a hearing may file a petition with the Rehabilitation Services Administration Hearing Clerk no more than 15 days following publication of the hearing notice in the **Federal Register.** A petitioner who wishes to be a party must also provide a copy of the petition to each party of record at that time.

(c) *What must be in a petition.* A petition must state concisely: (1) Whether the petitioner wishes to be a party or an amicus curiae;

(2) The petitioner's interest in the proceedings;

(3) Who will appear for the petitioner;

(4) The issues on which the petitioner wishes to participate; and

(5) Whether the petitioner intends to present witnesses, if the petitioner wishes to be a party.

(Sections 12(c), 101(b) and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

§ 361.176 What happens to a petition.

(a) *Petitions to be a party.* (1) The presiding officer determines if the issues to be considered at the hearing have caused the petitioner injury and if the petitioner's interest is within the zone of interest protected by the governing Federal statute. The presiding officer permits or denies the petition accordingly and promptly sends the petitioner a written notice of the decision. If the presiding officer denies the petition, the officer states the reasons in the notice.

(2) Before making this determination, the presiding officer will allow any party to file comments on the petition to be a party. Any party who wishes to file comments must do so within 5 days of receiving the petition.

(3) If the presiding officer decides that parties by petition have common interest, the officer may require that they designate a single representative, or may recognize two or more of these parties to represent all of them.

(b) *Petitions to be amicus curiae.* The presiding officer determines if the petitioner has a legitimate interest in the proceedings and may contribute materially to the proper settlement of the issues. The officer also determines if the petitioners' participation would unduly delay the proceedings. The presiding officer permits or denies the petition accordingly and promptly sends the petitioner a written notice of the decision. If the presiding officer denies the petition, the officer states the reason in this notice.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

§ 361.177 Rights of parties and amicus curiae.

(a) *What rights parties have.* A party may:

(1) Appear by counsel or other authorized representative in all hearing proceedings;

(2) Participate in any prehearing conference held by the presiding officer;

(3) Stipulate facts that, if uncontested, become part of the record;

(4) Make opening statements;

(5) Present relevant evidence;

(6) Present witnesses who must be available for cross-examination;

(7) Present oral arguments at the hearing; and

(8) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

(b) *What rights an amicus curiae has.* An amicus curiae may:

(1) Present an oral statement at the hearing at the time specified by the presiding officer;

(2) Submit a written statement of position to the presiding officer before the hearing begins; and

(3) Submit a brief or written statement at the same time the parties submit briefs

If the amicus curiae submits a written statement or brief, the amicus shall serve a copy on each party.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

§ 361.178 Authority of presiding officer.

(a) *General rule.* The presiding officer conducts a fair hearing, avoids delay, maintains order and makes a record of the proceedings. In so doing, he or she has authority that includes:

(1) Regulating the course of the hearing;

(2) Regulating the participation and conduct of parties, amici curiae, and others at the hearing;

(3) Ruling on procedural matters and, if necessary, issuing protective orders or other relief to a party against whom discovery is sought;

(4) Taking any action authorized by the rules in this subpart;

(5) Making a final decision, if the Secretary is the presiding officer;

(6) Administering oaths and affirmations;

(7) Examining witnesses;

(8) Receiving or excluding evidence; and

(9) Ruling on or limiting evidence or discovery.

(b) *What the presiding officer may not do.* The presiding officer may not compel by subpoena the production of witnesses, papers, or other evidence.

(c) *When the presiding officer's authority is limited.* If the presiding officer is not the Secretary, the officer certifies the entire record to the Secretary, including a recommended decision on each issue in the hearing, but may not make a final decision.

(Sections 12(c), 101(b), 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

§ 361.179 Discovery.

A party has the right to conduct discovery against other parties. These discovery proceedings are subject to Rules 26–37, Federal Rules of Civil Procedure. The presiding officer promptly rules on any written objection to discovery and may restrict or control discovery to prevent undue delay in the hearing. If a party fails to respond to discovery procedures, the presiding officer may issue any order and impose any sanction (other than contempt orders) authorized by Rule 37 of the Federal Rules of Civil Procedure.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

§ 361.180 How evidence is handled.

(a) *Testimony.* Witnesses, under oath or affirmation, give oral testimony at a hearing. Witnesses must be available at a hearing for cross-examination by the parties.

(b) *Rules of evidence.* Technical rules of evidence do not apply to hearings described in this subpart. The presiding officer applies any rules or principles necessary to ensure disclosure of the most credible evidence available and to subject testimony to cross-examination. Cross-examination may be on any material matter, regardless of the scope of direct examination.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

§ 361.181 What happens to unsponsored written material.

Letters and other written material regarding matters at issue, if not submitted specifically on behalf of a party, become part of the correspondence section of the docket. This material is not part of the evidence or the record.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

§ 361.182 What the record is.

(a) *Official transcript.* The Rehabilitation Services Administration designates the official reporter for a hearing. The Rehabilitation Services Administration Hearing Clerk has the official transcript of testimony, and other material submitted with the official transcript. The parties and the public may obtain transcripts of testimony from the official reporter at rates that do not exceed the maximum fixed by contract between the reporter and the Rehabilitation Services Administration. Upon notice to the parties, the presiding officer may authorize transcript corrections that involve matters of substance.

(b) *Record.* The record for the hearing decision is the transcript of testimony, exhibits, and all other papers and requests filed in the proceedings except for the correspondence section of the docket. The record includes rulings and any recommended decision.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

§ 361.183 Posthearing briefs.

The presiding officer fixes the time for filing posthearing briefs. They may contain proposed findings of fact and conclusions of law. The presiding officer may permit filing of reply briefs.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

§ 361.184 Decisions.

(a) *If the Commissioner is the presiding officer.* If the Commission is the presiding officer, the Commissioner issues a final decision 60 days after the time allowed for filing posthearing or reply briefs ends. The Commissioner provides copies of the decision to all parties and any amici curiae.

(b) *If the Commissioner appoints a presiding officer.* (1) No later than 30 days after the time for filing posthearings or reply briefs ends, the presiding officer certifies the entire record, including his or her recommended decision, to the Commissioner.

(2) The Commissioner provides a copy of the recommended decision to the parties and any amici curiae. Within 20 days, a party may file with the Commissioner, exceptions to the recommended decision. The party must file a supporting brief or statement with the exception.

(3) The Commissioner reviews the record, and, within 60 days of the date of receipt of the presiding officer's recommended decision, the Commissioner issues a final decision. The Commissioner provides copies of the decision to all parties and any amici curiae.

(c) If the Commissioner decides, after a hearing, that the plan or plan amendment is not approvable, or substantial noncompliance exists, the final decision indicates whether RSA will withhold all further payments or only payments under portions of the plan affected.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

§ 361.185 When a decision is effective.

(a) The Commissioner's decision, which constitutes "final agency action" within the meaning of 5 U.S.C. 704 and a final determination under section 101(b) and (c)(1) of the Act, specifies the effective date for RSA's reduction or withholding of the State's grant. This effective date may not be earlier than the date of the Commissioner's decision or later than the first day of the next calendar quarter.

(b) The decision remains in effect unless reversed or stayed on judicial appeal, or until the plan or State agency administration of the plan meets all Federal requirements, except that the Commissioner may modify or set aside his or her decision before the record of the proceedings under this subpart is filed in court.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

§ 361.186 How the State may appeal.

A State may appeal to the U.S. Court of Appeals which has jurisdiction in the State, the final decision of the Commissioner disapproving the State plan or plan amendment or finding noncompliance. The State must file the appeal within 30 days after receiving the Commissioner's final decision.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

2. The Secretary amends Title 34 of the Code of Federal Regulations by adding Part 365 to read as follows:

PART 365—THE STATE INDEPENDENT LIVING REHABILITATION SERVICES PROGRAM

Subpart A—General

Sec.

365.1 The State independent living rehabilitation services program.

Subpart B—State Plans for Independent Living Rehabilitation Services

State Plan Content: Administration

365.2 The State plan: General requirements.
365.3 State plan approval.
365.4 Withholding of funds.
365.5 State unit for administration.
365.6 Staffing of designated State unit.
365.7 Staff development.
365.8 State unit studies and evaluations.
365.9 State plan and policy development consultation.
365.10 Provision of technical assistance in poverty areas.
365.11 Cooperation with other public agencies.
365.12 Utilization of local public and private non-profit agencies, organizations, and facilities.
365.13 Independent living services for older blind individuals.
365.14 Reports.
365.15 Other administrative and fiscal requirements.

State Plan Content: Provision and Scope of Service

365.30 Processing referrals and applications.
365.31 Eligibility.
365.32 Determination of eligibility for independent living rehabilitation services.
365.33 Certification of eligibility or ineligibility.
365.34 Order of selection for services.
365.35 The case record for the individual.
365.36 The individualized written rehabilitation program for independent living rehabilitation services.
365.37 Scope of State unit program: independent living rehabilitation services for individuals.
365.38 Case closure.
365.39 Duration.
365.40 Standard for facilities and providers of services.
365.41 Scope of State unit program: Establishment and construction of rehabilitation facilities.
365.42 Scope of State unit program: Facilities and services for groups of severely handicapped individuals.
365.43 Scope of State unit program: Telecommunications systems and special materials for blind individuals and deaf individuals.

Subpart C—Allotment and Payment

365.44 Allotment of Federal funds for independent living services.
365.45 Payments from allotments for independent living services.

Authority: Section 12(c) of the Rehabilitation Act of 1973, (29 U.S.C. 711(c)).

Subpart A—General

§ 365.1 The State independent living rehabilitation services program.

(a) General Part 365 includes all requirements relative to the conduct of State independent living rehabilitation service programs under State plans for independent living rehabilitation services authorized under Part A of Title VII of the Rehabilitation Act of 1973, as amended. Part 365 covers the procedures to be followed by a designated State unit in submitting a State plan for approval by the Secretary and the required scope and content of an approvable State plan.

(b) *Regulations which apply to the State independent living rehabilitation services program.* The following regulations apply to the State plan for independent living rehabilitation services program:

(1) The Education Division General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State administered programs) and 34 CFR Part 77 (General); and

(2) The regulations in this Part 365.

(c) *Definitions which apply to the State independent living program.* (1) The following terms used in this Part 365 are defined in 34 CFR Part 77:

"EDGAR"
"Fiscal year"
"Nonprofit"
"Public"
"Secretary"
"State"

(2) The following terms used in this Part 365 are defined in 34 CFR 361.1: § 1361.1 of this Chapter:

"Act"
"Blind"
"Construction of a rehabilitation facility"
"Designated State unit"
"Establishment of a rehabilitation facility"
"Physical and mental restoration services"
"Physical or mental disability"

"Rehabilitation facility"
"State unit"
"Vocational rehabilitation services"

(3) The following definitions also apply to this Part 365:

"Attendant care" means the assistance provided to a severely handicapped individual in performing a variety of tasks required to meet essential personal needs in such areas as bathing, communicating, cooking, dressing, eating, homemaking, toileting and transportation.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Health maintenance" means the provision of those health care services which are necessary for a severely handicapped individual to maintain or improve his or her functional capabilities and those services which might contribute to avoiding complications or reactivations of the severely handicapping impairment or the development of additional impairments.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Independent living rehabilitation services," or "independent living services," when provided to a severely handicapped individual, means those services listed in § 365.37.

(Section 702(b) of the Act; 29 U.S.C. 796a(b))

"Independent living rehabilitation services," or "independent living services," when provided for the benefit of groups of severely handicapped individuals, includes:

(i) The establishment or construction of a rehabilitation facility which provides independent living services to individuals;

(ii) The provision of other facilities and services which promise to contribute substantially to the independent living rehabilitation of a group of severely handicapped individuals but which are not related directly to the individualized written rehabilitation program of any one severely handicapped individual;

(iii) The use of existing telecommunications systems; and

(iv) The use of services providing recorded materials for blind individuals and captioned films or videocassettes for deaf individuals.

(Section 702(b) of the Act; 29 U.S.C. 796a(b))

"Severely handicapped individual" means an individual whose ability to function independently in family or community, or whose ability to engage or continue in employment is so limited by the severity of his or her physical or mental disability that it has been determined that independent living rehabilitation services are required in order to enable achieving a greater level of independence in functioning in family or community or engaging or continuing in employment.

(Section 702(a) of the Act; 29 U.S.C. 796a(a))

"State plan" means the State plan for independent living rehabilitation services.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Transportation" means necessary travel in connection with a severely handicapped individual's engaging in or maintaining employment or improving his or her ability to carry out independent living activities within family or community.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

Subpart B—State Plans for Independent Living Rehabilitation Services

State Plan Content: Administration

§ 365.2 The State plan: General requirements.

(a) *Purpose.* In order for a State unit to be eligible for grants from the allotment of funds under Title VII of the Act, it must submit an approvable State plan for providing independent living rehabilitation services to severely handicapped individuals.

(b) *Form and content.* The State plan must contain, in the form prescribed by the Commissioner, a description of the State's independent living rehabilitation program, the plans and policies to be followed in carrying out the program, and other information requested by the Commissioner.

(c) *Consolidated rehabilitation plan.* The State may choose to submit a consolidated rehabilitation plan which includes both the State plan for vocational rehabilitation services and the State plan for independent living rehabilitation services. The State may also choose to submit a consolidated plan which includes either or both of the State's rehabilitation plans and the State's plan for services for persons with developmental disabilities developed under the Developmental Disabilities Assistance and Bill of Rights Act.

(d) *Duration.* The State plan must cover a three-year period and must be amended whenever necessary to reflect any material change in any applicable phase of State law, organization, policy or agency operations which affects the administration of the State plan

(Sections 12(c) and 705(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.3 State plan approval.

Except in the case of the first State plan submitted under Title VII, the State plan must be submitted for approval no later than July 1 of the year preceding the first fiscal year of the three-year period for which the State plan is submitted.

(Section 705(b) of the Act; 29 U.S.C. 796d(b))

§ 365.4 Withholding of funds.

(a) *When withheld.* Payments under section 704 of the Act may be withheld, suspended, or limited as provided by section 101(c) of the Act, when after a reasonable notice and opportunity for hearing has been given to the designated State unit, the Secretary finds that:

(1) The State plan has been so changed that it no longer conforms with the requirements of section 705 of the Act, or

(2) In the administration of the State plan, there is a failure to comply substantially with any provision of such plan.

(b) *Notification to State unit.* The designated State unit is notified of the decision.

(c) *Judicial review.* The decision to withhold, suspend, or limit payments described in paragraph (a) of this section may be appealed to the United States Court of Appeals for the circuit in which the State is located, in accordance with section 101(d)(1) of the Act.

(d) *Informal discussions.* Hearings meeting the requirements of § 361.5(a) of this chapter are not called until after reasonable effort has been made to resolve the questions involved by conference and discussion with State officials.

(Sections 12(c) and 101(c) and 705(b) of the Act; 29 U.S.C. 711(c), 721(c) and 796d(b))

§ 365.5 State unit for administration.

(a) *Designation of State unit.* The State plan must provide that the designated State unit administers the State's independent living rehabilitation service program conducted under this part.

(b) *Designation of State unit for the blind.* The State plan may designate a State commission for the blind or the organizational unit of another agency of the State which is authorized under State law to provide vocational rehabilitation services to blind individuals under a State plan for vocational rehabilitation services, as the State unit to administer that part of the plan under which independent living services are provided to blind individuals.

(c) *Responsibility for administration.* The State plan must assure that all decisions affecting eligibility for, the nature and scope of available independent living rehabilitation services, and the provision of these services are made by the designated State unit, and that this responsibility may not be delegated to any other agency, facility, or individual.

(Sections 12(c) and 705(a)(1) of the Act; 29 U.S.C. 711(c) and 796(a)(1))

§ 365.6 Staffing of designated State unit.

(a) *General staffing requirement.* The State plan must assure that the staff of the designated State unit includes specialist personnel skilled in the coordination and provision of independent living services to severely handicapped individuals.

(b) *Special communication needs staffing.* The State plan must also assure that the State unit makes available personnel able to communicate with applicants for service and with severely handicapped individuals who rely on special modes of communication, such as manual communication or nonverbal communication devices, and personnel able to communicate in the native languages of applicants for service and of severely handicapped individuals with limited English-speaking ability from ethnic groups which represent substantial segments of the population of the communities in which the services are being provided.

(Sections 12(c), 101(a)(7), and 705(a) of the Act; 29 U.S.C. 711(c), 721(a)(7), and 796d(a))

§ 365.7 Staff development.

The State plan must assure a program of staff development for all classes of positions involved in providing independent living services within the designated State unit. The staff development program must emphasize improving the skills of staff directly responsible for the provision of independent living services.

(Sections 12(c) and 705(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.8 State unit studies and evaluations.

(a) *Scope of studies.* The State plan must assure that the State unit conducts or has previously conducted studies of the independent living rehabilitation service needs of severely handicapped individuals within the State, including comparative studies of the different methods for providing these services, such as regional and community centers, centers for independent living, halfway houses, and patient-release programs. The State plan must also assure that the State unit conducts studies to determine effective alternatives to institutionalization. Any studies carried out under the plan must fully utilize findings from relevant studies which have been conducted in the past.

(b) *Evaluations.* The State plan must assure that the State unit conducts evaluations of the effectiveness of the State unit's independent living rehabilitation program in meeting the service needs of severely handicapped individuals in the State. These evaluations must measure the adequacy of State unit performance in providing independent living services to severely handicapped individuals, in the light of program and financial resources available in the State.

(c) *Use of findings.* The State plan must also assure that findings from the State's studies and evaluations are utilized in planning for and improving future independent living services.

(Section 705(a)(2) of the Act; 29 U.S.C. 796d(a)(2))

§ 365.9 State plan and policy development consultation.

(a) *Advisory committee.* The State plan must assure that the State unit organizes a committee of severely physically and mentally handicapped persons, which may include parents or guardians of severely handicapped persons as necessary, to consult on a continuing basis in the initial development and periodic revision of the State plan. The members of the advisory committee must serve on a rotating basis after severely handicapped persons in the State have been provided an opportunity to suggest those individuals considered by them to be best qualified to represent severely handicapped individuals in need of independent living services. The State plan must assure that this committee periodically consults with the State unit in matters of policy and program development and implementation which affect the overall administration of the State's independent living rehabilitation service program. The committee must also participate actively in the periodic evaluations of the State's independent living rehabilitation service program.

(b) *Other consultations.* The State plan must also assure that there is a procedure for taking into account the views of providers of independent living services and other individuals interested in services for severely handicapped individuals.

(Sections 12(c) and 705(a)(7) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.10 Provision of technical assistance in poverty areas.

The State plan must assure that the State unit undertakes special efforts to provide technical assistance to public and other nonprofit agencies and organizations located in areas of urban or rural poverty which are interested in developing capability for providing independent living services. The State unit must annually report those special efforts which have been undertaken in this regard.

(Section 705(a)(6) of the Act; 29 U.S.C. 796d(a)(6))

§ 365.11 Cooperation with other public agencies.

The State plan must assure that, to the greatest extent possible, the designated State unit enters into cooperative arrangements or cooperative agreements with, and utilizes the services and facilities of, other State and local public agencies which provide services to severely handicapped individuals, including those agencies administering the State's special education, vocational education, and developmental disabilities service programs, public health, mental health, and mental retardation programs, housing, and transportation programs, Veterans Administration programs, and the programs authorized under Title XIX and Title XX of the Social Security Act.

(Sections 12(c) and 705(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.12 Utilization of local, public and private nonprofit agencies, organizations, and facilities.

(a) *General provisions.* The State plan must assure that the State unit utilizes local public and private nonprofit agencies, organizations, and facilities, as appropriate, to provide independent living services. The State plan must describe the methods and criteria to be used to ensure the appropriate use by the State unit of these local agencies, organizations, and facilities, including entering into agreements with them or making direct grants to them for providing independent living services.

(b) *Special requirements for State unit grantees.* Any agency, organization, or facility awarded a grant by the State unit must assure that severely handicapped individuals are fully involved in policy and program development activities affecting the provision of independent living rehabilitation services. Any agency, organization, or facility awarded a grant by a State unit must also assure that any services provided under the grant are at least of the same quality as services provided directly by the State unit.

(c) *Grants from State units.* At least 20 percent of the funds received by a State under this part must be used to make grants to local public agencies and

private nonprofit organizations for the conduct of independent living service programs. The State plan must assure that the State unit makes the availability of funds known to potential applicants within the State and identifies that criteria against which applications for grant funds are evaluated. These criteria must provide priority in the awarding of funds to those agencies and organizations which are directed and managed to a substantial degree by qualified severely handicapped individuals.

(d) *Waiver of grants by State units.* The designated State unit may request from the Secretary a waiver of the requirement that grants in the amount required under paragraph (c) of this section be made for any fiscal year when there is sufficient evidence to determine that the local agencies and organizations cannot use the funds effectively. In waiving this requirement, the Secretary considers such factors as the number of agencies and organizations which have indicated an interest in applying for funds, the capability of these agencies and organizations, and the efforts which have been made by the State unit to improve the capacity of the agencies and organizations for conducting independent living rehabilitation service programs.

(e) *Priority for State unit clients.* When a program of independent living rehabilitation services is conducted by a local public agency or a private nonprofit organization, the program must be designed primarily to serve those severely handicapped individuals who are determined by the State unit to be eligible for independent living services under the State plan.

(f) *State unit plans under related funding programs.* The State plan must specify the State unit's goals and plans with respect to the distribution of any Federal funds received for the establishment and operation of independent living centers under Section 711 of the Act. The State plan must further indicate whether the State unit will directly apply for independent living center grants or whether local public agencies or private nonprofit organizations in the State will have the opportunity to apply for Federal funds under Section 711 of the Act.

(Sections 12(c), 705(a)(8) and 705(a)(3)(A) of the Act; 29 U.S.C. 711(c), 796d(a)(8), and 796(d)(a)(3)(A)

§ 365.13 Independent living services for older blind individuals.

The State plan must assure that the State unit seeks to incorporate within its program of services any new methods or approaches to the provision of independent living rehabilitation services to older blind individuals which have been demonstrated to be effective under a special project under Section 721 of the Act. (Grants for independent living services for older blind individuals). The Secretary advises the State unit when the results of a special project have been found to be effective and requires that they be integrated within the State program to the extent feasible.

(Sections 12(c) and 721(b) of the Act; 29 U.S.C. 711(c) and 796f(b))

§ 365.14 Reports.

The State plan must assure that the State unit submits reports in the form and detail and at the time required by the Secretary, and complies with any requirements necessary to assure the correctness and verification of these reports.

(Sections 12(c) and 705(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.15 Other administrative and fiscal requirements.

(a) *Applicability of vocational rehabilitation regulations.* Certain regulations covering the State plan for vocational rehabilitation services also apply under this part for purposes of the State plan for independent living rehabilitation services. These regulations include:

§ 361.7 Designation of substitute State vocational rehabilitation agency.
§ 361.10 Methods of administration.
§ 361.15 Affirmative action plan for handicapped individuals.
§ 361.24 General administrative and fiscal requirements (except as provided in paragraph (b) of this section relative to 34 CFR Part 74).
§ 361.44 Authorization of services.
§ 361.47 Participation by handicapped individuals in the costs of vocational rehabilitation services.
§ 361.48 Administrative review of agency action, and fair hearing; review by Secretary.
§ 361.49 Protection, use, and disclosure of personal information.
§ 361.76 State and local funds.
§§ 361.170–361.186 Procedures for Hearings on State Plan Conformity and Compliance.

(b) *Program administration.* Federal financial participation is available in expenditures under the State plan for the provision of services and for program planning, development, evaluation, and control; research; advocacy; interpretation of the program to the public; personnel administration, including the administration of affirmative action plans; use of advisory committees; the removal of architectural barriers in State unit offices and facilities; program accreditation; and training and staff development for State unit personnel. All expenditures in which Federal financial participation is claimed under the State plan must be subject to the administrative or supervisory control of the designated State unit.

(Sections 12(c) and 705(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

State Plan Content: Provision and Scope of Service

§ 365.30 Processing referrals and applications.

The State plan must assure that the State unit establishes and maintains written standards and procedures to assure expeditious and equitable handling of referrals and applications from severely handicapped persons for independent living services.

(Sections 12(c) and 705(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.31 Eligibility.

(a) *General provisions.* (1) The State plan must assure that eligibility requirements are applied by the designated State unit without regard to sex, race, creed, color, or national origin of the individual applying for service. The State plan must specify that no group of individuals is excluded from service solely on the basis of the type of disability or on the basis of age.

(2) The State plan must assure that no residence requirement is imposed which excludes from services under the plan any individual who is present in the State.

(b) *Basic conditions.* The State plan must assure that eligibility is based only upon:

(1) The presence of a severe physical or mental disability;

(2) The presence of a severe limitation in ability to function independently in family or community or to engage or continue in employment; and

(3) A reasonable expectation that independent living rehabilitation services will significantly assist the individual to improve his or her ability to function independently in family or community or to engage or continue in employment. For purposes of determining an individual's eligibility for independent living services, improvement in ability to function independently in family or community refers to a demonstration in functional and behavioral terms of an individual's greater independence or maintenance of independence in such areas as self-care, activities of daily living, driving, using public transportation, shopping,

housekeeping, communicating, or living more independently.

(Sections 12(c), 702(a) and 705(a) of the Act; 29 U.S.C. 711(c), 796a(a) and 796d(a))

§ 365.32 Determination of eligibility for independent living rehabilitation services.

(a) *General provisions.* The State plan must assure that the State unit conducts an evaluation of each severely handicapped person who applies for independent living services. This evaluation is limited to that information necessary to determine whether the individual is eligible to be provided independent living services and to determine which independent living services are needed. The evaluation takes into consideration any relevant case record materials available from files of the designated State unit or from the files of other agencies. A special diagnostic study is conducted specifically for purposes of determining eligibility for independent living services only if already available information is not complete, relevant, or current.

(b) *Scope of evaluation.* The State plan must also assure that the evaluation is sufficient in scope to determine which services will best meet the current and future needs of the individual for functioning more independently in family or community or engaging or continuing in employment.

(Sections 12(c), 702(a) and 705(a) of the Act; 29 U.S.C. 711(c), 796a(a) and 796d(a))

§ 365.33 Certification of eligibility or ineligibility.

(a) *Certification of eligibility.* The State plan must assure that, before or at the same time as acceptance of a severely handicapped individual for independent living rehabilitation services, there must be a certification that the individual has met the basic requirements specified in § 365.31. The State plan must also assure that the certification is dated and signed by an appropriate staff member of the designated State unit.

(b) *Certification of ineligibility.*

(1) The State plan must assure that whenever it is determined that independent living services cannot be expected to assist an individual to engage or continue in employment or to function more independently in family or community, there must be a certification dated and signed by an appropriate staff member of the State unit.

(2) The State plan must also assure that the certification indicates the reasons for the ineligibility determination and is made only after full consultation with the individual or, as appropriate, his or her parent, guardian, or other representative, or after giving a clear opportunity for this consultation. In this case, the State unit notifies the individual in writing of the action taken and informs the individual of his or her rights and the means by which he or she may express and seek remedy for any dissatisfactions, including procedures for administrative review and fair hearings. When appropriate, the individual is provided a detailed explanation of the availability of the resources within a protection and advocacy project established within the State under section 731 of the Act, and referral is made to other agencies and facilities, including the State's vocational rehabilitation program under Part 361 of this chapter.

(3) The State plan must also assure that when an applicant for independent living services has been certified as ineligible because of a determination that these services cannot be expected to assist the individual to engage or continue in employment or to function more independently in family or community, the individual's current status will be reviewed no later than 12 months after the determination has been made. The review need not be conducted in situations where the individual has refused the review, the individual is no longer present in the State, or the individual's whereabouts are unknown.

(Sections 12(c), 702(a) and 705(a) of the Act; 29 U.S.C. 711(c), 796a(a) and 796d(a))

§ 365.34 Order of selection for services.

The State plan must show the order to be followed in selecting groups of severely handicapped individuals to be provided independent living rehabilitation services when services cannot be provided to all eligible persons who apply. The State plan must assure that first priority is given to those severely handicapped individuals, including homebound individuals, who are not presently receiving vocational rehabilitation services under the State vocational rehabilitation service program under Part 361 because of the severity of their physical or mental disability, and those severely handicapped individuals who are institutionalized, have been institutionalized in the past, or are at risk of becoming institutionalized.

(Sections 12(c), 702(a) and 705(a)(2) of the Act; 29 U.S.C. 711(c), 796a(a) and 796d(a)(20))

§ 365.35 The case record for the individual.

The State plan must assure that the State unit maintains for each applicant for independent living services and for each individual receiving these services, a case record which includes documentation concerning the individual's eligibility for service and the provision and payment for services.

(Sections 12(c) and 705(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.36 The individualized written rehabilitation program for independent living rehabilitation services.

(a) *General provision.* The State plan must assure that an individualized written rehabilitation program is initiated and periodically updated for each severely handicapped individual provided independent living rehabilitation services. The State plan must also assure that each independent living service is provided in accordance with the written program. The individualized written rehabilitation program must be developed jointly by the appropriate staff member of the State unit and the severely handicapped individual or, as appropriate his or her parent, guardian or other representative. A copy of the written program, and any amendments, must be provided to the severely handicapped individual or, as appropriate, his or her parent, guardian or other representative.

(b) *Initiation of program.* The individualized written rehabilitation program must be initiated after certification of eligibility under § 365.33 and must indicate the goals established for each individual, the services to be provided, and the anticipated duration of the service program and each component service.

(c) *Review.* The State plan must assure that the individualized written program will be reviewed as often as necessary but at least on an annual basis to determine whether services should be continued, modified, or discontinued, or whether the individual should be referred to a program of vocational rehabilitation services under Part 361 or to any other program of assistance. Each severely handicapped individual, or, as appropriate, his or her parent, guardian or other representative must be given an opportunity to review the program and, if necessary, jointly redevelop and agree by signature to its terms.

(d) *Review of ineligibility determination.* The State plan must assure that if services are to be terminated under a written program for any reason, the following conditions and procedures must be met or carried out:

(1) This decision is made only with the full participation of the individual, or, as appropriate, his or her parent, guardian, or other representative, unless the individual has refused to participate,

the individual is no longer present in the State, or his or her whereabouts are unknown. When the full participation of the individual or a representative of the individual has been secured in making this decision, the views of the individual are recorded in the individualized written rehabilitation program;

(2) The rationale for the ineligibility decision is recorded as an amendment to the individualized written rehabilitation program certifying that the provision of independent living services has demonstrated that the individual is not capable of functioning more independently in family or community or engaging or continuing in employment. A certification of ineligibility under § 365.33 is then executed; and

(3) There is a periodic review, at least annually of the ineligibility decision in which the individual is given opportunity for full consultation in the reconsideration of the decision, except in situations where a periodic review would be precluded because the individual has refused services or has refused a periodic review, the individual is no longer present in the State, or his or her whereabouts are unknown. The first review of the ineligibility decision is initiated by the State unit. Any subsequent reviews are undertaken at the request of the individual.

(e) *Coordination with vocational rehabilitation, developmental disabilities and education programs.* The development of the individualized written rehabilitation program for independent living services and the provision of these services must be coordinated to the maximum extent possible with the individualized written rehabilitation program for vocational rehabilitation services for that individual, if there is such a written program. This must also be coordinated with any individualized written habilitation program for the individual prepared under the Developmental Disabilities Assistance and Bill of Rights Act or with any individualized education program for the individual prepared under Part B of the Education for All Handicapped Children Act.

(Sections 12(c) and 705(a)(4) and 705(a)(5) of the Act; 29 U.S.C. 711(c) 796d(a)(4) and (5))

§ 365.37 Scope of State unit program; independent living rehabilitation services for individuals.

(a) *Scope of services.* The State plan must specify those independent living services available for meeting the independent living rehabilitation service needs of severely handicapped individuals in the State. The services which may be provided to any severely handicapped individual may be any of the following independent living rehabilitation services, as appropriate:

(1) Counseling services, including psychological counseling, psychotherapeutic counseling, peer counseling, advocacy services and related services;

(2) Housing incidental to the provision of any independent living rehabilitation service, and including appropriate accommodations to, and modifications of, any space utilized to serve severely handicapped individuals;

(3) Physical and mental restoration services, including:

(i) Physical and mental medical rehabilitation services;

(ii) Dentistry services;

(iii) Nursing services;

(iv) Therapeutic treatment, such as physical therapy, occupational therapy, speech, language and hearing therapy, therapeutic recreation, drama therapy, music therapy, dance therapy and art therapy;

(v) Health maintenance;

(vi) Eyeglasses and visual services; and

(vii) Prosthetic, orthotic and other assistive appliances and devices.

(4) Attendant care;

(5) Transportation;

(6) Interpreter services for deaf individuals, including tactile interpretation for deaf-blind individuals;

(7) Reading services, rehabilitation teaching services, and orientation and mobility services for blind individuals;

(8) Recreational activities;

(9) Services to members of a severely handicapped individual's family when necessary for improving the individual's ability to live and function more independently, or the individual's ability to engage or continue in employment;

(10) Vocational and other training services, including personal and vocational adjustment when necessary for improving a severely handicapped individual's ability to live and function more independently, or his or her ability to engage or continue in employment;

(11) Job placement services;

(12) Referral services;

(13) Telecommunications, sensory and other technological aids and devices;

(14) Services for children of pre-school age including physical therapy, development of language and communication skills, and child development services;

(15) Any other vocational rehabilitation services available under the State plan for vocational rehabilitation services under Part 1361 of this chapter, which are appropriate to the independent living rehabilitation needs of a severely handicapped individual; and

(16) Any appropriate preventive services necessary to decrease the future needs of a severely handicapped individual assisted under this program for similar services.

(b) *Written policies.* The State plan must also assure that the State unit establishes and maintains written policies covering the quality, scope, and extent of each of the independent living services listed in paragraph (a) of this section which is to be provided under the State program, and the conditions, criteria, and procedures under which the service is to be provided. These policies must assure that when services are being provided solely to assist a severely handicapped individual to secure or engage in employment, the services must be provided under Part 1361 if the individual is also eligible for vocational rehabilitation services.

(Sections 12(c) and 702(b) of the Act; 29 U.S.C. 711(c) and 796a(b))

§ 365.38 Case closure.

The State plan must assure that when all objectives identified for a severely handicapped individual under an individualized written rehabilitation program are achieved, the case is closed. When the case is closed, there must be a record describing the way in which the severely handicapped individual has benefited from independent living rehabilitation services and has significantly improved his or her ability to engage or continue in employment or to function independently in family or community.

(Sections 12(c) and 705(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.39 Duration.

The State plan must assure that no uniform durational requirement is imposed. The estmated duration of each service must be recorded for each individual under an individualized written rehabilitation program.

(Sections 12(c) and 705(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.40 Standards for facilities and providers of services.

The State plan must assure that the State unit maintains written standards for the various types of facilities and providers of services utilized by the State unit in providing independent living services to severely handicapped individuals. The designated State unit must assure that providers of service meet all licensure or certification requirements in the State. The State unit must also assure that any facilities used in connection with the delivery of

services under this program are free from communication and transportation barriers and meet the standards specified in the Architectural Barriers Act of 1968 and, the "American Standard Specification for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped," No. A117.1–1961, as amended, and its implementation standards, 41 CFR Part 101–19.6 et seq.

(Sections 12(c), 101(a)(7) and 705(a)(3) of the Act; 29 U.S.C. 711(c), 721(a)(7) and 796d(a)(3))

§ 365.41 Scope of State unit program: Establishment and construction of rehabilitation facilities.

If the State plan provides for the establishment and construction of rehabilitation facilities which provide independent living services, it must further assure that the primary purpose of the establishment of construction of any facility is to provide independent living rehabilitation services to severely handicapped individuals under this part. The provisions of § 361.51 and § 361.52 concerning the establishment and construction of rehabilitation facilities under the State plan for vocational rehabilitation services also apply.

(Sections 12(c), 103(b) and 702(b) of the Act; 29 U.S.C. 711(c), 723(b), and 796a(b))

§ 365.42 Scope of State unit program: Facilities and services for groups of severely handicapped individuals.

The State plan may provide for facilities and services which may be expected to contribute substantially to the rehabilitation of a group of severely handicapped individuals but which are not related directly to the individualized rehabilitation program of any one individual. If the State plan includes these facilities and services, it must further assure that the State unit establishes and maintains written policies covering their provision.

(Sections 12(c), 103(b) and 702(b) of the Act; 29 U.S.C. 711(c), 723(b), and 796a(b))

§ 365.43 Scope of State unit program: Telecommunications systems and special materials for blind individuals and deaf individuals.

The State plan may provide for the use of existing telecommunications systems which have the potential for substantially improving independent living rehabilitation service delivery methods and the delivery of appropriate programming to meet the particular needs of severely handicapped individuals. The State plan may also provide for the use of special services available to provide recorded material for blind individuals and captioned television, films or video cassettes for deaf individuals. If the State plan includes these services, it must further assure that the State unit shall establish and maintain written policies covering their provision.

(Sections 12(c), 103(b) and 702(b) of the Act; 29 U.S.C. 711(c), 723(b) and 796a(b))

Subpart C—Allotment and Payment

§ 365.44 Allotment of Federal funds for independent living services.

(a) The allotment of Federal funds for independent living services for each State is computed in accordance with the requirements of section 703 of the Act.

(b) Where the State plan designates separate units to administer the part of the plan under which independent living rehabilitation services are provided for blind individuals, and the rest of the plan, respectively, the division of the State's allotment is a matter for State determination.

(Section 703 of the Act; 29 U.S.C. 796(b))

§ 365.45 Payments from allotments for independent living services.

The Secretary pays to each State an amount computed in accordance with the requirements of section 704 of the Act. The Federal share is 90 percent except for the cost of construction of rehabilitation facilities where the Federal share may be no more than 50 percent.

(Section 704 of the Act; 29 U.S.C. 796(c))

PART 370—[REMOVED]

3. The Secretary further amends Title 34 of the Code of Federal Regulations by removing Part 370.

Note.—The following appendix will not appear in the Code of Federal Regulations:

Appendix A—Summary of Comments and Responses

The most significant areas of comment on the proposed regulations and the responses to these comments are as follows:

PART 361—THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAMS

§ 361.1 The State vocational rehabilitation services program.

Changes. This section has been revised to describe the coverage of the regulations under Part 361. This change is intended to bring about greater consistency with Department of Education regulatory format.

This section has also been revised to specify those regulations and those EDGAR definitions which apply to the State vocational rehabilitation service program. This change is similarly intended to bring about greater consistency with Department of Education regulatory format.

Definitions

A number of comments were received concerning the ways in which some terms were defined for purposes of administering the State plans for vocational rehabilitation services. Among those terms receiving special attention were the following—

"American Indian"

Comment. A commenter pointed out that the term "American Indian" had been defined for purposes of administering the new grant program for providing vocational rehabilitation services to handicapped Indians under Part 1362 of the proposed regulations, but that the term had not been defined in relation to the State vocational rehabilitation service program. Since there are new State plan requirements relative to the provision of vocational rehabilitation services to handicapped American Indians, this was noted to be a serious omission.

Response. A change has been made in this section and a definition of American Indian has been added. This definition had appeared in § 1362.45 of the proposed regulations and is now specifically applied to the State plan for vocational rehabilitation services.

"Physical and mental restoration services"

Comment. Comments were received from representatives of State units and recreation specialist practitioners concerning the specific inclusion of "therapeutic recreation services" under the definition of "physical and mental restoration services" of the proposed regulations. The comments were generally favorable and pointed out that therapeutic recreation services and activities not only can alleviate the effects of disabilities on handicapped individuals, but also can play a major role in fostering improved physical and mental health leading to the achievement of a vocational objective.

A few State unit commenters opposed the inclusion of therapeutic recreation services within the definition and questioned whether therapeutic recreation services do in fact directly contribute to a handicapped individual's ability to secure and maintain employment.

Response. No change has been made in this definition. The specific inclusion of "therapeutic recreation services" within the definition of "physical and

mental restoration services" had been proposed because of the increasing evidence of the importance of recreation and leisure time activities in assisting a handicapped individual to prepare for employment. The recognition of therapeutic recreation in the proposed definition also reflected the concern which the Congress had demonstrated for recreation and recreation activities in the 1978 Amendments to the Rehabilitation Act of 1973.

Therapeutic recreation services have long been regularly included within the scope of vocational rehabilitation services in a number of State unit programs. The inclusion of "therapeutic recreation services" in the definition of "physical and mental restoration services" does not require that these services be provided to each State unit client. This definition simply provides a more accurate definition of the scope of services which might be provided if prescribed by a physician to assist a handicapped individual in his or her vocational rehabilitation.

Comment. While the inclusion of "therapeutic recreation services" was generally favorably noted, other comments were received regretting the fact that certain other therapeutic services had been omitted from the list of "physical and mental restoration services." These comments requested that the definition be further extended to correct this omission by adding a reference to the creative arts therapies and by noting in this way the importance which these services might have for vocational rehabilitation service programs.

These commenters further noted that although art therapy, dance therapy, music therapy and psychodrama are modalities employed in vocational rehabilitation settings, especially in those settings serving psychiatrically disabled persons, relatively little attention has been called to their contribution to the vocational rehabilitation process.

The comments pointed out that the creative art therapies offer a unique alternative to verbal psychotherapies and drug control of psychiatrically disabled individuals through the common use of nonverbal communication. Art therapy can foster emotional growth and maturation, increase perceptual awareness, and provide an opportunity for improved social interaction through the use of artistic expression. Music therapy uses music to accomplish therapeutic aims including the restoration, maintenance, and improvement of mental and physical health by offering handicapped individuals an emotional outlet for expressing themselves, and a structured approach for dealing with reality. Dance therapy uses movement as a process to further emotional and physical integration of the individual. Psychodrama uses group psychotherapy, role theory, and social systems theory within the framework of action methodologies working toward the treatment of individuals and total groups.

These comments also pointed out that the creative arts therapies had been specially included in the definition of "independent living rehabilitation services" under Part 1363 of the proposed regulations and it was suggested that it would be fully consistent for the use of the creative arts therapies in the vocational rehabilitation process to be reflected in the vocational rehabilitation service definitions.

Response. A change has been made in this definition in this regard. It is recognized that the creative arts therapies are currently used in the vocational rehabilitation process especially where services are being provided in psychiatric rehabilitation. The change in the definition of "physicial and mental restorative services" does not mean that every State unit client must be provided creative arts therapies if they are available. This change means only that in those special cases where a physician might wish to prescribe creative arts intervention for a State unit client, the State unit will clearly be able to follow through on the request consistent with the service goals of the client's individualized written rehabilitation program.

Other changes. Paragraph (h) has been revised to clarify that the provision of hearing aids is included within the scope of "physical and mental restoration services."

"Severely Handicapped Individual"

Changes. Specific learning disability has been added to the list of physical and mental conditions which may be identified with an individual being identified as a "severely handicapped individual." An individual cannot be determined to be severely handicapped on the basis of specific learning disability only. For an individual to be determined severely handicapped, there must be evidence of serious functional limitations and evidence of a need for multiple vocational rehabilitation services over an extended period of time.

§ 361.2 The State plan: General requirements

Comment. A comment from the private rehabilitation facility sector indicated that the public has difficulty in gaining access to State plans for vocational rehabilitation services and suggested that a regulatory requirement be added in this regard.

Response. No change has been made in this section. However, § 75.106 of EDGAR requires that State plans and related official documents be made available to the public. The State plans for vocational rehabilitation services are subject to this section through the adoption of EDGAR in § 361.1(b).

Comment. Additional comments were received questioning the advisability of integrating the Program and Financial Plan within the State plan. It was suggested that the integration of these two plans might prove to be unmanageable and that overlap might occur with the newly required State inventory of rehabilitation facilities under § 361.2.

Response. A change has been made in this section to eliminate the requirement that the information previously included in the Program and Financial Plan be included within the annual State plan submittal. In this way the reporting burden being placed on State units is being reduced. The overall State unit reporting system is currently being revised and technical assistance will be provided to State units to assist in improving procedures in this area.

§ 361.5 State agency for administration

Comment. It was pointed out by some State unit commenters that this section of the vocational rehabilitation regulations has traditionally referred to "designated" State agency, but that this usage is confusing now that the 1978 Amendments have added the definition of "designated State unit." It was suggested that the regulations drop the reference to the "designated" State agency.

Response. A change has been made in this section. Where necessary, the "State agency" is now referred to as the "sole State agency." The use of the term "designated" is now reserved in vocational rehabilitation regulations for use in connection with the designated State unit.

Comment. It was further pointed out by some commenters that not all agencies are subject to the supervision of the office of the Governor, as was implied in paragraph (b) of the proposed section. Some agencies may be constitutionally created and report to

elected Boards rather than to the Office of the Governor.

Response. A change has been made in paragraph (b) of the section to reflect the possibility that the Office of the Governor will not necessarily directly supervise the sole State agency for vocational rehabilitation.

361.7 Designation of a substitute State vocational rehabilitation agency.

Changes. A final regulation with a formal comment period had been published in the Federal Register of September 28, 1979 concerning the procedures to be followed in designating a public agency or a nonprofit organization in the State, or any political subdivision of the State, as the agency to substitute for the sole State agency when funds have been totally withheld from the State agency. This withholding of funds would only occur because either: (1) The State plan has been found out of conformity with the Act; or (2) the State has not been complying with the requirements of the Act in its administration of the State plan. This section had previously been published as § 1361.24 but in these fully revised final regulations it is now being redesignated as § 361.8.

Comment. Comment was received relating to the redesignation of the sole State agency and its resumption of operation after a substitute State agency has begun its operation of the program. It was pointed out that few agencies would be interested in applying for designation as a substitute agency if the previously designated State agency can be redesignated and the substitute agency can be removed with such ease. It was similarly noted that the 1978 Amendments established a three-year State plan period and it was suggested that the three-year time period should appropriately also be applied to the State plan submitted under this section.

Response. A change has been made in this section to provide that the previously designated sole State agency may be redesignated at the end of the three-year period for which the substitute State plan has been approved or at an earlier date determined by the Secretary after discussion with all parties involved. For an earlier date to be determined, however, there must be agreement by the sole State agency, the substitute agency and the Secretary.

Comment. A suggestion was made that the section be revised so that a priority would be given to any nonprofit agency which may be created by the State for the purpose of administering the State's vocational rehabilitation program.

Response. No change has been made in this section in this regard since it is clear that the intent of Section 101(c)(2) of the Act is that a broad range of agencies and organizations have an opportunity to be considered for designation as the substitute State vocational rehabilitation agency. The suggested approach would not only substantially limit the statutory range of potential designees but would also limit the responsibilities assigned to the Secretary to make this determination under the Act.

Comment. Another suggestion was made that language be added to paragraph (a) of the section to ensure that funding would be continued at the same level as was in effect at the time that the State was found by the Secretary to be out of compliance or out of conformity. This suggestion was made to ensure that there would not be a disruption of services during the period of transition to a substitute State agency.

Response. No change has been made in this section in this regard because it was recognized that the designation of a substitute State agency would only follow a lengthy review of the compliance and conformity issues in the State. It is clear that sufficient notice would be provided to a State prior to the need for the designation of a substitute State agency for appropriate transition planning to have taken place. It does not seem likely that any disruption of service could occur under the approach reflected in the section, as proposed.

§ 361.9 Local administration.

Comment. Comment was received suggesting that reference to the "State agency" be revised to refer to the "designated State unit" and that the references to "local agency" be changed to "local unit."

Response. A change has been made in this section. Although the statutory authority for local administration in Section 101(a)(1)(A) of the Act specifically refers to the "State agency," it is the State unit which is responsible for providing vocational rehabilitation services and for making agreements for carrying out service programs. The section has been revised therefore to reflect the fact that the designated State unit has responsibilities under written agreements for local administration of service programs and that these agreements can only be effectively carried out with the concurrence of the State agency.

The Rehabilitation Act speaks to the local agency in a manner comparable to the State agency in terms of responsibility for the management of a local vocational rehabilitation program. It is apparent therefore that a local vocational rehabilitation unit would be directly responsible for the provision of vocational rehabilitation services and the section has also been revised to reflect this distinction.

§ 361.11 Shared funding and administration of special joint projects or programs.

Comment. A commenter pointed out that § 1361.77 of the proposed regulations had provided that requests to participate in special joint projects or programs were to be made by the designated State unit but this section, as proposed, had indicated that the State agency would be making such requests. It was suggested that the State unit was the appropriate organizational unit for participation in these special joint projects or programs.

Response. A change has been made in this section since this provision and § 1361.77 of the proposed regulations had clearly been inconsistent. The State unit is directly responsible for carrying out programs of service within special projects and programs but the conduct of these special activities has great significance for State plan conformity and compliance and therefore affect the State agency. The section has been revised therefore to provide that the State unit participates in a special project or program only with the concurrence of the State agency.

§ 361.12 Waiver of Statewideness.

Changes. The section has been revised to clarify the role of the designated State unit in carrying out a service activity in a particular political subdivision of the State.

§ 361.14 Staffing of the State's vocational rehabilitation program.

Comment. It was noted by a commenter that the section, as proposed, did not extend to applicants for service and therefore did not require the State unit to have available staff able to communicate with applicants for service who rely on special modes of communication or whose English-speaking ability is limited.

Response. A change has been made in this section. It is clear that the intent of this section is to make vocational rehabilitation services more broadly available to handicapped persons with communication difficulties throughout the State and the omission of a special reference to applicants for service is inconsistent with this overall intent. The section has been revised to ensure that applicants for services with special

communication needs will have an easier access to State unit services.

Comment. Representatives of certified interpreters for the deaf suggested that professional standards be required under this section to assure that only highly skilled and fully qualified personnel be utilized by the State unit in assisting handicapped individuals with special communication needs.

Response. No change has been made in this section in this regard. The personnel to be utilized by the State unit under this section will facilitate the delivery of services, but will not necessarily be the primary service providers themselves. These persons will help other rehabilitation workers to communicate with the communicatively disabled individuals being served. Since there are still relatively few highly skilled personnel available throughout the country to assist State units in working with handicapped individuals who rely on special modes of communication, it seems likely that setting a high qualifications standard by regulation might prevent the State unit from fulfilling its intended responsibility under this section.

Comment. Question was also raised concerning the definition of "substantial segment" of the population of the State when considering whether special interpreter personnel might be needed to work with handicapped individuals whose native language is not English and whose English-speaking ability is limited. It was suggested that a percentage be set within the section to identify when these personnel would in fact be necessary.

Response. No change has been made in this section in this regard. It is noted that the purpose of this section is to expand opportunities for making vocational rehabilitation services available to individuals with special communication assistance needs. State units are most familiar with the ethnic compositions of the communities of the State which they serve and are best able to determine whether ethnic minority groups comprise substantial segments of the population whose members should be expected to be frequently in contact with the State unit on the basis of population statistics. It does not seem necessary for an arbitrary percentage to be established by these regulations in this area nor does it seem likely that a uniform percentage could be determined which would be equitable in all the affected State units throughout the country. It is the responsiblity of the State to comply with the intent of this requirement in a reasonable manner and ensure that services are available when needed for handicapped persons in the State whose native language is not English and whose English-speaking ability is limited.

§ 361.15 Affirmative action plan for handicapped individuals.

Comment. Paragraph (a) of the proposed section reflected the fact that Section 602(a) of the Civil Service Reform Act (Pub. L. 95–454) had amended Section 208 of the Intergovernmental Personnel Act of 1970 to abolish all statutory personnel requirements established as a condition for the receipt of grants-in-aid by States and local governments. Since Section 101(a)(7)(A) of the Rehabilitation Act of 1973 requires personnel standards to be established but does not require adherence to the Federal merit system standards, the amendment provided an opportunity either to remove all personnel standards requirements in vocational rehabilitation or to apply the Federal merit system standards throughout the State/Federal vocational rehabilitation system. In line with the intent of the amendment to avoid inconsistent and conflicting approaches to State and local government personnel administration and to encourage uniform use of the Federal merit system standards, it had been proposed in paragraph (a) of this section that the Federal merit system standards be applied under the State plans for vocational rehabilitation services.

Comments received from State units on this matter were generally negative.

Response. Because of the possibility that the proposed section was not fully understood by all State unit commenters, a final decision is not being made at this time. The Federal merit system standards provide a strong basis on which State unit personnel administration could be established but the Department wishes to review the matter further in light of the State unit comments. Under these regulations, therefore, there are no Federal requirements covering personnel standards and policies. A final decision will be made on this matter after the completion of the Departmental review. It is expected, nonetheless, that State units will continue to operate in accordance with State standards and methods of personnel administration in such areas as pay, minimum qualifications for classes of positions, recruitment, selection, and tenure.

Other changes. This section, as proposed, had been titled "Standards of personnel administration." Since the reference to the Federal merit system standards of personnel administration has now been removed pending further study, the title of the section has been revised to reflect its more limited coverage.

§ 361.18 Policy development consultation.

Comment. It was suggested by representatives of consumer self-advocacy groups that "matters of general policy development and implementation" be defined clearly so that there would be a better understanding of the scope of public participation required under the State/Federal vocational rehabilitation program.

Response. A change has been made in this section to indicate some of the areas of policy development and implementation in which public participation may be expected to be undertaken. The revised section suggests certain areas of "policy development and implementation" in which the views of the public would be especially important such as program planning, development and evaluation; development of legislative and budgetary proposals; assessment of research and service proposals; and development of affirmative action plans for the employment of qualified handicapped individuals.

Comment. Concern was expressed by some consumer representatives about public access to information about State unit policy development activities. It was suggested that State units be required to maintain an annually updated list of disability-related groups with whom information should be routinely shared. It was further suggested that State units be required to utilize self-advocacy and parent advocacy group newsletters and annual "town meetings" as methods for increasing public access to information about State unit programs.

Response. No change has been made in this section in this regard. Specific suggestions concerning ways of sharing information with consumers within a State are best communicated to State units in guideline and manual materials rather than through Federal regulatory requirements.

Comment. It was suggested by some representatives of consumer groups that the State units be required to establish Advisory Committees formally constituted to review and comment on the State plan and otherwise consult with the State unit in the overall administration of the State vocational rehabilitation service program.

Response. No change has been made in this section. All State vocational rehabilitation units currently use Advisory Councils with consultative functions which vary from State to

State. Although State Advisory Councils are widely used throughout the country, their establishment has never been required under the Rehabilitation Act of 1973, as amended. There does not appear to be a basis in law therefore for a Federal regulatory requirement of this type.

§ 361.19 Cooperation with other public agencies.

Comment. A number of comments were received on this section in connection with the specific learning disability issue. It was suggested that the State unit be *required* to enter into cooperative agreements with "the State education agencies, including those agencies administering the Education of the Handicapped Act and the Vocational Education Act." Under this group of comments, cooperative arrangements with public agencies other than education agencies, however, could continue to be undertaken only to the extent that they are considered appropriate by the State unit.

Response. A change has been made in this section. Section 101(a)(11) of the Rehabilitation Act of 1973 does not provide any authority for *requiring* cooperative arrangements with any specific public agency. The Act does require, nonetheless, that special arrangements be made for coordinating services to handicapped young people eligible for special education or vocational education services, but these special coordinative arrangements had been already emphasized under paragraph (b) of the proposed section and no additional change in this regard seemed necessary.

In partial response to the concern reflected in these comments, however, paragraph (a) of the section has been revised to identify more clearly those education programs with which cooperative arrangements or agreements might be made by State units such as adult education, higher education, special education and vocational education. Paragraph (a) has also been revised to indicate that these cooperative arrangements or agreements may be made at either the State or local level, or both.

§ 361.20 Establishment and maintenance of information and referral resources.

Comment. Advocates for deaf-blind individuals pointed out that although special attention had been called to communicatively disabled individuals in paragraph (b) of the proposed section, deaf-blind individuals had not been specified. It was feared that the failure to specify deaf-blind individuals in this section might have indicated an intent that they not be include in the coverage of the State information and referral system.

Response. A change has been made in this section. It had not been overlooked that the special needs of deal-blind individuals be ignored in State information and referral systems and the section has been revised to ensure that the special needs of these individuals are noted.

Comment. Concern was expressed by some State units about the possibility that a State unit would be required to establish a new information and referral program when adequate existing resources exist in the State. The establishment of a duplicative resource was considered to be unncessarily wasteful.

Response. A change has been made in this section. The proposed section required State units to use existing information and referral systems in the State and this requirement is given greater emphasis in the revised section. It is expected that existing resources will be used to the greatest extent possible and will not lead to duplication of already available information and referral resources.

§ 361.21 State plan for rehabilitation facilities.

Comment. It was requested by consumer self-advocacy groups that this section be revised to require specific methods for securing public participation in the development of the State's rehabilitation facilities inventory. Procedures were suggested for selecting persons to provide input into the development of the inventory with special attention to ensuring the participation of representatives peer support groups, individual disability groups, and parent advocacy groups.

Response. No change has been made in this section. The preparation of the rehabilitation facilities inventory required under the section is a State unit responsibility and it is to be prepared with the active participation of providers and recipients of service. The State units have had substantial experience in securing public participation over the years and specific Federal procedural requirements in this section seem neither appropriate nor necessary.

Comment. Representatives of private rehabilition facilities suggested that the rehabilitation facilities inventory be made a part of the basic State plan for vocational rehabilitation services and be approved for a three-year period.

Response. No change has been made in this section in this regard. The inventory of rehabilitation facilities is intended to be a listing of rehabilitation facilities and rehabilitation facility needs which are identified at any time in the State. The inventory is more of a working document than is the formal State Plan for vocational rehabilitation services and, in order to be effective, it must be updated continuously. The inventory could not be used in a meaningful manner if it were fixed at the same stage of development for a three-year period.

§ 361.22 Utilization of rehabilitation facilities.

Comment. It was suggest by a commenter that the requirements relating to the utilization of rehabilitation facilities should appropriately be directly related to the State inventory for rehabilitation facilities required under § 361.21.

Response. A change has been made in this section to link more directly the requirements affecting a State unit's utilization of rehabilitation facilities to the information gained under the State's inventory of rehabilitation facilities.

Comment. Consumer group representatives requested in their comments that the section be revised to clearly include "self-advocacy, self-help, and peer support counseling groups" within the definition of "rehabilitation facilities" required to be utilized by State units.

Response. No change has been made in this section in this regard. The term "rehabilitation facility" is defined in § 361.1 and refers to a facility where certain programs of vocational rehabilitation services are provided. To the extent that self-advocacy, self-help and peer support counseling groups maintain facilities which provide these services specified in the definition, these groups are covered by this section and their facilities are expected to be utilized by State units.

Comment. Representatives of private rehabilitation facilities requested that the section be revised to specify an "annual determination of individual and aggregate rehabilitation facility program capability relative to actual utilization" * * * including "a systematic procedure for reporting both the cost and effectiveness of services and programs provided by rehabilitation facilities."

Response. No change has been made in this section in this regard. The importance of establishing management information systems for rehabilitation facilities is recognized, but the state-of-the-art does not yet seem sophisticated enough to make possible the implementation of the suggested

requirements. The suggested revision will be again considered at a later date when management information systems for rehabilitation facilities have been more fully developed.

§ 361.31 Eligibility for vocational rehabilitation services.

The preamble to the proposed regulations included a special request for public comment on two areas of program development covered in this section. These areas were: (1) A proposed new procedure for providing an interim determination of eligibility for certain applicants for State vocational rehabilitation services and (2) a proposal for the addition of a special evaluative requirement for applicants with specific learning disabilities in order to determine whether they also have physical or mental disabilities. As a result of these requests for public comment, a large number of comments were received on these matters and changes were made in this section.

Interim Determination of Eligibility

Comment. The section, as proposed, provided for an opportunity for an interim determination of eligibility to be made by State units in the case of applicants who have records of physical or mental disability and a demonstrated difficulty in securing employment because of their disability. Under the proposed approach a State unit would have been able to initiate a program of vocational rehabilitation services to an individual immediately at the time of his or her application because of the strong likelihood on the basis of the presenting case records that the individual would be found eligible after a formal evaluation of eligibility is completed.

This approach was proposed as an option which a State unit might choose to adopt. It was not proposed that each State unit be required to adopt the interim eligibility approach and the proposal presented an opportunity for demonstrating the value of accelerated service delivery in these special cases. Public comment had specifically been invited concerning those factors which might be considered in developing criteria for making an interim determination of eligibility to assist in demonstrating the potential effectiveness of the approach. Public opinion was also invited on whether these criteria should be uniformly applied in all State unit programs. The overwhelming majority of the approximately 35 comments received on this proposed section were received from State units and these comments were generally unfavorable.

The State units in their comments did not always appear to have recognized the optional nature of the proposal, and indicated a fear that an interim determination of eligibility would violate sound casework procedures, could easily lend itself to abuse or misuse, and could lead to serious problems for both the State unit and the handicapped person, if on the basis of a more careful evaluation the individual were eventually found in fact not to be eligible. Special concern was directed to the possibility that an audit exception would be taken if an individual were determined to be ineligible after a program of services had been initiated. It was also suggested that the interim eligibility option was not necessary because the procedure for an extended evaluation of vocational rehabilitation potential already was available to a handicapped person of the type who might be assisted under the interim eligibility option.

Response. No change has been made in this section even though State unit comments were generally negative. The need for finding new ways to accelerate service delivery is so great that the effectiveness of the interim eligibility approach deserves to be demonstrated. It is important to remember this provision is optional and not mandatory. It is intended solely for use with those persons who are highly likely on the basis of presenting information to be found eligible. As such, these individuals are far different from those for whom the extended evaluation of rehabilitation potential is indicated, since in these latter cases it is the great difficulty in determining the likelihood of eligibility option will have done so consistent with all Federal regulatory requirements and will therefore not be liable to audit exceptions in relation to this practice.

Eligibility for individuals with specific learning disabilities

The proposed regulations also requested comment on the feasibility of adding a new procedural requirement under this section that would provide for any applicant with a specific learning disability to receive a special evaluation by the State unit under a preliminary diagnostic study to determine whether for that applicant a physical or mental disability also exists. It was noted in the proposed regulations that under the Rehabilitation Act of 1973 eligibility for services is limited to individuals with physical or mental disabilities and that a specific learning disability in and of itself could not be considered to be either a physical or mental disability for purposes of vocational rehabilitation eligibility. The special evaluation procedure was suggested as a means for determining whether the individual has a medically recognized physical or mental disability in association with the learning disability.

Comment. Approximately 300 letters were received concerning the specific learning disability issue but relatively few of the comments were directly related to the eligibility evaluation proposal under this section on which comment had been requested. The letters generally described problems encountered by persons with specific learning disabilities and requested that specific learning disability be covered as a disability category under the State/Federal vocational rehabilitation service program. It was apparent from these letters that the commenters assumed that problems related to serving individuals with specific learning disabilities under the State/Federal vocational rehabilitation service program were derived from prohibitions in the regulations rather than from limitations in the Rehabilitation Act of 1973, as amended, which the regulations interpret.

Advocates in the area of specific learning disability generally commented on the difficulties encountered in securing vocational services of any type. It was suggested that paragraph (b) of the section be revised to state clearly that the first eligibility criterion for vocational rehabilitation services is "the presence of a physical or mental disability, including any specially diagnosed specific learning disability * * *." The basis for the suggested changes in § 361.31 was a related suggestion that a new definition be added to § 361.1 of the regulations for "specifically learning disabled individuals." Under the proposed definition the term would refer to an individual "who has:

"(a) A physical disability such as an auditory, visual, or tactile perceptual problem; and/or

"(b) A mental disability such as difficulty in conceptualization, use of language, memory or control of attention."

The suggested definition further indicated that "these physical and mental disabilities can result in conditions such as dyslexia, dyscalculia, dysgraphia, agnosia, and dysphasia. Limitations caused by specific learning disabilities must result in a substantial handicap to employment to be considered vocationally handicapping."

In addition to the comments received from advocates for learning disabled individuals, approximately 40 letters

were received from State vocational rehabilitation units and these letters were in strong opposition to the imposition of requirements for special evaluations in the case of applicants with specific learning disabilities. It was pointed out in these comments that neither the Rehabilitation Act of 1973 nor the regulations implementing the Act prevent services from being provided to an individual with a specific learning disability provided that the individual can be determined to have a physical or mental disability and meet the other eligibility criteria for vocational rehabilitation services. The State units noted that any requirement for a special evaluation procedure would constitute unfair preferential treatment since such an evaluation is not mandatory for any other applicants for vocational rehabilitation service. It was also pointed out that a relatively limited proportion of the individuals covered by the requirement would probably be considered to be severely handicapped individuals as is necessary under the State's order of selection requirements and relatively few could therefore be expected to be served after so many diagnostic studies had been completed.

Response. A change has been made in this section. The number of comments received on the specific learning disability issue and the frustration experienced by learning disabled individuals, their parents, and others interested in specific learning disability in attempting to secure assistance demonstrate that there has been a serious problem in this area. A review of State unit programs indicates that many learning disabled individuals are currently being served by State vocational rehabilitation units throughout the country, but these individuals are not being served on the basis of their being learning disabled, but rather on the basis of their being determined to be otherwise physically or mentally disabled after a medical or a psychological evaluation has been carried out.

At the time that the proposed regulations were published, specific learning disability had not been recognized by the professional medical community as a physical or mental disability. Similarly, the Congress had not identified specific learning disability as a distinct disability category for the purposes of the State-Federal vocational rehabilitation service program. The proposed regulations therefore reflected the fact that persons with specific learning disabilities could be considered eligible for vocational rehabilitation services only when they were identified in terms of a more traditional medically recognized physical or mental disability.

After the publication of the proposed regulations, the situation affecting the medical recognition of specific learning disability changed dramatically. In 1980 the American Psychiatric Association published the Third Edition of the *Diagnostic and Statistical Manual of Mental Disorders* which included the specific learning disability category as a mental disability identified as "Specific Developmental Disorder." At approximately the same time, the World Health Organization published the 1980 Edition of the *International Classification of Diseases* which included the specific learning disability category as a mental disability identified as "Developmental Delay Disorders."

The 1980 publication of these materials by the medical community has created a totally new environment for establishing the vocational rehabilitation eligibility for persons with specific learning disabilities. On the basis of this new recognition of specific learning disability, individuals may now be considered to be disabled solely on the basis of their being diagnosed as specifically learning disabled. It will no longer be necessary for an individual seeking vocational rehabilitation eligibility to present himself or herself to the State vocational rehabilitation unit in terms of another physical or mental disability.

Vocational rehabilitation activities in the area of specific learning disability in the past have been hampered by the fact that there are so many divergent opinions about causative factors of specific learning disability which has made it difficult for diagnosticians to determine whether or not a more tradition physical or mental disability did, in fact, exist in all cases. As a result, learning disabilities have generally been identified in educational terms on the basis of functional limitations manifested by poor performance in the classroom and this type of diagnosis has not been considered an adequate substitution for the medical or psychological evaluations required of other disability groups served under the State/Federal vocational rehabilitation program.

The National Advisory Committee on Handicapped Children developed the basic Federal definition of "specific learning disability" which is specified in Section 620(b) (4) of the Education of the Handicapped Act, as amended, and in the regulations implementing the Act. According to this definition, a specific learning disability is "a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasis. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, or emotional disturbance, or of environmental, cultural, or economic disadvantage." (34 CFR Part 300 Assistance to States for Education of Handicapped Children, § 300.5 (formerly § 121a.5)).

Under this educational definition, learning disabled individuals are those individuals whose disabilities are reflected in a severe discrepancy between achievement and intellectual ability in such areas as oral expression, listening comprehension, and mathematics reasoning. Although there may be a more traditional physical or mental disability identified in association with the educationally identified specific learning disability, it is generally the specific learning disability itself which is the source of clinical concern to the individual, his or her parents, and the professions providing services.

Neither the American Psychiatric Association nor the World Health Organization has developed definitions of "specific learning disability" which are readily applicable to the State vocational rehabilitation service programs in operational terms. Both of these organizations have identified specific learning disorders as mental disabilities, however, and this recognition will be applied to the State vocational rehabilitation service programs. The eligibility for vocational rehabilitation services of an individual with a specific learning disability will be determined in the same manner as is carried out for any other handicapped individual with a mental disability. This means that a preliminary diagnostic study to determine the individual's eligibility must include an examination by a physician skilled in the diagnosis and treatment of mental or emotional disorders or by a licensed or certified psychologist, or both, as is required under Section 103 of the Rehabilitation Act of 1973, as amended.

When a learning disabled individual is found eligible for vocational rehabilitation services, he or she will be provided service in the same manner as other handicapped individuals and will

be directly covered by State policies and procedures including those affecting the order of selection for service. After establishing that a mental disability exists, for example, it will be necessary to establish that the learning disabled individual meets the other criteria for vocational rehabilitation eligibility regarding a substantial handicap to employment for the individual and the likelihood that providing vocational rehabilitation services will benefit him or her in terms of employability.

Although the interest in developing a special definition of specific learning disability for vocational rehabilitation purposes is recognized, a special definition is not being added to the regulations.

Vocational rehabilitation regulations do not include definitions of other groups of mentally disabled persons, and the recognition of specific learning disability by the American Psychiatric Association and the World Health Organization would appear to eliminate any need for a special definition in this area.

A special evaluation requirement for all applicants with specific learning disabilities is similarly not being added because of the fact that special evaluations are not required of any other applicants for vocational rehabilitation service and because of the great expense which such a requirement would impose on State units.

This challenge appears now to be primarily one of program management and implementation. The Commissioner of the Rehabilitation Services Administration is therefore undertaking a number of special activities to ensure that learning disabled individuals will be effectively served by State vocational rehabilitation programs. Among these special activities are the following:

—A Rehabilitation Services Administration Task Force has been established to develop a comprehensive action plan for serving learning disabled individuals with special attention to the problems of determinig eligibility and evaluating the severity of the disability. This Task Force has a membership which includes State vocational rehabilitation unit personnel, representatives from other Federal agencies, and representatives of voluntary organizations concerned with individuals with specific learning disability.

—Rehabilitation Services Administration case reporting materials are being reviewed for revision necessary to identify learning disability as a disability on which eligibility for vocational rehabilitation services can properly be based.

—Guidance materials are being prepared for State vocational rehabilitation units to ensure that learning disabled persons who might be eligible for vocational rehabilitation services will be given the opportunity to receive those services and that those who are eligible will be served effectively.

—Finally, "The Rehabilitation of Individuals with Specific Learning Disabilities" was identified as special priority under the rehabilitation short-term training program in FY 1980 and a national workshop in this area of vocational rehabilitation program development will be conducted, in order to provide an opportunity to explore the problems relating to this issue more fully.

§ 361.32 Evaluation of vocational rehabilitation potential: Preliminary diagnostic study.

Comment. Some State units indicated confusion as to whether a generally medical examination was routinely required within a preliminary diagnostic study. Many State units commenters also requested that the term "current" be defined in paragraph (c) in relation to the reference to a handicapped individual's "current" health status.

Response. No change has been made in this section. A general medical examination is not routinely required of all applicants for State vocational rehabilitation services. Whether a general medical examination is in fact necessary will depend on a number of factors concerning each individual situation, such as the type of disability, the amount of previous documentation concerning the disability, the recency of the onset of the disability, the progressiveness or stability of the condition, and the severity of the disability. No arbitrary definition of "current" can be provided by these regulations since sound casework practice requires an individualized assessment of each individual. A key to ensuring an effective process for conducting an evaluation of rehabilitation potential would appear to be the quality of the medical consultation available to the State unit.

§ 361.33 Evaluation of vocational rehabilitation potential: Through diagnostic study.

Comment. A large number of comments concerned the specific procedures to be followed in carrying out a thorough diagnostic study. Some comments were concerned with the scope of the visual evaluation to be carried out under paragraph (d) for deaf individuals and whether the examination should be concerned with "visual system," "visual field," or "visual acuity." Still other comments were concerned with the coverage of the requirement for a visual evaluation and requested that the term "deaf" be defined so that a State unit would be able to know which of its clients required the evaluation. Other comments were concerned with specifically identifying the practitioner to be recognized as qualified to perform the necessary evaluation. Still other comments requested that the section be further revised to add specific procedural requirements covering certain categories of handicapped inividuals not yet highlighted in the Section.

Response. Changes have been made in this section. In light of the large number of comments and the nature of the comments received on this section, the Secretary has carefully reviewed the special procedural requirements affecting deaf, blind, and mentally retarded individuals and considered whether these requirements needed to be included within these regulations. It was noted that the level of regulatory specificity in the area of casework procedures and the application of these procedures to single disability groups made this section substantially different from all other sections of the regulations implementing the Rehabilitaion Act of 1973. This section was also noted to be unique in its establishment of professional practice requirements and its identification of the types of professionals who might participate in the evaluation process.

Because of its level of specificity, the material in this section appeared to be inappropriate for retention in Federal regulations and more appropriate for inclusion within guideline material. It is being removed from these regulations, therefore, and will be integrated within Rehabilitation services Manual materials currently being developed.

Since the Rehabilitation Act of 1973 does not require special processes for individual with any specific disability, there does not appear to be a basis for these regulations to do so. Similarly, since the Act does not address practitioner professional qualifications, there is no clear basis for these regulations to impose national standards on practitioners. It similarly does not appear to be equitable to identify certain disabilities for special discussion in these regulations and not others. Since this regulatory material appears to be interpreted by many interest groups as reflecting a special vocational rehabilitation priority for individuals

with certain disabilities, it can be expected that each disability will eventually request a discussion in this section of its own special evaluation needs. The diagnostic procedures reflected in this section represent sound practice and State units can be expected to continue to carry them out in accordance with State licensure and certification laws.

§ 361.35 Certification: Eligibility; extended evaluation to determine vocational rehabilitation potential; ineligibility.

Comment. Some comments pointed out that previous vocational rehabilitation regulations had required that the State unit prepare a certification of ineligibility only when it was clear "beyond any reasonable doubt" that the individual was not eligible for vocational rehabilitation services. It was noted that the proposed regulation omitted the term "beyond any reasonable doubt" and it was requested that the term be restored in the final regulations as a standard against which State unit performance might be measured.

Response. A change has been made in this section. The term "beyond any reasonable doubt" had been omitted from the proposed section because of the great difficulty in objectively applying it as a standard. The need for a standard is recognized, however, and paragraph (c) has been revised by adding the term "on the basis of clear evidence" to indicate that time when a certification of ineligibility is to be prepared. It is hoped that this reliance on objective evidence will make it easier to apply the standard to State unit operations and will make reviews of State unit performance easier to conduct.

Comment. Some consumer representatives requested that paragraph (c) be revised to provide for an automatic referral to the State's independent living program of all persons found ineligible for vocational rehabilitation.

Response. No change has been made in the section. Persons are found ineligible for vocational rehabilitation services for a number of reasons and not all can be automatically considered eligible for independent living services. Referral to the State's independent living program is therefore best done on an individual basis only where appropriate to the needs of the person who has been found to be ineligible for vocational rehabilitation.

§ 361.36 Order of selection of services.

Changes. A change has been made in paragraph (a) of this section to limit coverage of the State's order of selection procedures to those handicapped individuals who have been determined to be eligible for vocational rehabilitation services. This change is in line with Section 101(a)(5)(A) of the Act which requires the order of selection to go into effect when vocational rehabilitation services cannot be provided to all "eligible handicapped individuals who apply for such services."

§ 361.40 The individualized written rehabilitation program: Procedures.

Comment. A number of comments from State units pointed out the inconsistency between the requirement in paragraph (c) that the handicapped individual or his representative sign a "redeveloped" individualized written rehabilitation program and the fact that there is no similar requirement for a signature at the time that the individualized written rehabilitation program is first developed. The State units were almost evenly split between those who wished signatures to be required at all stages of program development and those who did not think that it should properly be imposed as a Federal requirement at any time.

Response. A change has been made in this section. Paragraph (c) has been revised to eliminate the specific requirement for a signature at the time that an individualized written rehabilitation program is redeveloped. Each State unit is responsible nonetheless for developing and following procedures to assure that there is evidence that handicapped individuals have in fact agreed to the terms of any redeveloped individualized written rehabilitation program. Securing the signature of a client or his or her representative is an effective approach which may be adopted by State units but other approaches may also be used to document client agreement to the terms of an individualized written rehabilitation program.

Comments. Representatives of disabled persons suggested that the section be revised to require State units to routinely advise consumer self-help groups and other representatives of handicapped persons of all procedures and requirements affecting the developing and reviews of individuals written rehabilitation programs.

Response. A change has been made in this section. Paragraph (a) has been revised to ensure that handicapped individuals receiving services under individualized written rehabilitation programs are fully aware of the procedures in effect for developing and redeveloping their individualized service program. This requirement is specific to those handicapped individuals receiving vocational rehabilitation services and is not generalized to other handicapped persons in the State. The section of information about procedures affecting the individualized written rehabilitation program.

§ 361.41 The individualized written rehabilitation program: Content.

Comment. A number of commenters objected to paragraph (b), as proposed, which appeared to them to indicate that individualized education plans being developed for handicapped young people must be fully integrated within individualized written rehabilitation programs. This requirement, as interpreted by these commenters, seemed unnecessarily burdensome since individualized education plans are not only very detailed and complex but also are educational in focus and are therefore not fully relevant to the needs of the State vocational rehabilitation unit.

Response. A change has been made in this section. Paragraph (b) has been revised to more accurately reflect the intent that the preparation of the individualized vocational rehabilitation and special education plans be coordinated to the greatest extent possible. It is not expected that the content of an individualized education plan will be fully integrated within an individualized written rehabilitation program. It is only required that the relevant content of an individualized education program will be summarized within the individualized written rehabilitation program so that its findings can contribute meaningfully in the identification and achievement of vocational goals for the handicapped individual being served.

§ 361.42 Scope of State unit program: Vocational rehabilitation services for individuals.

Comment. A commenter pointed out that a very important service for many deaf and blind clients of State vocational rehabilitation units is note-taking but the list of vocational rehabilitation services in paragraph (a) did not specifically identify note-taking as a service. It was requested that the list be revised to include this assistance needed by so many sensory disabled persons.

Response. A change has been made in this section since note-taking services are, of course, frequently provided by

State vocational rehabilitation units. Because of the importance of these services, the list has been revised to specify clearly that note-taking services may be provided by State units.

Comment. A number of State units commented favorably about the fact that "maintenance" and "transportation" were identified in paragraph (a), as proposed, as supportive services provided only to assist the handicapped individual to derive the full benefits from the other vocational rehabilitation services being provided to achieve a vocational rehabilitation objective.

Response. The section has not been revised in relation to the supportive vocational rehabilitation services. It is noted that in addition to "maintenance" and "transportation" there are other vocational rehabilitation services which may be provided only to assist an applicant to determine his or her eligibility or a recipient of vocational rehabilitation services in achieving a vocational rehabilitation objective. These other supportive services are "services to members of a handicapped individual's family," "interpreter services for deaf and deaf-blind individuals" and "reader services, rehabilitation teaching services and orientation and mobility services for blind individuals." The note-taking services added to paragraph (a) are also supportive services which would not be provided to a handicapped individual independent of other vocational rehabilitation services.

361.45 Standards for facilities and providers of services.

Comment. Some commenters noted that paragraph (b) specifies areas for which the State unit must establish written standards relative to rehabilitation facilities. It was pointed out that this regulatory material had been located in the section covering the "establishment of rehabilitation facilities" in earlier vocational rehabilitation regulations and that the more general application of these standards because of their relocation under this section makes some of the identified areas inappropriate.

Response. A change has been made in this section. Paragraph (b) has been revised to eliminate "personnel administration and management" from the areas required to be covered by State unit standards for rehabilitation facilities. State units may nonetheless wish to establish and maintain standards covering the qualifications of personnel employed in rehabilitation facilities utilized in the State vocational rehabilitation service program.

Comment. Representatives of private rehabilitation facilities recommended that paragraph (b) be revised to recognize the Commission on Accreditation of Rehabilitation Facilities (CARF) standards and to establish CARF accreditation as evidence of the adequacy of facilities.

Response. No change has been made in this section in this regard. Under Section 101(a)(7) of the Rehabilitation Act of 1973, State units are required to establish and maintain within their State plans minimum standards governing the facilities utilized in the provision of vocational rehabilitation services. Since the authority for establishing these standards is assigned to the State units under the Act, it would not be appropriate for Federal regulations to specify any single set of nationally recognized standards currently applicable to rehabilitation facilities. A State unit may independently, of course, select the Commission on Accreditation of Rehabilitation Facilities standards to be applied as the State unit standards for facilities in the State.

361.46 Rates of payment.

Comment. Representatives of private rehabilitation facilities requested that this section be revised to require State unit payments to vendors at rates no less than the actual cost of services provided.

Response. No change has been made in this section. A Federal regulation uniformly requiring reimbursement of actual costs does not appear either appropriate or cost-effective.

The State units are responsible for administering State service programs as economically as possible and it is noted that many vendors elect to charge State units and other public agencies at rates less than the actual cost. A Federal regulatory requirement preventing this practice would therefore neither be economical nor in the best public interest.

§ 361.48 Administrative review of State unit action and fair hearing; review by Secretary.

Comment. Comments from both State units and advocates for handicapped persons indicated some confusion about whether the opportunity for the Secretary of Education to review a State unit decision was available to applicants for vocational rehabilitation services as well as to clients of the State units. The proposed section had described this recourse as one which only recipients of services might pursue. Some comments suggested that the provision should apply to both applicants for services and recipients while others found the provision to be costly, inefficient, and nonproductive and suggested that it be removed completely from the regulations.

Response. A change has been made in this section. The review by the Secretary of Education of a State unit director's decision is limited to dissatisfactions between a handicapped individual and the State unit in connection with decisions or determinations made under an individualized written rehabilitation program. Since the Act limits this option to those matters arising in connection with an individualized written rehabilitation program, it can only apply to recipients of service and cannot be exercised by an applicant. Similarly, since this option is specifically required under the Act, it cannot be removed from the regulations. Some editorial revisions have been made in the section however to attempt to eliminate confusion about those processes applicable to applicants and those available only to recipients.

361.49 Protection, use and release of personal information.

Comment. Some comments suggested that this section be revised to remove any possible conflict with specific State laws and regulations.

Response. No change has been made in this section in this regard. State laws and regulations vary so much that it is impossible for the Federal regulations to be in complete agreement with all of them. It is important that there is a national standard in effect relating to personal information even though there may be some inconsistencies with statutes and regulations in some States.

Comment. A number of commenters suggested sharing information with other public programs, especially education agencies, and with the affected individual without regard as to the source of the information.

Response. No change has been made. A considerable amount of information is received by State vocational rehabilitation units from other agencies operating under other laws and regulations many of which specifically restrict further release even to the individual. The section provides for the sharing of information generated by the State vocational rehabilitation unit with other agencies and with the individual in a reasonable manner but with important safeguards.

Comment. Some commenters suggested that an individual must have access to all information in his or her record, especially during an administrative review or a fair hearing,

in order to prevent any violations of civil rights.

Response. No change has been made in this regard. The section, as proposed, provided for information to be obtained by the individual or by his or her representative, when needed.

Comment. Some commenters were concerned about the vagueness of paragraph (e)(2) relative to the release of information to any legally constituted public investigative authority.

Response. A change has been made to restrict the release of information for investigative purposes to only those situations which arise in connection with law enforcement, fraud, or abuse. Release will be possible in these situations only if permitted by Federal or State law or by Federal or State regulations.

Other changes. The section has been revised in a number of places to make it easier to understand.

§ 361.55 Scope of State unit program; special materials for blind individuals and for deaf individuals.

Comment. Some comments were received from advocates of deaf persons requesting that the special materials for blind, deaf, and deaf-blind individuals under this section be identified as mandatory vocational rehabilitation services required to be provided by each State unit. The section, as proposed, identified the provision of these materials as a permissive service which a State unit may or may not choose to provide.

Response. No change has been made in this section. Section 103 of the Rehabilitation Act of 1973 distinguishes certain vocational rehabilitation services which *must* be made available to handicapped individuals in each State from those vocational rehabilitation services which *may* be made available at the discretion of the State unit. The special services for blind, deaf, and deaf-blind individuals covered under this section are not mandatory under the Act and cannot therefore be made mandatory by regulation.

§ 361.71 Vocational rehabilitation services to individuals.

Comment. A number of State units criticized the proposed policy in paragraph (b) allowing Federal financial participation in the costs of native healing practitioners when serving handicapped American Indians. The use of native healing practitioners was seen both as violating the commitment of the State/Federal vocational rehabilitation program to medical practice meeting established standards of professional excellence and as discriminating against religious and ethnic groups whose comparable modes of treatment were not specifically covered in the section. State units also indicated some confusion about identifying those individuals who might perform as native healing practitioners under this section.

Response. A change has been made in this section to clarify that a native healing practitioner qualified to participate in the State vocational rehabilitation service program must be an individual recognized as such by the Indian tribe. The authority for Federal financial participation in the costs of native healing practitioner services has been retained for those State units which wish to utilize these services, however.

It must be noted that native healing practitioner services are not considered medical services under the State/Federal vocational rehabilitation program and are not expected to be regulated in the same manner as more traditional medical and medically related health services. Native healing practitioner services are considered to be "other goods and services" under the State vocational rehabilitation reporting system.

American Indian culture enjoys unique protection under the Indian Self-Determination Act and the American Indian Religious Freedom Act of 1978 and because of this legislation, the special consideration given to native healing practitioners is important and does not discriminate against other cultural groups. The use of native healing practitioner services is, of course, at the discretion of the State unit. These services would only be used when necessary for assisting a handicapped American Indian to achieve a vocational rehabilitation goal.

§ 361.73 Establishment of rehabilitation facilities.

Comment. Concern was expressed by representatives of private rehabilitation facilities and State units about the $200,000 limit on the Federal share in the costs of projects for the establishment of rehabilitation facilities. It was pointed out that this ceiling had been in effect for a number of years, but that increases in costs of the establishment of rehabilitation facilities in recent years have made the $200,000 limit no longer feasible to maintain. It was requested that the limit be raised.

Response. A change has been made in this section. The $200,000 ceiling is clearly inadequate in light of current economic conditions and the ceiling has been raised to $300,000.

§ 361.87 Methods of computing and making payments.

Changes. Paragraph (b) has been revised to reflect the fact that payments are now made to States through a Letter of Credit system.

§ 361.91 Appeals procedures and expenditures settlement.

Changes. A change has been made in this section to remove the reference to the Department of Health, Education, and Welfare's grant appeals process.

§ 361.151 Special project requirements.

Changes. Paragraphs (b) and (c) have been revised to clarify that grants are made to the State agency and not to the designed State unit under the innovation and expansion grant program.

§ 361.171 How to request a hearing.

Changes. Paragraph (c) has been revised to require that any hearing is held in settings free from any barriers to the participation of handicapped persons.

PART 365—THE STATE INDEPENDENT LIVING REHABILITATION SERVICES PROGRAM.

§ 365.1 The State independent living rehabilitation program.

Changes. This section has been revised to describe the coverage of the regulations under Part 365. This change is intended to bring about greater consistency with Department of Education regulatory format. This section has also been revised to specify those regulations and those EDGAR definitions which apply to the State independent living rehabilitation service program. This change is similarly intended to bring about greater consistency with Department of Education regulatory format.

Definitions

Comment. Some criticism was received concerning the proposed definition of "severely handicapped individual" and its reliance on a comparison with an individual who might be receiving vocational rehabilitation services under Part 361. The definition was seen by both State units and advocates for handicapped persons as imprecise and difficult to apply because of this comparison.

Response. A change has been made and the definition was revised in order to remove any direct comparison with the vocational rehabilitation service program. A severly handicapped individual receiving State independent living rehabilitation services will nontheless be expected to be in greater

need of service than an individual receiving vocational rehabilitation services under Part 361 and requiring a program of service appreciably more costly and of greater duration than is generally necessary for a State vocational rehabilitation client.

§ 365.2 The State plan: General requirements.

Changes. A new paragraph (e) has been added to require that the State plan is always available to interested parties for review and inspection.

§ 365.8 State unit studies and evaluations.

Comment. One commenter requested clarification on whether a State unit which has already conducted comparative studies of different methods for providing independent living rehabilitation services in the past, will need to repeat these studies or conduct additional studies after the new State plan program goes into effect.

Response. The section has been revised to clarify that State units which conducted comparative studies of alternative methods of service delivery in the past and which developed independent living service programs prior to the enactment of the 1978 Amendments to the Rehabilitation Act of 1973 would not be required to repeat these studies. When the results of earlier studies are not longer considered timely, however, the State unit will wish to undertake additional comparative studies.

Comment. Additional comment on this section requested revisions to require that consumer self-advocacy groups and parent advocates be fully consulted in *all* aspects of the conduct of State studies and evaluations.

Response. The section has not been revised to require any additional consultation with representatives of handicapped persons in carrying out State studies and evaluations since § 365.10, as proposed, already provided for the establishment of an overall Advisory Committee which must, among other things, "participate actively in the periodic evaluations of the State's independent living rehabilitation service program". This requirement appears sufficient to ensure appropriate consultation. An additional required consultation would seem to be duplicative of the role of the Advisory Committee, the membership of which will consist of severely handicapped persons and their representatives.

§ 365.9 State plan and policy development consultation.

Comment. A number of comments from State units suggested that the requirement for the establishment of a formal Advisory Committee was an excessive administrative burden which exceeded the requirements of the Act and requested the the Advisory Committee requirements be deleted. These comments indicated that Advisory Committees of the type being required under this section frequently misrepresent the view of the general population of handicapped persons and represent a costly and cumbersome approach to policy development.

Response. No change has been made in this regard. The Advisory Committee approach appears to be the most effective way to ensure that the views of severely handicapped persons are fully considered by State units in their development of State programs. Section 705 of the Act requires that handicapped persons have a substantial role in developing the State plan and the Advisory Committee approach is the most economical way to meet this statutory requirement fully.

Comment. Comments from consumer self-advocacy groups requested that the functions of the Advisory Committee be more fully specified and its role strengthened.

Response. No change has been made. The specific responsibilities of the Advisory Committee will vary from State to State under arrangements worked out between the State units and the members of the Committees. Although the Commissioner will provide general guidance concerning the role and functions of Advisory Committees for independent living rehabilitation programs throughout the country, a rigid specification of their roles and functions cannot properly be established by Federal regulations.

§ 365.15 Other administrative and fiscal requirements.

Changes. A few changes have been made in paragraph (a) to complete the list of vocational rehabilitation regulations which apply to the State plan for independent living rehabilitation services. All references to Part 361 requirements affecting the State vocational rehabilitation agency are understood to apply to the State unit for purposes of Part 365.

§ 361.32 Determination of eligibility for independent living rehabilitation services.

Comment. Some comments indicated confusion about whether the purpose of the evaluation conducted for applicants for service under this section was to be limited to matters of eligibility determination or whether the evaluation would also be designed to determine which independent living rehabilitation services would be of most benefit to the individual. It was suggested that a distinction be made between the "preliminary diagnostic study" and the "thorough diagnostic study" aspects of the evaluation process, as is done under Part 361 for the State plan for vocational rehabilitation services.

Response. A change has been made in this section. Every effort is being made to keep the evaluations of applicants for independent living services as simple and efficient as possible since applicants for service under this program are expected to be persons who have been in frequent contact with a great many service-providing agencies, organizations and facilities. Emphasis has been given therefore to simplifying eligibility determination procedures to the greatest extent possible. The section has been revised, however, to clarify that the purpose of the evaluation for an applicant is both to determine his or her eligibility for service and to identify those services most necessary to assist in improving the capacity for independent living.

Comment. Questions were asked by representatives of consumer self-advocacy groups about the responsibility for payment for the evaluations of State unit clients. These groups were concerned that there might be an expectation that centers for independent living and other facilities cooperating in the State independent living service programs might be required to pay for evaluations for applicants for service under the State programs.

Response. No change has been made in this regard § 365.6 provides that the responsibility for all matters affecting the determination of eligibility for any severely handicapped individual rests with the State unit and may not be delegated to any other agency, facility, or individual. The payment for any evaluation necessary to make an eligibility determination is clearly included within the scope of this State unit responsibility. Under the State unit's independent living service program, it is expected that a large number of cooperative working arrangements will be developed with local agencies and facilities—especially since at least 20 percent of the funds available to the State must be granted to these local agencies and facilities under this program. It is possible that some of

the funding arrangements developed in relation to State unit subgrants will include special provision for the payment of evaluations for applicants for State services but these arrangements will all be completed with the full concurrence of the participating centers for independent living.

§ 365.34 Order of selection for services.

Comment. Substantial objection was received from many commenters about the proposed provision which enabled the Rehabilitation Services Administration to set special priorities at any time to identify "other groups of Severely handicapped individuals" to be served first within the State's order of selection. It was pointed out that this provision could be seriously disruptive of ongoing State service efforts and was an improper Federal regulatory imposition. To allow the Rehabilitation Services Administration to change priorities "from time to time" was considered especially inefficient during the early years of the program when funding could be expected to be limited.

Response. A change has been made in this section. The criticisms appear valid and the section has been revised to remove the potential for Federal priority setting beyond the scope of those State unit priorities identified within its established order of selection.

§ 365.35 The case record for the individual.

Comment. Some commenters pointed out an apparent duplication between the case record and the individualized written rehabilitation program requirements which relate to the periodic review of a client's progress.

Response. A change has been made in this section. Although the case record and the individualized written rehabilitation programs are separate documents with distinct purposes, the proposed recording requirements in both documents covering the periodic review of a client's progress seem to be unnecessary. This recording requirement has been removed from the case record section, therefore, and has been retained only in § 365.36 in relation to the preparation of the individualized written rehabilitation program.

§ 365.36 The individualized written rehabilitation program for independent living rehabilitation services.

Comment. As was discussed in connection with § 365.35, concern was expressed by commenters about some duplication in recording requirements under the case record and the individualized written rehabilitation program.

Response. Changes have been made in the section. As a result of these changes, the annual review of an individual's progress under the State's independent living service program is now covered in connection with the individualized written rehabilitation program only.

Other changes. Some clarification of the purpose of the annual review has also been added and the section has been revised to specify that the responsibility to initiate annual reviews of ineligibility decisions rests with the individual after the first review has been conducted.

Comment. Advocates for learning disabled persons requested that paragraph (e) be revised to require that an individualized written rehabilitation program for independent living services not only be coordinated with individualized service plans prepared under related programs, but also be coordinated "with the appropriate educational agency."

Response. No change has been made in this regard. Section 705(a)(4) of the Rehabilitation Act of 1973, as amended, requires that the individualized written rehabilitation program for independent living services be coordinated with individualized service planning for handicapped persons being undertaken under the related vocational rehabilitation, developmental disabilities, or special education programs. Paragraph (e) of the proposed section covered this coordination in the manner required under the Act.

It is also noted that § 1363.12 of the proposed regulations covers coordination with other public agencies and there is a requirement for cooperative agreements and arrangements with other public agencies, including educational agencies, under that section. Programming for independent living rehabilitation services affects a large number of related programs and extends far beyond those special aspects of joint programming relevant to education agencies.

§ 365.37 Scope of State unit program; independent living rehabilitation services for individuals.

Comment. Some State unit commenters indicated confusion about whether each independent living service listed in paragraph (a) of the proposed section was expected to be available to all clients. These commenters were not sure whether each service was mandatory under the Act or whether the State unit had discretion in selecting those services which are to be made available in the State.

Response. A change has been made in this section. Section 702 of the Act lists those independent living services which may be made available to severely handicapped clients of the State units. None of these services is required under the Act, however, and a State unit is not required to provide any one of the potentially available services. The State unit is required to list in its State plan those services which it does in fact choose to provide to its severely handicapped clients. Those services which are available under any State program will of course be provided to an individual State unit client only to the extent that they are appropriate and needed. Paragraph (a) of this section has been revised to clarify the discretionary role of the State unit in selecting those services to be made available in the State.

Comment. Additional comment under this section related to the proposed policy in paragraph (b) indicating that when a severely handicapped individual is eligible for services under both the State vocational rehabilitation service program and independent living service program, services should be provided only under vocational rehabilitation service funding authorized under Part 361. Although the policy was generally supported, it was suggested that in the case of attendant care services for an employed severely handicapped individual, concurrent assistance might be necessary under both the State's vocational rehabilitation and independent living rehabilitation programs.

Response. A change has been made in this section. The proposed policy limiting concurrent eligibility was considered necessary because the Act indicated that an appropriate purpose of providing independent living services would be to assist an individual to "continue or engage" in employment, as well as to assist him or her in functioning more independently in family or community. Since the vocational rehabilitation service program can expect to have far greater resources available to it in the immediate future, the use of independent living service funds for vocational rehabilitation clients does not appear to be an efficient way to administer the independent living service program. The section has been revised, however, to clarify that concurrent eligibility is prohibited only in those cases where the purpose of the independent living service program might be to assist the individual to

"secure or engage" in employment. Where the purpose of the independent living service program is to help an individual to "continue" in employment, such as in the case of a severely handicapped individual in need of attendant care services to retain his or her job, the provision of independent living services would be possible.

§ *365.38 Case closure.*

Comment. State unit commenters indicated that the proposed section was somewhat unclear in that it appeared to cover recording requirements rather than requirements related to case closure.

Response. The section has been revised to clarify that a case is closed when those independent living service objectives identified for an individual have been achieved. It is recognized that intermediate objectives will be established, objectives will change, and new objectives will be identified for State unit clients during the time they receive services from the State units. The case closure requirement applies only when all independent living rehabilitation service objectives have been achieved for an individual being served under an individualized written rehabilitation program.

[FR Doc. 81-1588 Filed 1-16-81; 8:45 am]

BILLING CODE 4000-01-M

federal register

Monday
January 19, 1981

Part XX

Department of Interior

Heritage Conservation and Recreation Service

Archaeological Resources Protection Act of 1979; Proposed Uniform Rulemaking and Notice of Public Hearings

DEPARTMENT OF THE INTERIOR

Heritage Conservation and Recreation Service

36 CFR Part 1215

Archaeological Resources Protection Act of 1979; Proposed Uniform Rulemaking and Notice of Public Hearings

AGENCY: Heritage Conservation and Recreation Service, Department of the Interior.

ACTION: Proposed Rulemaking and Notice of Public Hearings.

SUMMARY: This proposed uniform rulemaking, implementing the provisions of the Archaeological Resources Protection Act of October 31, 1979 (Public Law 96–95), is in response to Section 10(a) of the Act. This uniform rulemaking will serve as the foundation and basic policy standard for additional regulations which Departments and independent agencies may promulgate pursuant to Section 10(b) of the Act.

DATES: Written comments are invited and should be submitted on or before March 20, 1981. Participation is invited at public hearings to be held February 7, 1981; February 14, 1981; February 21, 1981; February 28, 1981; March 7, 1981; and March 14, 1981. See Supplementary Information below for details.

ADDRESSES: Written comments should be forwarded to the Director, Heritage Conservation and Recreation Service, CODE: W512, Department of the Interior, 440 G Street, N.W., Washington, D.C. 20243. Public hearings will be held in Albuquerque, New Mexico; Anchorage, Alaska; San Francisco, California; Denver, Colorado; Chicago, Illinois; and Atlanta, Georgia. See Supplementary Information below for details.

FOR FURTHER INFORMATION CONTACT: Charles M. McKinney, Manager, Federal Antiquities Program Heritage Conservation and Recreation Service, Department of the Interior, Washington, D.C., 202–343–5264; Barbara Levin, Office of the Solicitor, Department of the Interior, Washington, D.C., 202–343–7957; Maxwell D. Ramsey, Tennessee Valley Authority, Norris, Tennessee, 615–632–6450; Janet Friedman, Department of Agriculture, Washington, D.C., 202–447–7711; or Garland P. Thompson, Department of Defense, Washington, D.C., 202–272–0517.

SUPPLEMENTARY INFORMATION: The public is invited to submit written comments on the proposed rulemaking. Comments should include the name and address of the person making the submission, should identify the specific section(s) and/or paragraph(s) commented on, should state reasons for the comments and, where appropriate, suggest an alternative approach.

Public Hearings

Public hearings were held during March and April 1980, in Denver, Colorado; Phoenix, Arizona; Portland, Oregon; and Knoxville, Tennessee, following publication of a notice of public hearings in the March 19, 1980, issue of the **Federal Register** (45 FR 17622). These public hearings were held to provide an opportunity for early public input into the rulemaking process and to initiate an early dialogue among various groups interested in the use and/or protection and conservation of archeological resources. Six additional hearings will be held during the comment period on the proposed rules according to the following schedule:

Chicago, Illinois—February 7, 1981. University of Illinois, Chicago, Circle Campus, Room 509–10, 750 South Halstead Street.

Host: National Park Service, Department of the Interior.

Atlanta, Georgia—February 14, 1981. Marriott Hotel, Courtland and International Blvd., N.E.

Host: Department of the Army, Department of Defense.

Albuquerque, New Mexico—February 21, 1981. Southwestern Indian Polytechnical Institute, 9169 Coors Road, N.W.

Host: Bureau of Indian Affairs, Department of the Interior.

San Francisco, California—February 28, 1981. Federal Courthouse, Room 2007, 450 Golden Gate Avenue.

Host: Department of the Army, Department of Defense.

Anchorage, Alaska—March 7, 1981. Main Auditorium, 1011 E. Tudor Road.

Host: Fish and Wildlife Service, Department of the Interior.

Denver, Colorado—March 14, 1981. Lecture Hall, Building No. 25, Denver Federal Center, West 6th and Kipling Streets.

Host: Water and Power Resources Service, Department of the Interior.

All six hearings are scheduled on Saturdays in order to provide ample opportunity for maximum public participation. All hearings are scheduled to begin at 10 a.m. and conclude by 4 p.m. Host agencies will provide local arrangements, including meeting space for a minimum of 100 persons and recording facilities, at each hearing. Charles M. McKinney, Manager, Federal Antiquities Program (Chairman, Interagency Rulemaking Task Force) will serve as the principal hearings officer, and a representative from the host agency or bureau will serve as co-hearing officer for each hearing.

Background

The Archaeological Resources Protection Act of 1979 ("the Act") has two fundamental purposes: to protect irreplaceable archeological resources on public lands and Indian lands which are subject to loss or destruction from the actions of persons who would excavate, remove, damage, alter, or deface them for commercial or personal reasons; and to increase communication and exchange of information among governmental authorities, the professional archeological community, Native Americans, collectors, and the general public toward the goal of protecting and conserving archeological resources nationwide.

Provisions of the Act which address the first purpose, protection, include requirements for a permit, issued by the appropriate Federal land manager, for any qualified person who would make use of archeological resources for the purpose of furthering archeological knowledge in the public interest. For any person who would make unpermitted (unauthorized) use of archeological resources, criminal and civil penalty and forfeiture provisions are prescribed in the Act. Basic governmentwide standards for the issuance of permits and for the implementation of penalty provisions are a principal focus of the proposed uniform regulations.

The Act directs that certain of its provisions are to be implemented through actions of the Secretary of the Interior. For this reason, a section of the proposed uniform regulations has been reserved to allow for future incorporation of regulations to provide guidance for cooperation with private individuals. These will be promulgated by the Secretary of the Interior and will be applicable to all Federal land managers.

Section 10(a) of the Act calls for uniform regulations to be written by the Secretaries of the Interior, Defense, Agriculture, and the Chairman of the Board of the Tennessee Valley Authority, as may be appropriate to carry out the purposes of the Act. Specific reference to uniform regulations is also included in section 3(l) (definition of "archaeological resource"), section 4(a) (permit appliation requirements), section 4(b) (standards for permit application evaluation, section 4(d) (permit terms and conditions), and section 10(b) (agency-specific regulations consistent with uniform regulations. The proposed rulemaking is

not limited to provisions of the Act where uniform regulations are specified. In order to meet the responsibility of carrying out the purposes of the Act and to insure the required governmentwide consistency, it is also necessary to provide a basic framework for those provisions of the Act which will be more fully implemented by separate rulemaking by individual agencies. In addition, it is important for the general public to be able to look to a single document for guidance regarding prohibited and permitted activities. Therefore, this proposed rulemaking provides general, and where appropriate, specific, procedures and guidelines covering all aspects of protecting archeological resources under the Act. Where guidelines are minimal or general, it is anticipated that agencies will establish their own agency-specific procedures through promulgation of further regulations and manuals within the scope and intent of these uniform regulations.

Major issues

The Act and this proposed uniform rulemaking revolve around three major areas of concern: the definition of the term "archaeological resource"; the development of a permitting system to allow for the scientific excavation and removal of archeological resources from public lands and Indian lands; and the delineation of criminal and civil prohibitions and penalties.

1. *Scope of the term "archaeological resource".*

Public participation preparatory to the drafting of this proposed rulemaking revealed a high level of concern on the part of hobbyists who collect a variety of items which might be considered "archaeological resources." Concern is centered on section 3(l) of the Act which defines "archaeological resources," sections 6(g) and 7(a)(3) which exempt removal of arrowheads located on the surface of the ground from criminal and civil penalties under the Act, and section 12(b) which exempts collection of any rock, coin, bullet, or mineral which is not an archeological resource from all provisions of the Act.

Section 3(l) of the Act requires that uniform regulations expand the Act's definition of "archaeological resource" by determining what constitutes "archaeological interest," by including the examples of objects listed in the Act in a more comprehensive listing, and by excluding non-archeological paleontological specimens and items less than 100 years of age. The definition in § 1215.3(a) of the proposed rulemaking meets these requirements with an eye toward accommodating the extremely broad range of archeological resources that might be found on any of the various public lands and Indian lands as defined in the Act. The definition has to be able to account for archeological resources found throughout the coterminous United States, Alaska and Hawaii, and on islands of the Caribbean and the western Pacific. The proposed solution to this problem was found in a reasonably brief list of general classes of material remains which can be archeological resources. Where needed, the class is followed by a list of illustrative examples. It is intended that any archeological specimen will be found to fit clearly and without question somewhere among the classes of material remains. During the comment period, archeologists are encouraged to test this part of the definition against archeological resources known by them to occur in various parts of the large area covered by the Act.

Some early public suggestions were directed toward defining, for the benefit of collectors, what is not an archeological resource. Comments suggested that the definition should state that only Indian materials from the prehistoric period should be considered archeological resources, and items such as coins, bullets, bottles, rocks, mineral specimens, and surface arrowheads, should be given blanket exclusion from protection. These suggestions have been rejected on the basis that the field of archeology is not confined to the study of prehistoric Indian cultural remains and that items suggested for complete exclusion may be archeological resources which the Act was intended to protect.

It was determined that a preferable approach was to provide a flexible test for determining whether or not such items should be included. Thus, a key concept in defining archeological resources relates to whether or not the material remains in question are of "archeological interest".

Material remains are of "archeological interest" under the proposed rulemaking if, through their scientific study and analysis, information or knowledge can be obtained concerning past human life or activities. This definition is intended to incorporate the varied archeological techniques applicable to the study of material remains without resorting to a highly technical listing or description of such techniques. Whether or not an item is of archeological interest should, despite the intricacies of archeological scientific methods, be a matter of common understanding. Thus, for example, most objects of prehistoric periods are clearly of archeological interest since the application of archeological techniques to these remains may provide information pertaining to methods of manufacture, levels of technological sophistication or levels of subsistence. Moreover, the location and context of such items may be of great value to an archeologist in determining whether or not a scientific item is intrusive in the site.

Conversely, historic non-native products of industrial manufacture such as coins, bullets and bottles have little intrinsic archeological value and, if found in isolation, would generally not be of archeological interest under the definition. However, if found in the context of other material remains of archeological interest, such items may be of great value for establishing the minimum age of associated materials, for demonstrating cultural contact, for determining the function of a site now in ruin, for providing new data about historic cultures and people, or for other purposes of archeological inquiry. It is thus incumbent upon the potential collector of such items to determine whether or not a given item might be considered of archeological interest; if so, it should be left in place and, in the spirit of cooperation, reported to the Federal land manager.

With regard to arrowheads located on the surface of the ground, the Act and the legislative history (e.g., 125 CRS 14722 Oct. 17, 1979) make it clear that criminal and civil penalties under the Act are not to be imposed for their removal. However, arrowheads are archeological resources. Their removal without a permit is in violation of prohibitions in the Act and the proposed regulations; and they remain the property of the United States or the Indian individual or Indian tribe when found on public lands or Indian lands, respectively.

It should be noted that the definition of "archeological resource" in this proposal is not the sole criteriaon for whether or not items on public or Indian lands can be the object of personal collection. There are other statutes and regulations governing the use of public lands which may prohibit such collection notwithstanding the fact that the items are not archeological resources. For example, nothing in the Act or this proposal addresses the use of metal detectors on public lands and Indian lands. However, as stated in the legislative history (125 CRS 14722, Oct. 17, 1979), the Act does not change existing law, regulations, or policy with regard to metal detectors.

2. *Permitting system.*

Section 4 of the act provides for the permitted use of archeological resources on public lands and Indian lands. It provides for the Federal land to issue permits to qualified persons for the excavation and removal of archeological resources, and for related activities. The Act addresses several areas relating to the issuance of permits, including: minimal application content (section 4(a)); permit issuance (section 4(b)); consideration of Indian religious and cultural concerns prior to issuance of a permit (section 4(c)): specification of terms and conditions of permits (section 4(d)); suspension of permits (section 4)(f)); and others. This proposed uniform rulemaking addresses and expands on each of these areas. It attempts to provide a logical and comprehensive framework for Federal land managers to follow in providing, through the issuance of permits, for the scientific use of archeological resources on public lands and Indian lands. While this proposed uniform rulemaking provides the overall procedures and guidelines to be followed by Federal land managers and potential permittees, it is expected that, where appropriate, agencies will develop agency-specific procedures, guidelines, and administrative processes, through regulations and manuals, in order to effectively manage the permitted use of archeological resources under their immediate jurisdiction. For example, section 1215.9 of this proposed uniform rulemaking specifies certain terms and conditions which Federal land managers must include in any permit issued for the excavation or removal of archeological resources on public lands and Indian lands. In addition, paragraph (b) § 1215.9 allows the Federal land manager to define and attach to a permit such terms and conditions as may be necessary to protect other values and resources and for other purposes. This allows the Federal land manager to custom tailor the terms and conditions of a permit to meet particular requiements and circumstances of the area(s) under his/her jurisdiction, as long as they are consistent with the uniform rules and regulations.

Section 10(a) of the Act requires that this uniform rulemaking may be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (42 U.S.C. 1996). The Act further requires in Section 4(c) that if a permit issued by a Federal land manager may result in harm to, or destruction of, any religious or cultural site, as detemined by the Federal land manager, then the Federal land manager shall notify any Indian tribe that may consider the site as having religious or cultural importance before issuing a permit. The purpose of Section 1215.6 of the proposed rulemaking then is to assist the Federal land manager in identifying sites that Indian tribes may consider to be of religious or cultural importance in order to facilitate the notification process under Section 4(c) of the Act and to insure that Federal agencies fulfill the policy of the American Indian Religious Freedom Act to protect and preserve for American Indians their right to freedom to believe, express, and exercise their traditional religions.

The proposed uniform rulemaking provides basic procedures and guidelines to be followed by Federal land managers when considering an application for a permit. In general, the process involves the notification of Indian tribes or groups who are in proximity to the area in question or who have expressed religious or cultural interest in the areas where archeological work is proposed to be conducted. For purposes of determining which groups constitute a bona fide tribe within the intended meaning of the Act, the regulations incorporate the Federal recognition and acknowledgement procedures adopted by the Department of the Interior. Any group that has pending a petition for acknowledgement is entitled to notice under the proposal.

It is incumbent upon the Federal land manager to give due consideration to the interests and concerns expressed by any tribe or group which responds to the notification, or any group which comes forward prior to permit issuance. Neither the Act nor this proposal require that religious or cultural concerns prevail over other interests. However, the Federal land manager should make efforts to accomomdate such concerns where appropriate. It should be noted that paragraph (h) of Section 1215.6 allows for the consideration of all present day or traditional religious practices, not merely the religious practices of Indian tribes or groups. This extension of the Act's mandate was incorporated to avoid constitutional questions arising from the consideration of only one set of religious beliefs.

As provided in the Act and this proposed uniform rulemaking, permits are required for the excavation and removal of archeological reources from public and Indian lands. The term "archaeological resources" in this statement refers to archeological resources as defined by the Act and the uniform regulations. Archeological activities on public and Indian lands not covered by the Act or the uniform regulations may require permitting under other authorities. For example, archeological activities involving resources less than 100 years of age, which includes a significant portion of the Euroamerican cultural heritage of this Nation, may require a permit under other authorities. Federal land managers should be aware that in addition to this Act, other existing secondary legislation and executive orders impose additional responsibilities for the protection of archeological resources on public lands and Indian lands.

3. *Civil Penalties.*

1215.18 Assessment of Civil Penalties

This section provides the structural framework for the procedures to be followed in assessing civil penalties. The procedures retain a great deal of flexibility in order to allow agencies to use the civil penalty in a variety of circumstances. Some agencies, for example, may be confronted with numerous violations of a minor nature, where the damage is minimal and the violations often committed unintentionally. Other agencies may be confronted with violations which involve significant resource damage, although there are fewer such occurrences. Civil penalties may be an appropriate enforcement tool in either of these situations. Individual agencies may seek to further refine the procedural outlines provided by these regulations if and when the use to which these penalties will be made becomes somewhat routinized.

If the Federal land manager has reason to believe that a person has violated the act, the regulations, or a term or condition of a permit, a notice of violation must be issued, even if assessment of a civil penalty is not contemplated. This can happen when minor, inadvertent violations occur in which imposition of a civil penalty could be viewed as overly harsh. However, issuing the notice of violation should be an effective means of educating the public about the need for diligent protection of archeological resources. The Federal land manager may also forego the civil penalty process when criminal prosecution for an offense is being undertaken. The notice of violation should be issued, nevertheless, for purposes of not foreclosing subsequent civil penalty proceedings.

If the Federal land manager determines that a civil penalty may be appropriate, a notice of assessment must be served upon the persons charged with a violation. Because the amount of a civil penalty is statutorily limited by the amount of "damage" done to the archeological resources involved, a

determination of such damage should be made by a trained archeologist. This will necessitate some delay between discovery of a violation and assessment of a civil penalty. The notice of assessment may, therefore, be served subsequent to the notice of violation or concurrently, as is appropriate.

The notice of assessment is the first of two required assessment notices, and must include a proposed penalty determined in accordance with § 1215.19(a). The notice may also contain an initial proposal for mitigation or compromise. The purpose of having two assessment notices is to build in an opportunity for informal resolution of contested violations. It is also a means whereby a proposed penalty may be reduced or forgiven, where appropriate, before engaging in a full evidentiary hearing. The person charged may simply accept the proposed penalty or compromise or may seek to contest the facts or the penalty amount by seeking informal discussions with the agency or by filing a written petition for the relief. An agency, under these regulations, is not required to set up conferences or otherwise respond to a request for informal discussions. However, agencies may find such procedures most expeditious for resolving disputes or achieving a fair mitigation process. Such agencies may subsequently formalize such procedures in their individual regulations. All agencies, however, must give full consideration to any information submitted in a written petition for relief.

The final notice issued by the agency will be the notice of penalty. Where the agency and person charged have been engaged in a dialogue, (either written or oral), the notice of penalty will state the agency's resultant determinations. The regulations require a written explanation of the basis upon which this determination was made. While such determinations will not have the precedential value of decisions reached after a full evidentiary hearing, it is hoped that written explanations will lead to greater uniformity in the informal processing of civil penalties and eventually form the basis of a body of general standards.

If the person charged wishes to contest the penalty assessed, that person must file a written request for a hearing. The Act requires that hearings be conducted in accordance with section 554 of title 5 of the United States Code. For those agencies which do not have such hearing procedures already established, they may, by regulation, refer such matters to another agency or adopt new procedures.

1215.19 Civil Penalty Amounts

Determination of civil penalty amounts has been set primarily in a variable format rather than a schedule of fixed penalty amounts or a fixed formula for arriving at the penalty amount. Because the amount of damage can vary extensively for similar violations, it was not deemed practical to predetermine fixed penalty amounts. However, should an agency find that it is confronted with numerous violations with minimal damage to archeological resources, it may wish to establish, by agency specific regulations, one or more small fixed penalty amounts. This would ease the administrative burden associated with individualized penalties. Section 1215.19 provides the framework for such a scheme.

The first step in determining the maximum penalty under § 1215.19(a). Under the Act, no civil penalty can exceed double the cost of restoration and repair of the archeological resources and archeological sites damaged, plus double the fair market value of resources destroyed or not recovered. This includes cases of second or subsequent violations, which may be double the penalty for a first violation. To simplify the distinction between first and subsequent offenses, the maximum penalty for a first violation under the regulations is simply the full cost of restoration and repair of resources damaged plus the fair market value of resources destroyed or not recovered. The maximum penalty for a subsequent violation is double that amount.

Where an agency wishes to establish fixed penalty amounts, such fixed penalty amounts would have to avoid exceeding the damage done. The premise underlying the selection of the amount would be that any violation to which this fixed penalty would be applicable would incur some minimum cost of restoration and repair due to disturbance of a site. The fixed penalty amount must stay within this minimum cost.

Once the maximum penalty amount has been determined, the agency may mitigate that amount based upon the factors enumerated in Section 1215.19(b). The mitigation process is discretionary and conceived as an individualized process. Should an agency find that there are sufficiently similar types of violations and/or violators to warrant a more standardized procedure, it may wish to set out with greater specificity the manner in which various factors should affect the mitigation process.

Although civil penalties can be imposed upon a person who unknowingly commits a violation, the legislative history of the Act indicates an intent by Congress that the civil penalty provisions not be used to harass citizens who are legally upon public lands, engaging in otherwise lawful activities, but who inadvertently damage archeological resources. For example, should a mining claimant, in the process of working his claim, inadvertently excavate archeological resources whose existence were heretofore unknown, the imposition of a civil penalty would be inappropriate, providing the claimant did not retain any objects and ceased to do further damage once it became clear to him that archeological resources were involved. However, where an individual is unlawfully upon the public land or engaged in otherwise prohibited activities, a civil penalty under the Act could be appropriate even when the violation of the Act itself was not intentional, if archeological resources were taken or damaged. In general, the Federal land managers should exercise their authority to mitigate or remit a civil penalty with a view toward fairness. It is also important, however, that the public be made aware of the fact that archeological resources are irreplaceable and that the public lands may no longer be a source for private collections.

It should be noted that arrowheads are defined as an archeological resource under the Act if they are at least 100 years of age. In recognition of the widespread popularity of collecting arrowheads, the Congress has determined that neither criminal nor civil penalties under the Act shall be imposed upon a person for the removal of arrowheads located on the surface of the ground. However, this should not be interpreted as sanctioning their removal from public lands, since they continue to be archeological resources and therefore public property under the authority of the Act. It should also be noted that in certain categories of reserved public lands (such as lands of the National Park and the National Forest Systems) the removal of arrowheads and other artifacts located within their legal boundaries may be prohibited by other statutes or by agency regulations. Violations of these other prohibitions can result in penalties as provided by those regulations or statutes.

Authorship

This proposed rulemaking document is the product of the Interagency Rulemaking Task Force for the Implementation of Pub. L. 96–95 formally convened by the Secretary of the Interior on March 24, 1980. The Task

Force is composed of representatives of the Department of Interior (Bureau of Land Management, Fish and Wildlife Service, National Park Service, Water and Power Resources Service, Bureau of Indian Affairs, Heritage Conservation and Recreation Service, and the Office of the Solicitor); Department of Defense (Departments of Navy, Air Force, and Army); the Department of Agriculture (Office of Environmental Quality and Forest Service); and the Tennessee Valley Authority. Lead Official: Charles M. McKinney, Task Force Chairman.

Statement of Significance

The Department of the Interior has determined that this rulemaking is a significant rulemaking but that it does not require preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14. An environmental assessment has been prepared in compliance with the provisions of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and is available for public inspection in Room 234, 440 G Street, N.W., Washington, D.C.

Federal Register to this effect in the immediate future. The Chairman of the Board of the Tennessee Valley Authority fully concurs with the contents of this proposed rulemaking.

Under the authority of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa–11), it is proposed to revise Part 1215 of Chapter XII, Title 36 of the Code of Federal Regulations as set forth below:

PART 1215—PROTECTION OF ARCHEOLOGICAL RESOURCES: UNIFORM REGULATIONS

Sec.

1215.1 Purpose.
1215.2 Authorities.
1215.3 Definitions.
1215.4 Excavation or removal of archeological resources.
1215.5 Application for permits.
1215.6 Consideration of Indian tribal religious and cultural concerns.
1215.7 Issuance of permits.
1215.8 Time limits of permits.
1215.9 Terms and conditions of permits.
1215.10 Suspension and revocation of permits.
1215.11 Compliance with regulations of the Advisory Council on Historic Preservation (36 CFR Part 800).
1215.12 Appeals relating to permits.
1215.13 Custody of archeological resources.
1215.14 Prohibited acts.
1215.15 Criminal penalties.
1215.16 Determination of archeological or commercial value and cost of restoration and repair.
1215.17 Assessment of civil penalties.
1215.18 Civil penalty amounts.
1215.19 Forfeiture and rewards.
1215.20 Confidentiality of archeological resource information.
1215.21 [Reserved]
1215.22 Report.
1215.23 Interpretive rulings.

Authority: P.L. 96–95, 93 Stat. 721 (16 U.S.C. 470aa-11) (Sec. 10(a)). Related authority: P.L. 59–209, 34 Stat. 225 (16 U.S.C. 432, 433); P.L. 86–523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 88 Stat. 174 (1974); P.L. 89–665, 80 Stat. 915 (16 U.S.C. 470a–t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978); P.L. 95–341, 92 Stat. 469 (42 U.S.C. 1996).

§ 1215.1 Purpose.

(a) The regulations in this part implement the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-11) and establish the uniform procedures and guidelines to be followed by Federal land managers in providing protection for archaeological resources located on public lands and Indian lands of the United States.

(b) It is not the purpose of the regulations in this part to impose additional restrictions on activities permitted under other laws, authorities, and regulations relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

§ 1215.2 Authorities.

(a) The Archaeological Resources Protection Act of October 31, 1979 (16 U.S.C. 470ii) requires that the Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority develop uniform rules and regulations for carrying out the purposes of the Act.

(b) Section 10(b) of the Act (16 U.S.C. 470ii) provides that each Federal land manager shall promulgate such rules and regulations, consistent with these uniform rules and regulations, as may be necessary for carrying out the purposes of the Act.

(c) The following authorities also pertain to the protection of archaeological resources on public lands and Indian lands under this part:

(1) The Act of June 8, 1906 ("Antiquities Act of 1906"; 16 U.S.C. 432, 433; 43 CFR Part 3);

(2) The Act of June 27, 1960 ("Reservoir Salvage Act of 1960"; 16 U.S.C. 469) as amended by the Act of May 6, 1974 ("Archaeological and Historic Preservation Act of 1974; 16 U.S.C. 469);

(3) The Act of October 15, 1966, as amended ("National Historic Preservation Act of 1966"; 16 U.S.C. 470a–t; 36 CFR Part 800);

(4) American Indian Religious Freedom Act of 1978 (42 U.S.C. 1996).

§ 1215.3 Definitions.

As used in this part:

(a) "Archaeological resource" means any material remains of past human life or activities which are of archaeological interest and are at least 100 years of age and the physical site, location, or context in which they are found. An object, site, or other material remain is of archaeological interest if, through its scientific study and anaylsis, information or knowledge can be obtained concerning human life or activities.

(1) "Material remains of past human life or activities" means physical evidence of human habitation, occupation, use, or activity, including, but not limited to:

(i) Surface or subsurface structures, shelters, facilities, or features (including, but not limited to, domestic structures, storage structures, cooking structures, ceremonial structures, human-made mounds, earthworks, canals, reservoirs, horticultural/agricultural gardens or fields, rock alignments, cairns, trails, borrow pits, cooking pits, refuse pits, middens, graves, hearths, kilns, post molds);

(ii) Surface or subsurface artifact concentrations or scatters and the three-dimensional relationship of artifacts to each other in the ground;

(iii) Whole or fragmentary tools, implements, containers, weapons and weapon projectiles, clothing, and ornaments (including, but not limited to, pottery and other ceramics, basketry, cordage, weavings, coins, bullets, bottles and other glassware, flaked stone, ground stone, pecked stone, worked bone, metal, wood, hide, feathers, pigments);

(iv) By-products, waste products, or debris resulting from manufacture or use of human-made or natural materials;

(v) Organic waste (including, but not limited to, vegetal and animal remains, coprolites);

(vi) Human skeletal or mummified remains (including, but not limited to, bone, flesh, teeth, burials, graves, cremations);

(vii) Rock carvings, rock paintings, intaglios and other works of artistic or symbolic representation;

(viii) Rockshelters and caves or portions thereof containing any of the above material remains;

(ix) All portions of shipwrecks (including, but not limited to, armaments, apparel, tackle, cargo);

(x) Paleontological remains only when they are found in a direct physical relationship with archeological resources;

(xi) The physical site, location, or context in which any of the foregoing are situated;

(xii) Any portion or piece of any of the foregoing.

(b) "Arrowhead" means any metal or stone projectile point triangular in configuration specifically designed for and/or used for an arrow. Arrowhead does not mean any bone artifacts, ceremonial flint, ceremonial knives, spear points, drills, knives, darts, or other metal or stone projectile points not specifically designed and/or used for an arrow.

(c) "Federal land manager" means:

(1) With respect to any public lands, the secretary of the department, or the head of any other independent agency or instrumentality of the United States, having primary management authority over such lands;

(2) In the case of Indian lands, or any public lands with respect to which no department, independent agency, or instrumentality has primary management authority, such term means the Secretary of the Interior;

(3) The Secretary of the Interior, where, pursuant to paragraph (2) of § 3 of the act, the head of any other independent agency or instrumentality, has with the consent of the Secretary of the Interior, delegated to the Secretary of the Interior the responsibilities (in whole or in part) in this part.

(d) "Public lands" means:

(1) Lands which are owned and administered by the United States as part of the national park system, the national wildlife refuge system, or the national forest system; and

(2) All other lands the fee title to which is held by the United States, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution.

(e) "Indian lands" means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for subsurface interests not owned or controlled by an Indian tribe or Indian individual.

(f) "Indian tribe" as defined in the Act means any Indian tribe, band nation, or other organized group or community, including any Alaska village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Native Claims Settlement Act (85 Stat. 688). In order to clarify this statutory definition for purposes of this part, the term "Indian tribe" means:

(1) Any tribal entity which is included in the annual list of recognized tribes published in the Federal Register by the Secretary of the Interior pursuant to 25 CFR 54.6(b);

(2) Any other tribal entity acknowledged by the Secretary of the Interior pursuant to 25 CFR Part 54 since the most recent publication of the annual list; and

(3) Any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native claims Settlement Act (85 Stat. 688).

(g) "Person" means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer, employee, agent, department, or instrumentality of the United States, of any Indian tribe, or of any State or political subdivision thereof.

(h) "State" means any of the fifty States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(i) "Act" means the Archeological Resources Protection Act of 1979 (16 U.S.C. 470aa–11).

§ 1215.4 Excavation or removal of archeological resources.

(a) Permits are required for persons wishing to conduct excavation and/or removal of archeological resources from public lands or Indian lands, and to carry out activities associated with such excavation and/or removal, and are issued by the Federal land manager to qualified persons, subject to appropriate terms and conditions.

(b) Exceptions:

(1) No permit shall be required under this part or under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), for the excavation or removal by any Indian tribe or member thereof of any archeological resource located on Indian lands of such Indian tribe or members of such tribe, except that in the absence of tribal law regulating the excavation or removal of archeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this part;

(2) No permit shall be required under this part for the collection for private purposes of any rock, coin, bullet, or mineral which is not an archeological resource, providing there is no disturbance of any archeological resource.

(3) No permit shall be required under this part to carry out any archeological activity authorized by a permit issued under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), before the enactment of the Act. Such permit shall remain in effect according to its terms and conditions until expiration.

(4) Employees and agents of the Federal government carrying out official duties associated with the management of archeological resources are deemed to be operating under a valid permit. However, each Federal land manager shall insure that all supervisory archeological personnel meet minimum qualifications as referenced in § 1215.7(a) of this part.

(5) No permit or other permission is required under section 3 of the Act of June 8, 1906 (16 U.S.C. 432) for any archeological work for which a permit is issued under this part.

(c) Archeological activities relating to archeological resources less than 100 years of age may require other permits as determined by the Federal land manager. Archeological activities involving no collection or disturbance of archeological resources may require only special use permits.

(d) Upon the written request of the Governor of any State, on behalf of the State or its educational institutions, the Federal land manager shall issue a permit, subject to the provisions of § 1215.7(a) (2), (3), (4), and (5) and §§ 1215.8, 1215.9, 1215.10 and 1215.11 of this part, to such Governor or to such designee as the Governor deems qualified to carry out the intent of the Act, for the purpose of conducting archeological research, excavation, and removal, and safeguarding and preserving materials and data collected.

§ 1215.5 Application for permits.

(a) Any person may file an application with the appropriate Federal land manager for a permit to excavate and/or remove archeological resources from public lands or Indian lands and to carry out activities associated with such excavation and/or removal.

(b) Each application for a permit shall include:

(1) The exact character of the work proposed, including how and why it is proposed to be conducted, proposed time of performance, locational maps, and proposed outlet for public written dissemination of the results.

(2) The name and address of the individual(s) proposed to be responsible for conducting the work, his/her institutional affiliation, if any, and evidence of his/her education, training, and experience in accord with the minimal qualifications referenced in § 1215.7(a) of this part.

(3) The name and address of the individual(s), if different from the individual(s) named in paragraph (b)(2) of this section, proposed to be responsible for carrying out the terms and conditions of the permit.

(4) Evidence of the applicant's capability to initiate, conduct, and complete the proposed work, including

evidence of logistical support and laboratory facilities.

(5) Where the application is for the excavation and/or removal of archeological resources on public lands, the name of the university, museum, or other scientific or educational institution in which the applicant proposes to store all collections, records, data, photographs, and other documents derived from the proposed work. Applicants shall submit written certification by an authorized official of the institution of its willingness to curate the collections, records, data, photographs and other documents and to safeguard and preserve these materials as property of the United States.

(6) Where the application is for the excavation and/or removal of archeological resources on Indian lands, the name of the university, museum, or other scientific or educational institution in which the applicant proposes to store all collections, records, data, photographs, and other documents derived from the proposed work in the event the Indian owners do not wish to take custody of or otherwise dispose of the archeological resources. Applicants shall submit written certification by an authorized official of the institution of its willingness to curate the collections, records, data, photographs, and other documents derived from the proposed work.

(c) Each Federal land manager may require additional information to be included in the application for permit and shall so inform the applicant.

§ 1215.6 Consideration of Indian tribal religious and cultural concerns.

(a) For any application received for a permit under this part which may result in harm to or destruction of an Indian tribal religious or cultural site, on public land, the Federal land manager shall provide written notification, as follows, to the official designated by the governing body of the tribe to receive such notification or, if no individual has been designated, to the chief executive officer of the tribal governing body. The Federal land manager shall:

(1) Notify any known Indian tribe having a reservation within 200 miles of the area in which the applicant proposes to conduct work. This requirement may be modified by agreement pursuant to section (f) of this section.

(2) Notify any other Indian tribe known or believed by the Federal land manager to have religious or cultural interest in the area of the proposed work.

(3) Notify any Indian group which has pending before the Secretary of the Interior a petition for acknowledgement pursuant to 25 CFR Part 54.

(4) Notify in writing the Bureau of Indian Affairs area office and any additional Indian tribes which the area office may identify as having religious or cultural interest in the area of the proposed work.

(5) Consult for notification purposes any central listing of interested Indian, Alaska Native or Native Hawaiian groups which may be established within the Department of Interior pursuant to the act, the American Indian Religious Freedom Act of 1978 (42 U.S.C. 1996, or other applicable authority.

(b) Prior to a decision to issue a permit, the Federal land manager shall consider written or verbal comments submitted by any tribe or group notified pursuant to paragraph (a) of this section, which responds to the notification within 45 days of receipt, or any other tribe or group entitled to receive notice under paragraph (a), which expresses a religious or cultural interest within the same period, in order to ascertain the character and nature of the concerns and the general location of the religious or cultural site(s) involved. Upon request during that period, the Federal Land Manager shall meet with any Indian tribe or group to discuss their concerns, including ways to avoid or mitigate adverse impacts. Information derived from such comments or received during any discussions regarding the nature and location of archeological resources and religious or cultural sites shall not be deemed, nor subject to, a disclosure to the public for purposes of section 9 of the Act and § 1215.20 of this part.

(c) Upon issuance of a permit under this part which may result in harm to, or destruction of, a site on public lands which has religious or cultural significance to any Indian tribe or group, pursuant to paragraph (b) of this section, the Federal land manager shall notify the chief executive officer of the governing body of such tribe or group in writing.

(d) Where a permit must be issued because of an imminent threat of loss or destruction of an archeological resource, the Federal land manager may omit compliance with subsections a–c or may shorten the time periods specified. However, the Federal land manager shall notify the Bureau of Indian Affairs area office and any Indian tribe known to or believed to consider the site as having religious or cultural importance of the permit application and the need for expedited procedures. Such notification shall preceed issuance of the permit, where possible.

(e) In the case of any application for a permit for the excavation or removal of any archeological resources located on Indian lands, the Federal land manager may issue a permit only after obtaining the consent of the Indian landowner and the Indian tribe having jurisdiction over such lands.

(f) The Federal land manager may enter into agreements with Indian tribes to establish formal and regular procedures for notification and discussion consistent with this section.

(g) Indian tribes are encouraged to designate a tribal official to be the focal point for any notification and discussion between the Indian tribe and the Federal land manager. The tribal official may assist the Federal land manager in identifying sites located on public lands which are of religious or cultural importance to the Indian tribe.

(h) If the area for which an application has been submitted is the subject of present day religious practice or has been the subject of traditional religious practice, areas containing such sites may be excluded from the permit. If such areas are not excluded, the Federal land manager shall consider ways to avoid or mitigate the adverse impacts which may result.

§ 1215.7 Issuance of permits.

(a) The Federal land manager may issue a permit, upon determining that:

(1) The applicant is appropriately qualified, as evidenced by training, education, and/or experience, and possesses demonstrable competence in theoretical and methodological design, and in collecting, handling, analyzing, evaluating, and reporting archeological data, relative to the type and scope of the work proposed and also meets the following minimal qualifications:

(i) A graduate degree in anthropology/archeology, or equivalent training and experience;

(ii) The demonstrated ability to carry research to completion, as usually evidenced by timely completion of theses, research reports, or similar documents;

(iii) Completion of at least 16 months of professional experience and/or specialized training in archeological field, laboratory, or library research, administration, or management, including at least 4 months experience and/or specialized training in the kind of activity the individual proposes to conduct under permit authority; and

(iv) Historic sites archeologists should have had at least one year of experience in research concerning archeological resources of the historic period. Prehistoric archeologists should have had at least one year of experience in research concerning archeological resources of the prehistoric period.

(2) The proposed work is to be undertaken for the purpose of furthering archeological knowledge in the public interest;

(3) The proposed work, including time, scope, location, and purpose, is not inconsistent with any management plan applicable to the public lands;

(4) Written consent has been obtained, for work proposed on Indian lands, from the Indian landowner and the Indian tribe having jurisdiction over such lands;

(5) Evidence is submitted to the Federal land manager that the university, museum, or other scientific or educational institution proposed in the application as the repository possesses adequate curatorial capability for safeguarding and preserving the archeological resources and all associated records; and

(6) The applicant has certified that, not later than the date the final report is submitted to the Federal land manager, the following will be delivered to the appropriate official of the approved university, museum, or other scientific or educational institution, which shall be named in the permit:

(i) All artifacts, samples, collections, records, data, photographs, and other documents resulting from work conducted under the requested permit where the permit is for the excavation and/or removal of archeological resources from public lands.

(ii) All artifacts, samples and collections resulting from work under the requested permit where the permit is for the excavation and/or removal of archeological resources from Indian lands for which the custody or disposition is not undertaken by the Indian owners, and other documents resulting from work conducted under the requested permit.

(b) For permit applications involving lands under the jurisdiction of more than one Federal land manager, the Federal land managers shall coordinate the review and evaluation of the applications and the issuance of the permits.

§ 1215.8 Time limits of permits.

(a) The Federal land manager may issue a permit for a period appropriate to the work to be conducted, but not to exceed 3 consecutive years from the date of issuance.

(b) A permittee may submit a written request for permit extension when additional time less than 4 months is needed to complete work in progress.

(c) A permittee may apply for permit renewal by following procedures under § 1215.5 of this part.

(d) Subsequent to review of extension requests or renewal applications, and evaluation of past performance, the Federal land manager may extend a permit for up to 4 months or may renew a permit for periods up to 3 additional years.

(e) The Federal land manager may extend a permit only once, but may renew a permit any number of times.

(f) The Federal land manager shall review, at least annually, the permittee's performance under any permit issued for a period greater than 1 year.

§ 1215.9 Terms and conditions of permits.

(a) In all permits issued, the Federal land manager shall specify:

(1) The exact nature and extent of work allowed under the permit, including the time, duration, scope, location, and purpose of the work;

(2) The name of the individual(s) responsible for conducting the work and, if different, the name of the individual(s) responsible for carrying out the terms and conditions of the permit;

(3) The name of the university, museum, or other scientific or educational institutions in which any collected materials and data shall be deposited; and

(4) Reporting requirements.

(b) The Federal land manager may specify such terms and conditions as deemed necessary, consistent with this part, to protect public safety and other values and/or resources, to secure work areas, to safeguard other legitimate land uses, and to limit activities incidental to work authorized under a permit.

(c) The Federal land manager shall include in permits issued for archeological work on Indian lands such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands.

(d) The Federal land manager may require adequate security to ensure adherence to terms and conditions of the permit.

(e) Initiation of work or other activities by the permittee under the authority of a permit signifies the permittee's acceptance of the terms and conditions of the permit.

§ 1215.10 Suspension, revocation and termination of permits.

(a) *Suspension.* (1) The Federal land manager may suspend a permit issued pursuant to this part upon determining that the permittee has violated any prohibition of §1215.14 of this part.

(2) The Federal land manager may suspend a permit upon determining that the permittee has failed to meet the terms and conditions of the permit. The suspension shall remain in effect until such time as the permittee corrects the situation, as determined by the Federal land manager.

(b) *Revocation.* (1) The Federal land manager may revoke a permit upon assessment of a civil penalty against the permittee under § 1215.18 of this part, or upon the permittee's conviction under § 6 of the Act.

(2) The Federal land manager may revoke a permit if the permittee fails to correct the situation which led to suspension.

(c) The Federal land manager reserves the right to terminate a permit at any time for program purposes.

§ 1215.11 Compliance with regulations of the Advisory Council on Historic Preservation (36 CFR Part 800).

(a) The act of issuing of a permit under this part does not require compliance with Section 106 of the Act of October 15, 1966 (16 U.S.C. 470f). The Federal land manager may, however, seek the advice or assistance of the Advisory Council on Historic Preservation with respect to activities proposed to be conducted under this part. Such action by the Federal land manager shall not be deemed compliance with Section 106 nor create a requirement for compliance where not otherwise required.

(b) If the activities proposed under this part constitute an undertaking in which there is Federal involvement other than the granting of a permit under this part and such Federal involvement requires compliance with Section 106 of the act of October 15, 1966 (16 U.S.C. 470f), then the Federal land manager shall coordinate the issuance of a permit under this part consistently with compliance requirements.

§ 1215.12 Appeals relating to permits.

Any person may appeal permit issuance, denial of permit issuances, suspension, revocation, termination, and terms and conditions of permits through appeal procedures established by the Federal land manager.

§ 1215.13 Custody of archeological resources.

(a) Archeological resources excavated or removed from the public lands remain the propoerty of the United States Government, unless otherwise provided for in law, regulations, or administrative policy.

(b) Archeological resources excavated or removed from Indian lands remain the property of the Indian or Indian tribe having rights of ownership over such resources.

(c) The Secretary of the Interior may promulgate regulations establishing procedures and guidelines for the exchange of archeological resources among suitiable universities, museums, or other scientific or educational institutions, for the ultimate disposition of archeological resources, and for standards by which archeological resources shall be preserved and maintained, when such resources have been excavated or removed from public lands and Indian lands.

§ 1215.14 Prohibited acts.

(a) No person may excavate, remove, damage, or othewise alter or deface any archeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under § 1215.7 or exempted by § 1215.4(b) (1), (2), (3), (4) and (5).

(b) No person may sell, purchase, or exchange any archeological resource or offer to sell, purchase, or exchange any archeological resource if such resource was excavated or removed in violation of:

(1) The prohibitions contained in paragraph (a) of this section; or

(2) Any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

(c) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law.

§ 1215.15 Criminal penalties.

(a) Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition contained in § 1215.15 of this part shall upon conviction be subject to:

(1) Fine of not more than $10,000, or imprisonment of not more than one year, or both, provided that the archeological or commercial value of the archeological resources involved and the cost of restoration and repair of such resources does not exceed the sum of $5,000, as determined under § 1215.17 of this part;

(2) Fine of not more than $20,000, or imprisonment of not more than two years, or both, provided that the archeological or commercial value of the resources involved and the cost of restoration and repair exceed the sum of $5,000, as determined under § 1215.17 of this part;

(3) Fine of not more than $100,000, or imprisonment of not more than five years, or both, in the case of conviction for a second or subsequent violation.

(b) Violations limited to the removal of arrowheads located on the surface of the ground shall not be subject to the penalties prescribed in this section.

§ 1215.16 Determination of archeological or commercial value and cost of restoration and repair.

(a) *Archeological value.* For purposes of this part, the archeological value of any archeological resource involved in a violation of prohibitions or conditions pursuant to this part shall be the value of the information associated with the archeological resource. This value shall be appraised in terms of the costs of the retrieval of the scientific information contained in the archeological resource which would have been obtainable if the archeological resource were found in its undisturbed state. These costs may include, but not be limited to, the cost of preparing a research design, conducting field work, carrying out laboratory analysis, and preparing reports as would be necessary to realize the information potential.

(b) *Commercial value.* For purposes of this part, the commercial value of any archeological resource, involved in a violation of prohibitions or conditions pursuant to this part, shall be the fair market value of its condition prior to removal or disturbance.

(c) *Cost of restoration and repair.* For purposes of this part, the cost of restoration and repair of archeological resources damaged as a result of violation of prohibitions or conditions pursuant to this part, shall be the sum of the costs already incurred for emergency restoration or repair work, plus those costs projected to be necessary to complete restoration and repair, which may include, but not be limited to, the costs of the following:

(1) Reconstruction of the archeological resource;

(2) Stabilization of the archeological resource;

(3) Ground contour reconstruction and surface stabilization;

(4) Research necessary to carry out reconstruction or stabilization;

(5) Physical barriers or other protective devices, necessitated by the disturbance of the archeological resource, to protect it from further disturbance;

(6) Examination and analysis of the archeological resource including recording remaining archeological information, where necessitated by disturbance, in order to salvage remaining values which cannot be otherwise conserved;

(7) Preparation of reports relating to the restoration and repair.

§ 1215.17 Assessment of civil penalties.

(a) *Application.* The civil penalty may be assessed against any person who has violated any prohibition contained in the Act or in this part, or who has violated a term or condition included in a permit issued pursuant to this part. Where criminal proceedings are being instituted against the person, the Federal land manager may elect not to assess a civil penalty but shall issue a notice of violation pursuant to this part. Where the violation is inadvertant and of a minor nature, the Federal land manager may likewise elect not to assess a civil penalty, but shall issue a notice of violation pursuant to this part.

(b) *Notice of violation.* Upon reasonable belief that a violation has occurred the Federal land manager shall notify any person believed to have committed the violation, either in person or by registered or certified mail (return receipt requested). The notice shall contain:

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the provision(s) of the Act, of this part, or of a permit issued pursuant to this part, allegedly violated; and

(3) A statement that a civil penalty may be assessed the person or persons for each referenced violation in an amount to be determined in accordance with this part; or a statement that no civil penalty will be assessed, as appropriate.

(c) *Notice of assessment.* Upon making a determination to assess a civil penalty for a violation charged in a notice of violation under this section, the Federal land manager shall make a determination of the damages associated with the violation, determine the maximum penalty amount in accordance with § 1215.18 of this part, and serve a notice of assessment on the person charged with the violation. The notice of assessment may be served concurrently with the notice of violation or as soon thereafter as the maximum penalty amount can be determined. The notice of assessment will be served in person or by registered or certified mail (return receipt requested). The notice shall contain:

(1) A statement of the facts believed to show a violation;

(2) A specific reference to the provisions of the act, of this part, or of a permit issued pursuant to this part allegedly violated;

(3) The amount of penalty proposed to be assessed;

(4) The basis in § 1215.16 and § 1215.18(a) of this part from which the amount was derived; and

(5) Notification of the right of the person charged to file a petition for relief pursuant to paragraph (c) of this section, or to await the Federal land manager's notice of penalty.

The notice may also contain an initial proposal for compromise or mitigation of the proposed penalty.

(d) The person charged shall have 45 calendar days from the date of service of the notice of assessment in which to respond. During this time they may:

(1) Seek informal discussions with the Federal land manager;

(2) Accept in writing or by payment the proposed penalty or compromise, if any, offered in the notice;

(3) File a petition for relief in accordance with paragraph (e) of this section;

(4) Take no action and await the Federal land manager's notice of penalty pursuant to paragraph (f) of this section.

If the person charged accepts the proposed penalty or compromise, this shall be deemed a waiver of the notice of penalty required by paragraph (f) of this section, and of the right to request a hearing.

(e) *Petition for relief.* Upon receipt of a notice of assessment, the person charged may ask that no penalty be assessed or that the amount be reduced, and may admit or contest the legal sufficiency of the charge and the Federal land manager's allegations of facts, by filing a petition for relief with the Federal land manager within 45 calendar days of the date of service of the notice of assessment. The petition shall be in writing and signed by the person charged. If the person charged is a corporation, the petition must be signed by an officer authorized to sign such documents. The petition shall set forth in full the legal or factual basis for the requested relief.

(f) *Assessment of penalty.* (1) The Federal land manager shall proceed to final assessment of a civil penalty upon expiration of the period during which the person charged may file a petition for relief, or upon completion of review of any petition filed, or upon completion of informal mitigation discussions, whichever is latest.

(2) The Federal land manager shall take into consideration all available information, including information provided by the person charged pursuant to paragraphs (b) and (c) of this section, or upon further request by the Federal land manager.

(3) If the facts warrant a conclusion that no violation has occurred, the Federal land manager shall so notify the person charged, and no penalty shall be assessed.

(4) Where the facts warrant a conclusion that a violation has occurred, the Federal land manager shall determine a penalty amount in accordance with §§ 1215.16 and 1215.18 of this part.

(g) *Notice of penalty.* The Federal land manager shall notify the person charged of the penalty assessed under paragraph (f) of this section by serving a written notice of penalty on the person charged, either in person or by registered or certified mail (return receipt requested). The Federal land manager shall set forth in the notice of penalty the facts and conclusions from which it was determined whether or not a violation did occur and the appropriateness of the penalty assessed and shall notify the person charged of the right to request a hearing pursuant to paragraph (h) of this section.

(h) *Hearings.* (1) Except where a right to request a hearing is deemed to have been waived as provided in paragraph (d) of this section, the person charged may, within 45 calendar days from the date of service of the notice of penalty, file a written dated request for a hearing with the appropriate adjudicatory body as specified in the notice of penalty. The person charged shall enclose with the request for hearing a copy of the notice of penalty. A copy of the request shall be served upon the person specified in the notice of penalty, personally, or by registered or certified mail (return receipt requested), at the address specified in the notice.

(2) Failure to file a timely request for a hearing shall be deemed a waiver of the right to a hearing.

(3) Any hearing conducted pursuant to this section shall be held in accordance with 5 U.S.C. 554 and regulations promulgated pursuant to 5 U.S.C. 554 or pursuant to section 10 (b) of the Act. In any such hearing, the amount of civil penalty assessed shall be determined in accordance with this part and shall not be limited by the amount assessed in a notice of penalty issued under paragraph (f) of this section or any compromise or mitigation offered by the Federal land manager.

(i) *Final administrative decision.* (1) Where the person charged has accepted the penalty pursuant to paragraph (c) of this section the notice of assessment shall constitute the final administrative decision;

(2) Where the person charged has not filed a timely request for hearing pursuant to paragraph (g)(1) of this section the notice of penalty shall constitute the final administrative decision;

(3) Where the person charged has filed a timely request for hearing pursuant to paragraph (g)(1) of this section the decision of the administrative law judge or any applicable administrative appeal therefrom shall constitute the final administrative decision.

(j) *Payment of final assessment.* (1) The person charged shall have 45 calendar days from the date of issuance of the final administrative decision in which to make full payment of the penalty assessed, unless a timely request for appeal with a United States District Court as provided in section 7(b)(1) of the Act has been filed.

(2) Upon failure by the person charged to pay the penalty, the Federal land manager may request the Attorney General to institute a civil action to collect the penalty in a United States District Court for any district in which the person charged is found, resides, or transacts business. Where the Federal land manager is not represented by the Attorney General, a civil action may be initiated directly.

(k) *Other remedies not waived.* Assessment of a civil penalty under this section shall not be deemed a waiver of the Federal land manager's right to pursue other available legal or administrative remedies.

§ 1215.18 Civil penalty amounts.

(a) *Maximum amount of penalty.* The Federal land manager shall, after establishing pursuant to § 1215.16 of this part the archeological or commercial value and the cost of restoration and repair of the archeological resouce(s) involved in a violation, ascertain whether the person charged has committed any previous violation of any prohibition in § 1215.14 or violation of any term or condition included in a permit pursuant to § 1215.9 of this part.

(1) Where the person charged has not committed any previous violation the maximum amount of the penalty shall be:

(i) A fixed amount, determined by the Federal land manager under regulations pursuant to section 10(b) of the Act or by administrative action, where damage to the archeological resource is minimal and all archeological resources have been recovered; or

(ii) Full cost of restoration and repair of archeological resources damaged plus the commercial value of archeological resources destroyed or not recovered.

(2) Where the person charged has been adjudged to have committed any previous violation, the maximum penalty shall be double the cost of

restoration and repair plus double the commercial value of archeological resources destroyed or not recovered.

(3) Violations limited to the removal of arrowheads located on the surface of the ground shall not be subject to the penalties prescribed in this section.

(b) *Compromise, mitigation or remission of penalty.* The Federal land manager may propose a compromise or may mitigate or remit the penalty amount determined under paragraph (a) of this section based upon any of the following factors:

(1) Agreement by the person charged to return to the Federal land manager archeological resources removed from public lands or Indian lands;

(2) Agreement by the person charged to assist the Federal land manager in activity to preserve, restore, or otherwise contribute to the protection and study of archeological resources on public lands or Indian lands;

(3) Agreement by the person charged to provide information which will assist in the detection, prevention, or prosecution of violations of regulations in this part;

(4) Demonstration of hardship or inability to pay on the part of the person charged, provided that this factor shall only be considered when the person charged has not previously been found to have violated the regulations in this part;

(5) Determination that the person charged did not intentionally commit the violation.

(6) Determination of other mitigating circumstances appropriate to consideration in reaching a fair and expeditious assessment.

§ 1215.19 Forfeiture and rewards.

(a) All archeological resources removed, and all vehicles or equipment used, in connection with a violation of any prohibition in § 1215.14 of this part are subject to forfeiture to the United States upon conviction under section 6 of the Act, assessment of a civil penalty under § 1215.16–17 of this part, or determination by any court that the archeological resources, vehicles, or equipment were involved in the violation.

(b) A payment shall be made in an amount equal to one-half of any penalty or fine collected, but not to exceed $500, to any person who furnishes information which leads to conviction for a criminal violation or to assessment of a civil penalty. If several persons provided information, the amount shall be divided among all such persons.

(1) Officers and employees of the United States, State, or local government who furnish information or render service in the performance of their official duties shall not be eligible for payment of rewards under this section.

(c) In cases involving Indian lands, all civil penalty monies and any item forfeited under the provisions of this section shall be transferred to the appropriate Indian or Indian tribe.

§ 1215.20 Confidentiality of archeological resource information.

(a) The Federal land manager shall not make available to the public, under subchapter II of chapter 5 of title 5 of the United States Code or any other provision of law, information concerning the nature and location of any archeological resource.

(b) The Federal land manager may make an exception to this rule provided that:

(1) The disclosure will further the purposes of the act and this part without risking harm to the archeological resource or the area in which it is located; or

(2) The Governor of the State in which the archeological resource is located has submitted a written request for information to the Federal land manager, including:

(i) The specific archeological resource or area about which information is sought;

(ii) The purpose for which the information is sought; and

(iii) The Governor's written commitment to adequately protect the confidentiality of the information.

§ 1215.21 [Reserved]

§ 1215.22 Report.

Each Federal land manager, when requested by the Secretary of the Interior, shall submit such information as is necessary to enable the Secretary to comply with Section 13 of the Act.

§ 1215.23 Interpretive rulings.

Each Federal land manager may publish from time to time, as an appendix to this part, statements of policy and legal opinions relating to the interpretation, enforcement, and implementation of the Act and this part.

Dated: December 4, 1980.

Cecil D. Andrus,

Secretary of the Interior.

[FR Doc. 81-1654 Filed 1-16-81; 8:45 am]

BILLING CODE 4310-03-M

federal register

Monday
January 19, 1981

Part XXI

Advisory Council on Historic Preservation

Historic Preservation Requirement of the Urban Development Action Grant Program; Proposed Regulations

ADVISORY COUNCIL ON HISTORIC PRESERVATION

36 CFR Part 801

Historic Preservation Requirements of the Urban Deviopment Action Grant Program

AGENCY: Advisory Council on Historic Preservation.

ACTION: Proposed Regulations.

SUMMARY: These proposed regulations implement the historic preservation review provisions of Section 110 of the Housing nad Community Development Act of 1980 (Pub. L. 96–399, 94 Stat. 1614) and Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470). Section 110(c) of Pub. L. 96–399 requires among other things, the Council to prescribe regulations for expeditious review and comment on Urban Development Action Grant projects which affect properties listed in or eligible for the National Register of Historic Places. The proposed regulations establish this required expedited Council commenting process.

DATE: Comments due: February 18, 1981.

ADDRESS: Comment address: Executive Director, Advisory Council on Historic Preservation, 1522 K Street NW., Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Peter H. Smith, Special Assistant for Urban Affairs, Advisory Council on Historic Preservation, 1522 K Street NW., Washington, D.C. 20005; 202–254–3967.

SUPPLEMENTARY INFORMATION: The Council was established by the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), and consists of the Secretary of the Interior, the Secretary of Housing and Urban Development, the Secretary of Commerce, the Administrator of the General Services Administration, the Secretary of the Treasury, the Attorney General, the Secretary of Agriculture, the Secretary of Transportation, the Secretary of State, the Secretary of Defense, the Secretary of Health and Human Services, the Chairman of the Council on Environmental Quality, the Chairman of the Federal Council on the Arts and Humanities, the Architect of the Capitol, the Secretary of the Smithsonian Institution, the Chairman of the National Trust for Historic Preservation, the President of the National Conference of State Historic Preservation Officers, and twelve members appointed by the President from outside the Federal Government. The Act generally charges the Council with advising the President and the Congress on historic preservation matters. Section 106 of the Act is designed to protect properties listed in or eligible for inclusion in the National Register of Historic Places through review and comment by the Council on Federal undertakings that affect such properties.

As established by the Council's regulations (36 CFR Part 800), the Section 106 process is a public interest process in which the Federal agency sponsoring the project, the State Historic Preservation Officer, the Council, and interested organizations and individuals participate. For programs authorized by Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301), applicants legally assume the status of a responsible Federal official for the purposes of the National Historic Preservation Act. This delegation is authorized by Section 104(h) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(a)). The Section 106 process is designed to assure that alternatives to avoid or mitigate an adverse effect on a property listed in or eligible for inclusion in the National Register are adequately considered in the planning process.

These regulations are required by Section 110(c) of the Housing and Community Development Act of 1980, (42 U.S.C. 5320(c)) and apply only to projects proposed to be funded by the Urban Development Action Grant (UDAG) program of the Department of Housing and Urban Development. The purpose of these proposed regulations is to expedite the Council's commenting process for such applications. Under the provisions of Section 110 of the Housing and Community Development Act of 1980 the State Historic Preservation Officer has a 45-day period to comment on properties listed in the National Register of Historic Places or which meet the Criteria and which will be affected by the proposed UDAG project as determined by the applicant. The Secretary of the Interior, likewise, has a 45-day period in which to make a determination whether the affected properties are eligible for inclusion in the National Register. For the sake of clarity the comment period of the State Historic Preservation Officer is referred to as a "review period" in these proposed regulations. This has been done in order to avoid confusion between comments of the Council required by Section 106 of the National Historic Preservation Act and the comments of the State Historic Preservation Officer required by Section 110(c) of the Housing and Community Development Act of 1980.

The process established by the proposed regulations is basically similar to the existing Section 106 process set forth in 36 CFR Part 800, "Protection of Historic and Cultural Properties." However, the proposed regulations restructure the normal Section 106 process to better reflect the UDAG program and the legal responsibilities of the applicant and most importantly to expedite the Council's commenting role.

The major provisions of the proposed regulations are:

1. *Section 801.1 Purpose and Authorities.* This section reflects the changes in Council responsibilities as a result of the Housing and Community Development Act of 1980.

2. *Section 801.2 Definitions.* This section includes definitions that are additions to those contained in 36 CFR 800.2 and which reflect the special requirements of the UDAG program.

3. *Section 801.3 Applicant Responsibilities.* This is a new section that is not contained in 36 CFR Part 800 and reflects the delegation of historic preservation review requirements by HUD and UDAG applicants.

4. *Section 801.3(c) Evaluation of Effect.* This section reflects the provisions of 36 CFR 800.3 but is tailored specifically to the requirements of the UDAG program. In addition, § 801.3(a)(1)(C) describes a number of specific components or elements of a UDAG project which need not be referred to the Council if certain standards are met. The Council would appreciate comments on the scope of this section and additional examples which could be included.

5. *Section 801.4 Council Comments.* This section specifies how the Council will respond to an applicant's request for Council comments. While it is similar in process to that specified in 36 CFR 800.6, a number of substantive changes have been made. For example, there is a time limit of 45 days to prepare a Memorandum of Agreement in cases of adverse effect determinations.

If no agreement is reached by the close of that period, the Executive Director will have 15 days to refer the matter to the Chairman. Based upon the recommendation of the Executive Director, the Chairman will make a decision as to what action Council will take. If the matter is referred to the Council members, there will be a meeting of either the full Council or a panel of members within 30 days. If the matter is referred to a panel, the panel's comments will be considered the comments of the full Council for the purposes of commenting on a particular

UDAG project. This will considerably reduce the time that is required to obtain the comments of the Council and also provide a fixed time limit, no more than 90 days, in which the process will be completed.

This section also provides for the designation of a lead agency for a UDAG project if another Federal agency is involved and for the applicant to accept previous compliance by a Federal agency for the project.

6. *Section 801.5 State Historic Preservation Officer Responsibilities.* This section is basically similar to 36 CFR 800.5, but reflects the State Historic Preservation Officer participation required by other provisions of Section 110. This section reflects the statutory period of 45 days within which the State Historic Preservation Officer may formally comment on an applicant's determination of effect on properties which are listed in the National Register or which may meet the Criteria for listing in the National Register. The time limitation does not preclude the applicant from earlier obtaining information from the State Historic Preservation officer which will assist the applicant in reaching its conclusions.

7. *Section 801.6 Coordination with Requirements Under the National Environmental Policy Act.* This is similar to 36 CFR 800.9.

8. *Section 801.7 Reports to the Council.* This section specifies how an applicant may utilize relevant portions of a completed UDAG application to meet information needs of the Section 106 process. The remainder of the section sets forth report requirements for various stages of the process.

9. *Appendix.* An appendix has been added specifically to provide guidance for UDAG applicants in identifying properties listed in the National Register of Historic Places or which meet the Criteria. In addition, a section is included which deals with archeology in an urban context.

The Council has determined that an economic impact statement pursuant to Executive Orders 11821 and 11949 is not required since these proposed regulations are modifications of an existing process to meet the needs of a specific program and do not constitute a major regulatory proposal.

The Council has determined that these proposed regulations are not significant regulations within the meaning of Executive Order 12044 and consequently do not require a regulatory analysis. The purpose of these proposed regulations is to expedite and clarify the Council commenting process on a specific program.

Pursuant to 36 CFR Part 805, "National Environmental Policy Act Implementation Procedures," the Council has determined that an Environmental Impact Statement is not required.

Dated: January 13, 1981.

Robert R. Garvey, Jr.,

Executive Director.

36 CFR is amended by adding Part 801 to read as follows:

PART 801—HISTORIC PRESERVATION REQUIREMENTS OF THE URBAN DEVELOPMENT ACTION GRANT PROGRAM

Sec.

801.1 Purpose and authorities.
801.2 Definitions.
801.3 Applicant responsibilities.
801.4 Council comments.
801.5 State Historic Preservation Officer responsibilities.
801.6 Coordination with Requirements Under the National Environmental Policy Act.
801.7 Reports to the Council.
Appendix Identification of properties.

Authority: Pub. L. 89–665, 80 Stat. 915 (16 U.S.C. 470); Pub. L. 94–422, 90 Stat. 1320 (16 U.S.C. 470i); Pub. L. 96–399, 94 Stat. 1619 (42 U.S.C. 5320).

§ 801.1 Purpose and authorities.

(a) These regulations are required by Section 110(c) of the Housing and Community Development Act of 1980 (HCDA) (42 U.S.C. 5320) and apply only to projects proposed to be funded by the Department of Housing and Urban Development (HUD) under the Urban Development Action Grant Program (UDAG) authorized by Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301). These regulations establish an expedited process for obtaining the comments of the Council specifically for the UDAG program and, except as specifically provided, substitute for the Council's regulations for the "Protection of Historic and Cultural Properties" (36 CFR Part 800).

(b) Section 110(c) of the HCDA of 1980 requires UDAG applicants to (1): Identify all properties, which are included in the National Register of Historic Places and which will be affected by the project for which the application is made; (2) identify all other properties, which will be affected by such project and which, as determined by the applicant, may meet the Criteria established by the Secretary of the Interior for inclusion on the National Register (36 CFR 1202.6); and (3) provide a description of the effect, as determined by the applicant, of the project on properties identified pursuant to paragraphs (b), (1) and (2) of this section. Further, the Act requires that the information developed by the applicant must be forwarded to the appropriate State Historic Preservation Officer (SHPO) for review and to the Secretary of the Interior for a determination as to whether the affected properties are eligible for inclusion in the National Register.

(c) Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), requires the head of any Federal agency with jurisdiction over a Federal, federally assisted or federally licensed undertaking that affects a property included in or eligible for inclusion in the National Register of Historic Places to take into account the effect of the undertaking on such property and afford the Council a reasonable opportunity to comment. The Secretary of HUD has delegated this responsibility to applicants with respect to projects proposed to be funded by the UDAG program.

§ 801.2 Definitions.

The terms defined in 36 CFR 80.2 shall be used in conjunction with this regulation. Furthermore, as used in these regulations:

(a) "Urban Development Action Grant Program" (UDAG) means the program of the Department of Housing and Urban Development (HUD) authorized by Title I of the Housing and Community Development Act (HCDA) of 1977 (42 U.S.C. 5318) to assist revitalization efforts in distressed cities and urban counties which require increased public and private investment.

(b) "Applicant" means cities and urban counties or Pocket of Poverty Communities which meet the criteria at 24 CFR 570.453. Except as specifically provided below, applicants must comply with these regulations rather than the Secretary of HUD.

(c) "Project" means a commerical, industrial, and/or neighborhood project supported by the UDAG program of the Department of HUD, as defined in 24 CFR 570.451(g). A project includes the group of integrally related public and private activities described in the grant application which are to be carried out to meet the objective of the action grant program and consists of all action grant funded activities together with all non-action grant funded activities. A project is an "undertaking" as defined in 36 CFR 800.2(c).

(d) "State Historic Preservation Officer Review Period" is a 45 day period provided to the appropriate State Historic Preservation Officer by Section 110(c) of the Housing and Community

Development Act (HCDA) of 1980 for comment on properties listed in the National Register or which may meet the Criteria and which will be affected by the proposed UDAG project.

(e) "Secretary of the Interior Determination Period" is a 45-day period provided by Section 110(c) of the HCDA of 1980 for a determination as to whether the affected properties are eligible for inclusion in the National Register.

§ 801.3 Applicant responsibilities.

As early as possible before the applicant makes a final decision concerning a project and in any event prior to taking any action that would foreclose alternatives or the Council's ability to comment, the applicant should take the following steps to comply with the requirements of Section 106 of the National Historic Preservation Act and Section 110 of the HCDA of 1980. In order to facilitate the commenting process the applicant should forward to the Council information on the proposed project if it is determined that National Register properties or properties which meet the Criteria for inclusion will be affected at the earliest practicable time. This will allow the Council to assist the applicant in expeditiously meeting its historic preservation requirements and facilitate the development of the Council's comments.

(a) *Information Required.* It is the primary responsibility of the applicant requesting Council comments to conduct the appropriate studies and to provide the information necessary for a review of the effect a proposed project may have on a National Register property or a property which meets the Criteria, as well as the information necessary for adequate consideration of modifications or alterations to the proposed project that could avoid, mitigate, or minimize any adverse effects. It is the responsibility of the applicant to provide the information specified in § 801.7, to make an informed and reasonable evaluation of whether a property meets the National Register Criteria (36 CFR 1202.6) and to determine the effect of a proposed undertaking on a National Register or property which meets the Criteria.

(b) *Identification of Properties.* Section 110 of the HCDA of 1980 makes UDAG applicants responsible for the identification of National Register properties and properties which may meet the Criteria for lising in the National Register that may be affected by the project. An appendix to these regulations sets forth guidance to applicants in meeting their identification responsibilities but does not set a fixed or inflexible standard for such efforts. Meeting this responsibility requires the applicant to make an earnest effort to identify and evaluate historic properties that may be affected by:

(1) Consulting the National Register of Historic Places to determine whether the project's impact area includes such properties;

(2) Applying the Department of the Interior Criteria for Evaluation (36 CFR 1202.6) to properties within the project's impact area through a site examination by qualified personnel;

(3) Utilizing local plans, surveys, or inventories of historic properties prepared by the locality or a recognized State or local historic authority;

(4) Obtaining, prior to initiating the State Historic Preservation Officer Review Period, relevant information that the State Historic Preservation Officer may have available concerning historic properties, if any, in the project's impact area: *Provided,* That a request for such information shall not be considered the initiation of the State Historic Preservation Officer Review Period; and,

(5) Utilizing other sources of information or advice the applicant deems appropriate.

(c) *Evaluation of Effect.* Applicants are required by Section 110(a) of the HCDA of 1980 to include in their applications a description of the effect of a proposed UDAG project on any National Register property and or any property which may meet the Criteria.

(1) *Criteria of Effect and Adverse Effect.* The following criteria, similar to those set forth in 36 CFR 800.3, shall be used to determine whether a project has an effect or an adverse effect.

(i) *Criteria of Effect.* The effect of a project on a National Register or eligible property is evaluated in the context of the historical, architectural, archeological, or cultural significance possessed by the property. A project shall be considered to have an effect whenever any condition of the project causes or may cause any change, beneficial or adverse, in the quality of the historical, architectural, archeological, or cultural characteristics that qualify the property to meet the Criteria of the National Register. An effect occurs when a project changes the integrity of location, design, setting, materials, workmanship, feeling or association of the property that contributes to its significance in accordance with the National Register Criteria. An effect may be direct or indirect. Direct effects are caused by the project and occur at the same time and place. Indirect effects include those cause by the undertaking that are later in time or farther removed in distance, but are still reasonably foreseeable. Such effects involve development of the project site around historic properties so as to affect the access to, use of, or significance of those properties.

(ii) *Criteria of Adverse Effect.* Adverse effects on National Register properties or properties which meet the Criteria may occur under conditions which include but are not limited to:

(A) Destruction or alteration of all of part of a property;

(B) Isolation from or alteration of the property's surrounding environment;

(C) Introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting;

(D) Neglect of a property resulting in its deterioration or destruction;

(iii) *Special Considerations.* If rehabilitation is a project activity, such components of the project may be considered to have no adverse effect and need not be referred to the Council if it is undertaken in accordance with the *Secretary of the Interior's Standards for Historic Preservation Projects.* (U.S. Department of the Interior, Heritage Conservation and Recreation Service, Washington, D.C., 1979) and the State Historic Preservation Officer concurs in the proposed activity. Additionally, the following types of project components or elements will be considered to not normally adversely affect properties listed in the National Register or which meet the Criteria.

(A) Insulation (except for the use of granular or liquid injected foam insultation in exterior walls or other vertical surfaces);

(B) Caulking;

(C) Weatherstripping;

(D) Replacement of Heating, Ventilating and Air Conditioning (HVAC) equipment: *Provided,* That such equipment is screened from public view and that the State Historic Preservation Officer and the applicant agree the equipment will not affect those qualities of the property which qualify it to meet the 36 CFR 1202.6 Criteria;

(E) In-kind refenestration (for example, replacement of deteriorated windows of a similar configuration, color and material);

(F) Lowering of ceilings: *Provided,* The ceilings will not be visible from outside of the building or from an interior public space and that the State Historic Preservation Officer and the applicant agree it will not affect a quality which qualified the building to meet the 36 CFR 1202.6 Criteria;

(G) Replacement in-kind of substantially deteriorated material, provided that the State Historic

Preservation Officer and the applicant agree;

(H) Installation of machinery, equipment, furnishings, fixtures, etc., in the interior of existing buildings: *Provided*, That the State Historic preservation Officer and the applicant agree such installations will have no effect on those qualities which qualified the building to meet the 36 CFR 1202.6 Criteria.

(I) Use of land containing known or possible archeological resources under specified conditions (See Appendix, Section D)

(2) *Determinations of Effect.* Prior to submitting an application to HUD, the applicant shall apply the Criteria of Effect and Adverse Effect to all properties which are listed in the National Register or which may meet the Criteria in the area of the project's environmental impact. In order to facilitate the process, information shall be requested from the State Historic Preservation Officer on applying the Criteria of Effect and Adverse Effect. Special attention should be paid to indirect effects, such as changes in land use, traffic patterns, street activity, population density and growth rate. While some aspects of a project may have little potential to adversely effect the significant qualities of a historic property, other project components may meet the Criteria of Effect and Adverse Effect. If any aspect of the project results in an effect determination, further evaluation of the effect shall be undertaken in accordance with these regulations. The resulting determination regarding the effect shall be included in the application.

(i) *No Effect.* If it is determined that the project will have no effect on any National Register property and property which meets the Criteria, the project requires no further review by the Council unless a timely objection is made by the Executive Director. An objection may be made by the Executive Director at any time during the UDAG application process prior to the expiration of the period for receiving objections to HUD's release of funds as specified in 24 CFR 58.31. The Executive Director may consider the views of the State Historic Preservation Officer and others, including members of the general public, in reaching a decision on whether the project has an effect, but the final determination as to effect shall be made solely by the Executive Director.

(ii) *Determinations of No Adverse Effect.* If the applicant finds there is an effect on the property but it is not adverse, the applicant after the close of the State Historic Preservation Officer Review Period shall forward adequate documentation (see § 801.7(a)) of the Determination, including the comments of the State Historic Preservation Officer, if available, to the Executive Director for review in accordance with § 801.4.

(iii) *Adverse Effect Determination.* If the applicant finds the effect to be adverse or if the Executive Director objects to an applicant's no adverse effect determination pursuant to § 801.4(a), the applicant shall proceed with the consultation process in accordance with § 801.4(b).

§ 801.4 Council Comments.

The following subsections specify how the Council will respond to an applicant's request for the Council's comments required to satisfy the applicant's responsibilities under Section 106 of the Act and Section 110 of the HCDA of 1980. When appropriate, an applicant may waive the time periods specified in these regulations.

(a) *Response to determinations of no adverse effect.* (1) Upon receipt of a Determination of No Adverse Effect from an applicant, the Executive Director will review the Determination and supporting documentation required by § 801.7(a). Failure to provide the required information at the time the applicant requests Council comments will delay the process. The Executive Director will respond to the applicant within 15 days after receipt of the information required in § 801.7(a). Unless the Executive Director objects to the Determination within 15 days after receipt, the applicant will be considered to have satisfied its responsibilities under Section 106 of the Act and these regulations and no further Council review is required.

(2) If the Executive Director objects to a Determination of No Adverse Effect, the consultation process pursuant to § 801.4(b) shall be initiated.

(b) *Consultation Process.* If any aspect of the project is found to be adverse, the applicant, the State Historic Preservation Officer and the Executive Director shall consult to consider feasible and prudent alternatives to the project that could avoid, mitigate, or minimize the adverse effect on the affected property.

(1) *Parties.* The applicant, the State Historic Preservation Officer and the Executive Director shall be the consulting parties. The Department of HUD, other representatives of national, State, or local units of government, other parties in interest, and public and private organizations, may be invited by the consulting parties to participate in the consultation process.

(2) *Timing.* The consulting parties shall have a total of 45 days from the receipt by the Executive Director of the information required in § 801.7(a) to agree upon feasible and prudent alternatives to avoid, mitigate, or minimize any adverse effects of the project. Failure of an applicant to provide the information required in § 801.7(b) will delay the beginning of the time period specified above.

(3) *Information Requirements.* The applicant shall provide copies of the information required in § 801.7(b) to the consulting parties at the initiation of the consultation process and make it readily available for public inspection.

(4) *Public Meeting.* An onsite inspection and a Public Information Meeting may be held in accordance with the provisions of 36 CFR 800.6(b). Public hearings or meetings conducted by the applicant in the preparation of the application may, as specified below, substitute for such Public Information Meetings. Upon request of the applicant, the Executive Director may find that such public meetings have been adequate to consider the effect of the project on National Register properties or properties which meet the Criteria, and no further Public Information Meeting is required.

(5) *Consideration of Alternatives.* During the consultation period, the consulting parties shall, in accordance with the policies set forth in 36 CFR 800.6(b) (4) and (5), review the proposed project to determine whether there are prudent and feasible alternatives to avoid or satisfactorily mitigate adverse effect. If they agree on such alternatives, they shall execute a Memorandum of Agreement in accordance with Section 801.4(c) specifying how the undertaking will proceed to avoid or mitigate the adverse effect.

(6) *Acceptance of Adverse Effect.* If the consulting parties determine that there are no feasible and prudent alternatives that could avoid or satisfactorily mitigate the adverse effects and agree that it is in the public interest to proceed with the proposed project they shall execute a Memorandum of Agreement in accordance with § 801.4(c) acknowledging this determination and specifying any recording, salvage, or other measures associated with acceptance of the adverse effects that shall be taken before the project proceeds.

(7) *Failure to Agree.* Upon the failure of the consulting parties to agree upon the terms for a Memorandum of Agreement within the specified time period, or upon notice of a failure to agree by any consulting party to the

Executive Director, the Executive Director within 15 days shall recommend to the Chairman whether the matter should be scheduled for consideration at a Council meeting. If the Executive Director recommends that the Council not consider the matter, he shall simultaneously notify all Council members. The applicant and the State Historic Preservation Officer shall be notified in writing of the Executive Director's recommendation.

(c) *Memorandum of Agreement*—(1) *Preparation of Memorandum of Agreement.* It shall be the responsibility of the Executive Director to prepare each Memorandum of Agreement required under this part. As appropriate, other parties may be invited by the consulting parties to be signatories to the Agreement or otherwise indicate their concurrence with the Agreement. In order to facilitate the process, the applicant may provide the Executive Director a draft for a Memorandum of Agreement. At the applicant's option, such draft may be prepared at the time the applicant makes its determinations that properties listed in the National Register or which may meet the Criteria for listing in the National Register may be adversely affected. The applicant must provide the State Historic Preservation Officer an opportunity to concur in or comment on its draft Agreement.

(2) *Review of Memorandum of Agreement.* Upon receipt of an executed Memorandum of Agreement, the Chairman shall institute a 15 day review period. Unless the Chairman notifies the applicant that the matter has been placed on the agenda for consideration at a Council meeting, the Agreement shall become final when ratified by the Chairman or upon the expiration of the 15 day review period with no action taken. Copies will be provided to signatories and notice of executed Memoranda of Agreement shall be published by the Council in the **Federal Register.** A copy of the Memorandum of Agreement should be included in any Environmental Assessment or Environmental Impact Statement prepared pursuant to the National Environmental Policy Act.

(3) *Effect of Memorandum of Agreement.* (i) Agreements duly executed in accordance with these regulations shall constitute the comments of the Council and shall evidence satisfaction of the applicant's responsibilities for the proposed project under Section 106 of the Act and these regulations.

(ii) If the Council has commented on an application that is not approved by HUD and a subsequent UDAG application is made for the same project, the project need not be referred to the Council again unless there is a significant amendment to the project which would alter the effect of the project on previously considered properties or result in effects on additional National Register properties or properties which meet the Criteria.

(iii) Failure to carry out the terms of a Memorandum of Agreement requires that the applicant again request the Council's comments in accordance with these regulations. In such instances, until the Council issues its comments under these regulations the applicant shall not take or sanction any action or make any irreversible or irretrievable commitment that could result in an adverse effect with respect to National Register properties or properties which are eligible for inclusion in the National Register covered by the Agreement or that would foreclose the Council's consideration of modifications or alternatives to the proposed project that could avoid or mitigate the adverse effect.

(4) Amendment of a Memorandum of Agreement. Amendments to the Agreement may be made as specified is 36 CFR 800.6(c)(4).

(5) *Report on Memorandum of Agreement.* Within 90 days after carrying out the terms of the Agreement, the applicant shall report to all signatories on the actions taken.

(d) *Council Meetings.* Council meetings to consider a project will be conducted in accordance with the policies set forth in 36 CFR 800.6(d).

(1) *Response to Recommendation for Consideration at Council Meeting.* (i) Upon receipt of a recommendation from the Executive Director concerning consideration of a proposed project at a Council meeting, the Chairman shall determine whether the project will be considered and shall notify the Executive Director, the applicant, HUD, and the State Historic Preservation Officer of his decision. In reaching a decision the Chairman shall consider any comments from Council members.

(ii) If the Chairman decides against consideration of the project at a Council meeting, a written summary of the project, any recommendations for action by the applicant and HUD, and the decision shall be sent to each member of the Council. The Chairman shall also notify the applicant, the Department of HUD, the State Historic Preservation Officer and other parties in interest of the decision. Such notice shall be evidence of satisfaction of the applicant's responsibilities for the proposed project under Section 106 of the Act and these regulations.

(2) *Decision to Consider the Project.* When the Council will consider a proposed project at a meeting, the Chairman shall either designate five members as a panel to hear the matter on behalf of the full Council or schedule the matter for consideration by the full Council. In either case, the meeting shall take place within 30 days of the Chairman's receipt of the recommendations of the Executive Director, unless the applicant agrees to a longer time.

(i) A panel shall consist of three non-Federal members, one as Chairman, and two Federal members. The Department of HUD may not be a member of such panel.

(ii) Prior to any panel or full Council consideration of a matter, the Chairman will notify the applicant and the State Historic Preservation Officer and other parties in interest of the date on which the project will be considered. The Executive Director, the applicant, the Department of HUD, and the State Historic Preservation Officer shall prepare reports in accordance with § 801.7(b). Reports from the applicant and the State Historic Preservation Officer must be received by the Executive Director at least 7 days before any meeting.

(3) *Meeting Notice.* At least 7 days notice of all meetings involving Council review of projects in accordance with these regulations shall be given by publication in the **Federal Register.** The Council shall provide a copy of the notice by mail to the applicant, the State Historic Preservation Officer, and the Department of Housing and Urban Development.

(4) *Statements to the Council.* An agenda shall provide for oral statements from the Executive Director; the applicant; the Department of HUD; parties in interest; the Secretary of the Interior; the State Historic Preservation Officer; representatives national, State, or local units of government, and interested public and private organizations and individuals. Parties wishing to make oral remarks should notify the Executive Director at least two days in advance of the meeting. Parties wishing to have their statements distributed to Council members prior to the meeting should send copies of the statements to the Executive Director at least 5 days in advance.

(5) *Comments of the Council.* The written comments of the Council will be issued within 7 days after a meeting. Comments by a panel shall be considered the comments of the full Council. Comments shall be made to the applicant requesting comment and to the Department of HUD in order to assist

the Department in taking final action on the application. Immediately after the comments are made to the applicant and the Department of HUD, the comments of the Council will be forwarded to the President and the Congress as a special report under authority of Section 202(b) of the Act and a notice of availability will be published in the Federal Register. The comments of the Council shall be available to the State Historic Preservation Officer, other parties in interest, and the public upon receipt of the comments by the applicant. The applicant should include the comments of the Council in any final Environmental Impact Statement prepared pursuant to the National Environmental Policy Act.

(6) *Action in Response to Council Comments.* Upon receipt of the Council's comments after a meeting, the applicant and the Department of HUD shall take these comments into account in reaching a final decision on the proposed project. When a final decision regarding the proposed project is reached by the applicant and the Department of HUD, they shall submit written reports to the Council describing the actions taken by them and other parties in response to the Council's comments and the impact that such actions will have on the affected National Register properties or properties eligible for inclusion in the National Register. Receipt of this report by the Chairman shall be evidence that the applicant has satisfied its responsibilities for the proposed project under Section 106 of the Act and these regulations. The Council may issue a final report to the President and the Congress under authority of Section 202(b) of the Act describing the actions taken in response to the Council's comments including recommendations for changes in Federal policy and programs, as appropriate.

(e) *Suspense of Action.* Until the Council issues its comments under these regulations and during the State Historic Preservation Officer review period and the determination period of the Secretary of the Interior, good faith consultation shall preclude the applicant from taking or sanctioning any action or making any irreversible or irretrievable commitment that could result in an adverse effect on a National Register or property which may meet the Criteria or that would foreclose the consideration of modifications or alternatives to the proposed project that could avoid, mitigate, or minimize such adverse effects. In no case shall UDAG funds be used for physical activities on the project site until the Council comments have been completed. Normal planning and processing of applications short of actual commitment of funds to the project may proceed.

(f) *Lead Agency.* If the project proposed by the applicant involves one or more Federal agencies, they may agree on a single lead agency to meet the requirements of Section 106 of the National Historic Preservation Act and Section 110 of the Housing and Community Development Act of 1980 and notify the Executive Director. If the applicant is the designated lead agency, these regulations shall be followed. If a Federal agency is designated lead agency, the process in 36 CFR Part 800 shall be used.

(g) *Compliance by a Federal Agency.* An applicant may make a finding that it proposes to accept a Federal agency's compliance with Section 106 of the Act and 36 CFR Part 800 where its review of the Federal agency's findings indicate that:

(1) The project is identical with an undertaking reviewed by the Council under 36 CFR Part 800; and

(2) The project and its impacts are included within the area of potential environmental impact described by the Federal agency;

The applicant shall notify the State Historic Preservation Officer and the Executive Director of its finding of compliance with Section 106 of the Act and 36 CFR Part 800 and provide a copy of the Federal agency's document where the finding occurs. Unless the Executive Director objects within 10 days of receipt of such notice the Council need not be afforded further opportunity for comment. If the Executive Director objects to the finding of the applicant, the applicant shall comply with § 801.4.

§ 801.5 State Historic Preservation Officer Responsibilities.

(a) The State Historic Preservation Officer shall participate in the review process established by Section 110(c) of the HCDA of 1980 whenever it concerns an undertaking located within the State Historic Preservation Officer's jurisdiction. The State Historic Preservation Officer shall have a maximum period of 45 days in which to formally comment on an applicant's determination that the project may affect a property that is lised in the National Register or which may meet the Criteria for listing in the National Register. This period does not include any effort by the applicant to obtain information from the State Historic Preservation Officer which the applicant considers in reaching its determinations regarding whether a property meets the Criteria for listing in the National Register and whether such property is affected by the project.

(b) The failure of a State Historic Preservation Officer to participate in any required steps of the process set forth in this part shall not prohibit the Executive Director and the applicant from concluding the Section 106 process, including the execution of a Memorandum of Agreement.

§ 801.6 Coordination with Requirements Under the National Environmental Policy Act (42 U.S.C. 4321 et seq)

The National Historic Preservation Act and the National Environmental Policy Act create separate and distinct responsibilities. The National Historic Preservation Act applies to those aspects of a project which may affect National Register properties and those which are eligible for listing in the National Register. The requirements for the National Environmental Policy Act apply to the effect that the project will have on the human environment. To the extent that the applicant finds it practicable to do so, the requirements of these two statutes should be integrated. Some projects, for reasons other than the effects on historic properties, may require an Environmental Impact Statement (EIS) subject to the time requirements for a draft and final EIS, in which case the applicant may choose to separately relate to the State Historic Preservation Officer, the Department of the Interior, and the Council for purposes of Section 110(c) of the HCDA of 1980. In that event, information in the draft EIS should indicate that compliance with Section 106 and these regulations is underway and the final EIS should reflect the results of this process. Applicants are directed to 36 CFR 800.9, which describes in detail the manner in which the requirements of these two acts should be integrated and applies to all UDAG applicants under these regulations. In those instances in which an Environmental Impact Statement will be prepared for the project, the applicant should consider phasing compliance with these procedures and the preparation of the Statement. This may necessitate the applicant waiving the time requirements set forth in § 801.4.

§ 801.7 Reports to the Council.

In order to adequately assess the impact of a proposed project on National Register and eligible properties, it is necessary for the Council to be provided certain information. For the purposes of developing Council comments on UDAG projects the following information is required. Generally, to the extent that

relevant portions of a UDAG application meet the requirements set forth below it will be sufficient for the purposes of Council review and comment.

(a) *Information Requirements for Applicants*—(1) *Documentation for Determination of No Adverse Effect.* Adequate documentation of a Determination of No Adverse Effect pursuant to § 801.3(c)(1) should include the following:

(i) A general discussion and chronology of the proposed project;

(ii) A description of the proposed project including, as appropriate, photographs, maps, drawings, and specifications;

(iii) A list of National Register and eligible properties that will be affected by the project including a description of the property's physical appearance and significance;

(iv) A brief statement explaining why each of the Criteria of Adverse Effect (See § 801.3(c)(1)) was found inapplicable;

(v) Written views of the State Historic Preservation Officer concerning the Determination of No Advese Effect, if available; and,

(vi) An estimate of the cost of the project including the amount of the UDAG grant.

(2) *Preliminary Case Reports.* Preliminary Case Reports should be submitted with a request for comments pursuant to § 801.4(b) and should include the following information:

(i) A general discussion and chronology of the proposed project.

(ii) The status of the project in the HUD approval process.

(iii) The status of the project in the National Environmental Policy Act compliance process and the target date for completion of all the applicant's environmental responsibilities.

(iv) A description of the proposed project including as appropriate, photographs, maps, drawings and specifications.

(v) A list of National Register and eligible properties that will be affected by the project including a description of the property's physical appearance and significance.

(vi) A brief statement explaining why any of the Criteria of Adverse Effect (See § 801.3(c)(1)(b)) apply;

(vii) Written views of the State Historic Preservation Officer concerning the effect on the property, if available;

(viii) The views of Federal agencies, State and local governments, and other groups or individuals, when known as obtained through the OMB Circular A-95 process or the environmental review process, public hearings or other applicant processes;

(ix) A description and analysis of alternatives that would avoid the adverse effects;

(x) A description and analysis of alternatives that would mitigate the adverse effects; and,

(xi) An estimate of the cost of the project including the amount of the UDAG grant.

(b) *Reports for Council meetings.* Consideration of a proposed project by the full Council or a panel pursuant to § 801.4(b) is based upon reports from the Executive Director, the State Historic Preservation Officer and Secretary of the Interior. Requirements for these reports are specified in 36 CFR 800.13(c). Additionally, reports from the applicant and the Department of HUD are required by these regulations. The requirements for these reports consist of the following:

(1) *Report of the Applicant.* The report from the applicant requesting comments shall include a copy of the relevant portions of the UDAG application; a general discussion and chronology of the proposed project; an account of the steps taken to comply with the National Environmental Policy Act (NEPA); any relevant supporting documentation in studies that the applicant has completed; an evaluation of the effect of the project upon the property, with particular reference to the impact on the historical, architectural, archeological, and cultural values; steps taken or proposed by the applicant to avoid or mitigate adverse effects of the projects; a thorough discussion of alternate courses of action; and an analysis comparing the advantages resulting from the project with the disadvantages resulting from the adverse effects on National Register or eligible properties.

(2) *Report of the Secretary of Housing and Urban Development.* The report from the Secretary shall include the status of the application in the UDAG approval process, past involvement of the Department with the applicant and the proposed project or land area for the proposed project and information on how the applicant has met other requirements of the Department for the proposed project.

Appendix—Identification of Properties

A. Introduction

Because of the high probability of locating properties which are listed in the National Register or which meet the Criteria for listing in many older city downtowns, this appendix is designed to serve as guidance for UDAG applicants in identifying such properties. In addition, because archeological resources present problems in an urban context, guidance is also set forth regarding this class of resources.

B. Role of the State Historic Preservation Officer

In any identification effort to locate Historic Register properties or properties which meet the Criteria, the State Historic Preservation Officer is a key figure. The State Historic Preservation Officer will be of vital assistance to the applicant. The State Historic Preservation Officer can provide information on known properties as well as studies which have taken place in the project area. Early contact should be made with the State Historic Preservation Officer for recommendations and suggestions regarding efforts that should be undertaken to identify properties. For UDAG projects, identification of National Register properties which meet the Criteria is the responsibility of the applicant. The level of identification effort should be made in consultation with the State Historic Preservation Officer with due consideration to the nature of the project and its impacts, the likelihood of historic properties being affected and the state of existing knowledge regarding historic properties in the area of the project's potential environmental impact.

C. Levels of Identification

1. The area of the project's potential environmental impact consists of two distinct subareas: That which will be disturbed directly (generally the construction site and its immediate environs) and that which will experience indirect effects. Within the area of indirect impact, impacts will be induced as a result of carrying the project out. Historic and cultural properties subject to effect must be identified in both subareas, and the level of effort necessary in each may vary. The level of effort needed is also affected by the stage of planning and the quality of pre-existing information. Obviously, if the area of potential environmental impact has already been fully and intensively studied before project planning begins, there is no need to duplicate this effort. The State Historic Preservation Officer should be consulted for information on previous studies. Assuming the area has not been previously intensively studied, identification efforts generally fall into three levels:

a. *Overview Study:* This level of study is normally conducted as a part of general planning and is useful at an early stage in project formulation. It is designed to obtain a general

understanding of an area's historic and cultural properties, by:

(1) Assessing the extent to which the area has been previously subjected to study;

(2) Locating properties previously recorded;

(3) Assessing the probability that properties eligible for the National Register will be found if the area is closely inspected, and

(4) Determining the need, if any, for further investigation.

An overview study includes study of pertinent records (local histories, building inventories, architectural reports, archeological survey reports, etc.), and usually some minor on-the-ground inspection.

b. *Identification Study:* An identification study attempts to specifically identify, and record all properties in an area that may meet the Criteria for listing on the National Register. It is conducted in consultation with the State Historic Preservation Officer, and includes study of pertinent background data plus a thorough on-the-ground inspection of the subject area by qualified personnel. For very large areas, or areas with uncertain boundaries, such a study may focus on representative sample areas, from which generalizations may be made about the whole.

c. *Definition and Evaluation Study:* If an overview and/or an identification study have indicated the presence or probable presence of properties that may meet the National Register Criteria but has not documented them sufficiently to allow a determination to be made about their eligibility, a definition and evaluation study is necessary. Such a study is directed at specific potentially eligible properties or at areas known or suspected to contain eligible properties. It includes an intensive on-the-ground inspection and related studies as necessary, conducted by qualified personnel and provides sufficient information to apply the National Register's "Criteria for Evaluation" (36 CFR 1202.6).

2. An overview study will normally be needed to provide basic information for planning in the area of potential environmental impact. Unless this study indicates clearly that no further identification efforts are needed (e.g. by demonstrating that the entire area has already been intensively inspected with negative results, or by demonstrating that no potentially significant buildings have ever been built there, and there is virtually no potential for archeological resources), an identification study will probably be needed within the area of potential environmental impact. This study may show that there are no potentially eligible properties within the area, or may show that only a few such properties within the area, or may show that only a few such properties exist, and document them sufficiently to permit a determination of eligibility to be made in accordance with 36 CFR Part 1202. Alternatively, the study may indicate that potentially eligible properties exist in the area, but may not document them to the standards of 36 CFR Part 1202. Should this occur, a definition and evaluation study is necessary for those properties falling within the project's area of direct effect and for those properties subject to indirect effects. If a property falls within the general area of indirect effect, but no indirect effects are actually anticipated on the property in question, a definition and evaluation study will normally be superfluous.

D. Identification and Consideration of Archeological Properties in an Urban Context.

1. Archeological sites in urban contexts are often difficult to identify and evaluate in advance of construction, because they are sealed beneath modern buildings and structures. Prehistoric and historic sites within cities may be important both to science and to an understanding of each city's history, however, and should be considered in project planning. Special methods can be used to ensure effective and efficient consideration and treatment of archeological sites in UDAG projects.

a. If it is not feasible to physically determine the existence or nonexistence of archeological sites in the project area, the probability or improbability of their existence can be determined, in most cases, through study of:

(1) Information on the pre-urban natural environment, which would have had an effect on the location of prehistoric sites;

(2) Information from surrounding areas and general literature concerning the location of prehistoric sites;

(3) State and local historic property registers;

(4) Archeological survey reports;

(5) Historic maps, atlases, tax records, photographs, and other sources of information on the locations of earlier structures;

(6) Information on discoveries of prehistoric or historic material during previous construction, land levelling, or excavation.

b. Where review of such sources of information reveals no significant likelihood that archeological resources which meet the National Register Criteria exist on the project site, no further review is required with respect to archeology.

2. Where review of sources of information such as those listed in Section D(1)(a) above, reveals that archeological resources which meet the National Register Criteria are likely to exist on the project site, but these resources are so deeply buried that the project will not intrude upon them, or they are in a portion of the project site that will not be disturbed, a determination of "No Effect" is appropriate in accordance with § 801.3.

3. Where review of sources of information such as those listed in Section D(1)(a) above, reveals that archeological resources which meet the Criteria exist or are likely to exist on the project site, and that the project is likely to disturb them, a determination of "No Adverse Effect" may be made in accordance with § 801.3(a)(2)(B) if:

a. The applicant and/or developer is committed to fund a professionally supervised and planned pre-construction testing program, and to modification of the project in consultation with the State Historic Preservation Officer to protect or incorporate within the project the archeological resources discovered with a minimum of damage to them, or if:

b. The applicant and/or developer is committed to fund a professionally supervised and planned archeological salvage program, coordinated with site clearing and construction, following the standards of the Secretary of the Interior set forth at 36 CFR Part 1210, and the applicant finds that this program negates the adverse effect, in accordance with the standards set forth in Section X of the Council's "Supplementary Guidance for Review of Proposals for Treatement of Archeological Properties" (45 FR 78808).

4. When archeological sites included in the National Register or which meet the Criteria are found to exist on the project site or in the area of the project's environmental impact, and where the project is likely to disturb such resources, and where the adverse effect of such disturbance cannot be negated by archeological salvage, a determination of "Adverse Effect" is appropriate in accordance with § 801.3(a)(2)(C).

[FR Doc. 81-1873 Filed 1-16-81: 8:45 am]

BILLING CODE 4310-10-M

federal register

Monday
January 19, 1981

Part XXII

Department of Transportation

Office of the Secretary

Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Implementation of Title VI of the Civil Rights Act of 1964; Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 21

[OST Docket No. 18; Amdt. No. 21-4]

DOT Title VI Regulation—Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Implementation of Title VI of the Civil Rights Act of 1964

AGENCY: Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Transportation proposes this regulation to revise and update the Department's rules implementing Title VI of the Civil Rights Act of 1964. Title VI provides that no person shall, on the ground of race, color or national origin, be excluded from, be denied the benefits of, or be discriminated against under any program or activity receiving Federal financial assistance.

The Department's existing Title VI regulation was published in June, 1970. Since that time, changes in administrative practice have occurred. The existing regulation no longer fully reflects the dimension and approach of the Department's Title VI program. Therefore, the Department has decided to publish a new Title VI regulation which reflects current practice and gathers into one document all Title VI requirements affecting the Department's financial assistance programs.

COMMENT CLOSING DATE: April 20, 1981.

ADDRESS FOR COMMENTS: Comments submitted should refer to OST Docket No. 18 and be sent (preferably in triplicate) to the U.S. Department of Transportation, Docket Clerk, Room 10424, 400 Seventh Street, S.W., Washington, D.C. 20590. All comments submitted will be available for public inspection both before and after the closing date at the above address. Office hours are from 9:00 a.m. to 5:30 p.m., E. T., Monday–Friday.

FOR FURTHER INFORMATION CONTACT: Robert J. Coates, Chief, Public Programs Division, or Dorsey R. Thomas, Public Programs Division, Room 9201. (Phone: 202 426–4754).

The address of these individuals is 400 Seventh Street, S.W., Washington, D.C. 20590. Normal business hours are 9:00 a.m. to 5:30 p.m., Monday through Friday. All times given are eastern time.

SUPPLEMENTARY INFORMATION: Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) is the cornerstone of the Federal government's policy to ensure that Federal financial assistance is not used in programs which discriminate against persons because of their race, color, or national origin.

The statute provides that: No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Applicants for or recipients of Federal financial assistance who fail to comply with this mandate are subject to the loss of their Federal assistance, following appropriate procedural safeguards. The Department of Transportation Regulation which carries out Title VI is 49 CFR Part 21. It was published on June 18, 1970.

Over the years, the Department's transportation assistance activities have changed and the DOT Title VI program has become more complex. In order to carry out its responsibilities, the Departmental Office of Civil Rights and the elements of the Department (e.g. the Federal Highway Administration, the Urban Mass Transportation Administration) have created administrative requirements and procedures to ensure that recipients of DOT financial assistance meet their Title VI responsibilities. For example, the Urban Mass Transportation Administration, Federal Highway Administration, Coast Guard and Federal Aviation Administration each have circulars, instructions, or guidelines setting forth the obligations of recipients and the administrative process enforcing these obligations. The Office of the Secretary, in January 1977, created an internal order which assigned Title VI responsibilities within the Department (DOT Order 1000.12). None of the details of these directives has been made part of the Code of Federal Regulations. Because the details of the directives vary somewhat, recipients who deal with more than one Departmental element may face differing or duplicative requirements.

The emphasis of much of the administrative guidance which has arisen since the publication is on application (pre-approval) reviews.

The application review approach is now required by Department of Justice regulations applicable to all Federal agencies (28 CFR Part 42, Subpart F). These Department of Justice regulations spell out requirements for Title VI programs, some of which do not appear in DOT's present Part 21.

The aims of this proposed revision of Part 21 are to make the DOT rules consistent with Department of Justice requirements, to gather all DOT Title VI guidance and requirements affecting recipients and the public into one place for easier reference, to reflect appropriately in a regulation the importance of application reviews in the Department's Title VI program, and to make the Department's requirements as clear and understandable as possible. To this end, the proposed rule is organized into three subparts and a number of appendices. The three subparts deal respectively with general requirements, means of determining whether applicants and recipients comply with the requirements (e.g. planning, application and compliance reviews and complaint investigations), and enforcement procedures (e.g. conciliation and sanctions). The appendices give examples of activities to which the regulation applies and programs in which employment practices are covered by Title VI; set forth a new standard, DOT Title VI assurance; internal procedures; a new pre-approval Title VI assessment form; and relate any specific requirements or procedures peculiar to a Departmental Element.

Title VI prohibits discrimination against minority businesses. A recent DOT rule (49 CFR Part 23) sets forth requirements for DOT recipients in the minority business program. Minority business matters are handled through Part 23 rather than through this rule. Enforcement procedures under Part 23 and this rule are identical.

Section-by-Section Analysis

This portion of the supplementary information concerning the proposed rule examines each section of the proposal, highlighting changes from the existing regulation and explaining the reasons for the proposed changes and additions to the rule.

Subpart A—General

Section 21.1 Purpose. This statement of the purpose of the entire regulation is substantively unchanged from the parallel section of the existing rule.

Section 21.3 Definitions. The definitions section of the rule has been expanded considerably from the present § 21.23. The section contains a number of new definitions, and some of the existing definitions have been clarified.

The definition of "applicant" is essentially unchanged from the present regulations, although the redundant definition of "application" has been dropped. The definition of "beneficiary," which is new, emphasizes that a beneficiary is not a recipient. An "ultimate beneficiary" is the last person in a chain of benefits flowing from a

covered program, such as the consumer of a transportation service.

The next several definitions (compliance, contractor, Department or DOT, Departmental Element, Director and discrimination) are not complicated concepts, but are placed in the definitions section to ensure a standard understanding of frequently used terms. The definition of "disparate negative effect", which applies only and benefits and services, is new and emphasizes that the provision of a lower level of services or more harmful effects of programs to some persons than to others may be discriminatory. The definition of "facility" and "financial assistance" are taken directly from the existing definitions except that licensees are now covered explicitly under the latter. Covered licenses include those to construct or operate a program or facility (e.g. a deepwater port) but not individual licenses (e.g. aircraft pilot licenses).

The definition of "noncompliance," which is new, points out that a violation of Title VI obligations can arise both by a failure to meet the direct requirements of Title VI or Part 21 and by a failure to carry out the provisions of the standard Title VI assurance which every recipient must sign. The definition of "Office" simply establishes standard usage for a term used repeatedly in the rule. The new definition of "participant" encompasses a class of persons and organizations who are neither direct recipients of DOT funds nor the ultimate consumer of DOT-funded services or facilities. Any party involved in the planning, construction, operation, or other phases of a program (e.g. contractors, concessionaires) is a participant, and may have obligations and may be protected against discrimination under the regulations. We are especially interested in receiving comments on this definition and its use in the text. The definition of "person" means any natural person, corporation, partnership, utility, unincorporated association and includes American Indian tribes, groups or nations. The definition of "positive steps" has been added. It emphasizes that necessary steps must be taken to assure that equitable services and benefits are provided to ensure nondiscrimination in all aspects of the planning and execution of programs. The definition of "program" (which includes the allied terms "project" and "activity," both of which are deemed to be aspects or expressions of programs) has been shortened and simplified from the version in the present Part 21. This editorial change is not intended to affect the substance of the definition, however. The definition of "recipient" has also been editorially simplified, and emphasizes that participants are considered to be recipients for purposes of Title VI responsibilities even though they do not directly receive DOT funds. The subdefinition of "primary recipient" is substantively unchanged from the present rule.

Because in many DOT program contexts, the relocation of persons displaced by the project is an important Title VI concern, a definition of "relocation assistance," which refers to the Uniform Relocation Assistance and Real Property Acquisition Policies Act, has been added. "Respondent" is defined to mean a party alleged or determined to be in noncompliance with the Act or the regulation. "Secretary," refers to the Secretary of Transportation. A concept new to the Title VI regulations, "transportation planning process," has been added. A transportation planning process means any planning process which is a prerequisite to the approval of a project or a grant under a DOT program. For example, the planning process of 23 U.S.C. 134 must be pursued by Metropolitan Planning Organizations (MPOs) before certain highway or mass transit projects may receive DOT approval and funding. The proposed regulation provides that planning processes will be reviewed to ensure that Title VI considerations are adequately taken into account in transportation planning. In addition to comments about the content of the various definitions, we are interested in receiving comments about whether other terms ought to be defined or whether terms in the definitions section are unnecessary and can be deleted.

Section 21.5 Applicability of this part. With minor editorial changes, this section's statement of the applicability of Part 21 is the same as that of § 21.3 of the present regulation. The list of programs covered by Title VI generally and covered by Title VI for purposes of employment, Appendices A and B, respectively—are not necessarily exhaustive. If Title VI in fact applies to a given program generally for employment purposes, the program is covered notwithstanding its absence from the appendices. Present or future programs may be added to either appendix from time to time by the Director of Civil Rights.

Section 21.7 Discrimination Prohibited. This section derives directly from § 21.5 of the present regulations. Subparagraphs (b)(2) and (3) have been reworded somewhat, though their substance has not been changed. Subparagraph (b)(4) of the present rule has been deleted on the ground that it states an obvious proposition—that benefits and services subject to Title VI requirements include those provided through a Federally funded facility.

Section 21.9 Consideration of Race, Color and National Origin. This section incorporates the language of § 21.5(b)(7) of the present rules. The subject is treated separately to emphasize the important point that it is permissible for a recipient to take the race, color, or national origin of beneficiaries, employees or others into account for beneficient purposes, such as positive steps to remedy the effects of past discrimination or to ensure nondiscriminatory treatment of all persons in the future.

Section 21.11 Employment Practices. Title VI covers the total employment practices of recipients under programs, a primary purpose of which is to provide employment. The first paragraph of this section (which derives from § 21.5(c)(1) of the present regulation with little change) sets forth this coverage. Programs, a primary purpose of which is to provide employment, are listed in Appendix B. This list was compiled by the departmental elements on the basis of their examination of the legislative history and operation of their programs. While these programs have other purposes in addition to creating jobs, it is the judgment of the Department that one of the primary purposes of each of them is to provide employment.

The other kind of employment coverage, even where a primary purpose of a program is not to provide employment, arises when discrimination in a certain kind of employment (e.g. public contact personnel, planners) could create discrimination in services to beneficiaries. Paragraph (b) of Appendix B explains this coverage of employment.

The last paragraph of this section points out that where employment may not be covered under Title VI, employment practices may be covered under DOT legislation such as Section 30 of the Airport and Airport and Airway Development Act of 1970, as amended, or Section 140 and 324 of the Federal-aid Highway Act of 1968, as amended.

Because the scope of coverage of employment under these proposed regulations may be somewhat wider than under the existing Part 21, the question arises whether this proposal could create equal employment opportunity requirements that overlap those of other Department of Transportation programs or programs of

other agencies (e.g. the EEOC). We invite comment on this issue, together with suggestions as to how best to deal with any overlap.

Section 21.13 Assurances Required. The DOT Title VI program has always required assurances—contractual documents setting forth a recipient's specific obligations under the Title VI program. This proposed rule incorporates a revised and expanded standard DOT assurance (found in Appendix C). The new assurance, considerably more inclusive than its predecessor, calls on recipients to agree to the detailed components of a Title VI program, in such areas as ensuring fair distribution of benefits and negative effects, providing for public information and citizen participation, complying with relevant requirements as to employment, minority business participation, and relocation assistance, and providing requested data to the Department for the purpose of monitoring compliance. Comments are specifically invited on the content of the new assurance.

This section provides for the phasing-in of the new assurances. Within 90 days from the effective date of the rule, all current recipients of DOT assistance will be required to sign a new assurance to replace their existing assurances. In addition, continuing recipients of DOT assistance (e.g. State highway departments) are required to submit a new signed assurance each year or certify compliance with the initial requirement in § 21.13(a). Failure to submit assurances is a form of noncompliance with Part 21.

Section 21.15 Title VI Assessment. This new section sets forth the requirement that each application for financial assistance contains a "Title VI Assessment" document, the basic form for which is found at Appendix E. This document requests information about all aspects of an applicant's Title VI posture necessary to allow the DOT element to make informed pre-approval compliance determinations. Pre-approval determinations are a key part of the Department's Title VI program. Comments are invited on the content and format of the Title VI Assessment, including modifications of the respective Departmental elements appendices. The Department is very concerned that this Assessment be as informative as possible without creating undue burdens on applicants.

Section 21.17 Intimidation and Retaliation Prohibited. This section, derived from § 21.11(e) of the present regulation, prohibits recipients and their employees from intimidating, coercing or retaliating against anyone for the purpose of interfering with a right or privilege granted by Title VI or Part 21 or in connection with any complaint or proceeding under this part. A sentence making explicit a long-standing administrative determination that violation of this prohibition constitutes noncompliance with the regulation is added. The present section's language relating to complainant confidentiality has been deleted and moved to Subpart B.

Section 21.19 Relationship to Other Laws, Regulations and Agencies. The requirements of Title VI are related to the requirements of other statutes and regulations and to the enforcement efforts of other Federal agencies. There are a number of Title VI-like statutes that prohibit discrimination in specific DOT grant programs, including Section 30 of the Airport and Airway Development Act, Section 19 of the Urban Mass Transportation Act, and 23 U.S.C. 324. In § 21.19(a), the Department proposes to be able to enforce these statutes through the mechanism of this Title VI regulation, in order to provide more uniform enforcement of all DOT civil rights requirements. This provision would not supersede existing regulations that implement Section 905 and Section 30, but simply would allow the Department to enforce its civil rights requirements according to a common scheme.

The program statutes cited all prohibit sex discrimination. Consequently, for the program each statute covers, the grounds on which discrimination is prohibited under this Title VI regulation would include sex as well as race, color, and national origin.

The Department recently published a final rule prohibiting discrimination against and requiring affirmative action to increase the participation of minority business enterprises in contracting opportunities under DOT financial assistance programs (49 CFR Part 23). To avoid duplication between this rule and the MBE regulation, discrimination against MBEs, though forbidden by Title VI, will be handled administratively only under the MBE rule and its enforcement procedures, which are identical to those of this Part.

Section 21.19(c) is taken, slightly modified, from § 21.21(c) of the existing Part 21. The purpose of the provision is to permit maximum coordination and flexibility within the Department and Federal government in Title VI enforcement.

Subpart B—Compliance Procedures

Section 21.21 General. This section summarizes the contents of the subpart and sets forth two important policies—that compliance procedures are handled by civil rights office personnel and that the Department provides financial assistance only to recipients who are in compliance with Title VI requirements.

Section 21.23 Planning, Application and Compliance Reviews. This section identifies the three types of reviews to be routinely conducted by the DOT element to ensure that applicants and recipients in fact comply with Title VI. The present Part 21 does not provide detailed information about these reviews, mentioning compliance reviews briefly and application and planning reviews not at all. Application reviews and periodic post-award compliance reviews are required by the Department of Justice as a part of all Federal agencies' Title VI programs (see 28 CFR 42.407).

Paragraph (a) concerns planning reviews. Transportation planning is a complex process involving State and local government agencies, transit operators, civic and neighborhood groups, Metropolitan Planning Organizations and other interested persons and groups in addition to the Department. The plans that emerge from the transportation planning process often affect services and the placement of facilities for an entire region over a significant period of time. The Department of Transportation's responsibility to ensure that transportation services and the impacts of providing transportation services and facilities are distributed in accordance with the requirements of Title VI cannot properly be carried out unless the planning process, as well as decisions on specific projects or services, adequately incorporates Title VI concerns.

Consequently, the Department proposes to examine two principal aspects of the process. First, the Department will inquire about the process and its consistency with Title VI. Do minority group members have adequate means of access to the planning process? Are they informed about the issues being considered, and are there mechanisms through which their views may be taken into account appropriately as plans are drawn? Is there reasonable representation of the minority community on the staffs, committees, advisory councils, and so forth of organizations responsible for planning? Second, the Department will examine the products of the process. Do the plans which emerge from the process call for equitable distribution of services, benefits, and adverse impacts among the population of the area,

regardless of race, color and national origin?

The aim of the Department's Title VI involvement in the planning process is to ensure that equitable distribution of services, benefits and negative effects, and adequate representation of minorities' views, becomes an integral part of the planning process. Through its experience with Title VI reviews of specific projects, the Department has become pursuaded that the goals of Title VI can be achieved far easier if these considerations are injected into transportation decision-making before the individual project stage. Consequently, this paragraph provides that each transportation planning process involving DOT-funded programs should be reviewed once a year.

Paragraph (b) concerns application (i.e. pre-approval) reviews. Before any grant, or any project, can be approved, the appropriate office of civil rights must determine that the applicant is in compliance with Title VI. Financial assistance cannot be provided for a project until this determination is made. The primary tool used in making application reviews is the Title VI Assessment. However, where it appears necessary, additional written information may be requested or an on-site inspection may be made so that the Department may make a fair and accurate determination.

Paragraph (c) deals with compliance reviews, which occur after a grant or project is approved. Compliance reviews include a "desk audit" (a review of documents) and, where appropriate, an on-site inspection. Compliance reviews normally are scheduled annually, although the scheduling may vary depending on the duration of the program or project being reviewed and other circumstances (e.g. following a conciliation agreement, a compliance review must be conducted within 9 months to make sure that the agreement is being carried out). Special compliance reviews may be scheduled at any time, at the Department's discretion.

In each case, following the review, the Department makes a determination of the applicant's or recipient's compliance with Title VI. The determination may be that the applicant or recipient is in compliance, in which case project or funding approval may proceed. Alternatively, the determination may be that there is reasonable cause to believe that the applicant or recipient is not in compliance, or that a program or planning process is not consistent with the goals and purposes of Title VI. Project or grant approval may not proceed until the problems identified by this determination are resolved.

The determinations respecting compliance are made by the concerned Departmental element office of civil rights. These determinations are submitted to the Director of the Departmental Office of Civil Rights for review, in order to ensure consistency throughout the Department's Title VI program.

Section 21.25 Complaints. The complaint process is basically unchanged from the process set forth in existing regulations (§ 21.11). However, the proposed regulation explains the procedure in greater detail. Among the points now stated explicitly by the regulation are the criteria for taking jurisdiction of a complaint, (the complaint must involve a DOT-assisted program and allege conduct prohibited by Title VI), the policy of referring complaints over which the Department lacks jurisidiction to other agencies and the kinds of cooperation required of respondents (e.g. providing all data requested by the investigator, providing records in the custody of a third party were possible). Following a complaint investigation, which is conducted by or under the direction of the Departmental Office of Civil Rights, the Director determines either that the respondent has not violated the Act or the regulation or that there is reasonable cause to believe that a violation has occurred.

Section 21.27 Report to the Department of Justice. In accordance with Department of Justice requirements, the Director must notify the Assistant Attorney General, Civil Rights Division, Department of Justice whenever he or she determines that there is reasonable cause to believe that an applicant or recipient is in noncompliance or has discriminated.

Subpart C—Enforcement Action and Sanctions

Section 21.43 Conciliation Procedures. When it is determined that there is reasonable cause to believe that an applicant or recipient is in noncompliance or has discriminated, the Department initiates conciliation proceedings to resolve the problem. Conciliation is informal resolution through negotiation intended to produce an agreement between the Department and respondent that will result in compliance with Title VI. It should be emphasized strongly that conciliation is a most important part of the Department's enforcement program. Only when informal efforts to secure compliance are unsuccessful does the Department intend to seek administrative sanctions against an applicant or recipient.

The terms used in this proposed regulation are themselves intended to facilitate conciliation. In present practice, recipients or applicants are "determined" to be in noncompliance and sent a notice saying they have been determined to be in noncompliance. This usage is misleading. The determination made after a review or complaint investigation by an office of civil rights is analogous to a finding of probable cause, rather than to a final verdict. This fact is clarified by the use of the "reasonable cause to believe" language in connection with these determinations in the proposed rule. "Reasonable cause" means that there is enough evidence to lead a reasonable person to believe that noncompliance exists. Noncompliance does not have to be conclusively proven to meet this standard. This revised language should help to avoid leading respondents to think that a final judgment has been rendered before they have had a chance to negotiate with the Department. Toward the same end, the notice that a respondent receives after a "reasonable cause" finding emphasizes that a respondent has the opportunity to present its point of view on the matter during conciliation to the office of civil rights which made the determination.

Normally, conciliation is initially between the respondent and the civil rights office of the concerned Departmental element. However, if an agreement between these parties has not been made within 50 days of the notice, the matter is elevated to the Departmental Office of Civil Rights, which then takes responsibility for the negotiation. If the Director of the Departmental Office of Civil Rights concludes that a conciliation agreement is not likely to be made within 50 days of receipt of the case, administrative sanction proceedings must be initiated.

Section 21.45 Administrative Sanctions. Although rewritten for greater clarity, the administrative sanction provisions of the proposed rule do not differ significantly in substance from the provisions of the present rules. The same prerequisites to the termination of funds—a determination by the Director of Civil Rights that informal resolution will not succeeed; a finding by the Secretary on the record, after opportunity for hearing, that the recipient or applicant is in noncompliance; and a report by the Secretary to the appropriate Congressional committees—are prescribed. A recipient which has had funds cut off may petition the Director for restoration of funds, upon a showing that it is now in compliance. If the

Director denies this request, the recipient has the right to a hearing, following which a decision is made by the Secretary.

Section 21.47 Hearings on Administrative Sanctions. With the exception of minor editorial changes (e.g. changing the term "hearing examiner" to "Administrative Law Judge" to conform to current practice), this section is identical to § 21.15 of the present Part 21 except for the addition of deferral procedures in (e). Deferral is an administrative procedure that halts future grants or project approval to a program when there is reasonable cause to believe that the program is in noncompliance with Title VI. Deferral is not the termination of or refusal to provide financial assistance, neither of which can happen without a hearing and an on-the-record-finding of noncompliance. It is the delay of new approvals to maintain the *status quo* pending a resolution of apparent Title VI noncompliance by the recipient. To permit new funds to flow to a recipient for a program that may shortly be found in noncompliance would be to permit the circumvention of Title VI. Deferrals are authorized by Department of Justice rules (28 CFR 50.3(c)) and have been approved in numerous cases in the Federal courts. The Department of Transportation has always had, and sometimes exercised informally, the authority to defer. However, in the interest of formalizing this authority and informing the public about it, we decided that it would be useful to add this paragraph to the proposed rule.

One option which the Department considered in preparing this proposed rule was to include much more detailed hearing procedures, similar to those of the Department of Health, Education and Welfare (45 CFR Part 81). However, we decided not to do so, principally because of the relative infrequency of Title VI hearing in DOT. We invite comment on the desirability of more detailed procedures.

Section 21.49 Decisions and Notices. The Department proposes to revise this section (§ 21.17 in the present rules) in the interest of clarity and better administrative procedures. There are two principal changes. First, administrative due process is best served where enforcement and decision-making functions of an agency are clearly separated. Therefore, the Director's role is delineated as enforcement. The Director initiates administrative sanction proceeding and participates as a party in the proceedings. The authority to decide whether to find noncompliance and impose administrative sanctions is reserved solely to the Secretary. This reservation of authority prevents any possible confusion between the "prosecutor" and "judge" roles in an adjudicatory proceeding. Moreover, it is highly likely that any matters that are unable to be settled informally will be sufficiently important and controversial to merit direct decision by the Secretary.

Second, the present regulation permits alternative administrative procedures to be used. Once a hearing is convened an administrative law judge selected, the judge can make either what is called an "initial" decision (which becomes final upon approval by the Secretary unless a party raises exceptions to it) or make what is called a "proposed" or "recommended" decision (which is a non-binding recommendation to the Secretary upon which the parties may comment). The procedural details pertinent to each of these paths differed somewhat. To simplify this structure, we propose that the administrative law judge will, in every case make a recommended decision, upon which the Director and the respondent may comment, with the final administrative decision to be made by the Secretary. A similar procedure has been employed in the Department's regulations implementing section 504 of the Rehabilitation Act of 1973, as amended (49 CFR Part 27).

Section 21.51 Other Means of Enforcement Authorized by Law. This provision is essentially identical to the present § 21.13(d). Other means authorized by law include referral to the Department of Justice to enforce Title VI, an assurance or project agreement in Federal court or resort to State or local judicial or administrative proceedings. Referral of complaints or findings of noncompliance to other Federal agencies (e.g. EEOC, Office of Revenue Sharing of the Treasury Department) are not deemed to be among mechanisms covered by this section. The Department may refer matters to other Federal agencies for their own administrative action without observing the requirements of this section.

The Department has determined that this regulation is significant under the criteria of the Department's Regulatory Policies and Procedures that implement Executive Order 12044. A regulatory evaluation has been prepared, and is available for public inspection and comment in the rulemaking docket.

The Department has evaluated the process rule in accordance with the Regulatory Flexibility Act of 1980. The Department has determined that the proposed rule would not have a significant economic effect on small businesses, small organizations or small governments.

Issued at Washington, D.C., this 13th day of January 1981.

Neil Goldschmidt,

Secretary of Transportation.

Accordingly, it is proposed to revise 49 CFR Part 21 to read as follows:

PART 21—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF TRANSPORTATION—IMPLEMENTATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Subpart A—General

Sec.

21.1 Purpose.
21.3 Definitions.
21.5 Applicaiton of this part.
21.7 Discrimination prohibited.
21.9 Consideration of race, color, or national origin.
21.11 Employment practices.
21.13 Assurances required.
21.15 Title VI assessment.
21.17 Intimidation and retaliation prohibited.
21.19 Relationship to other laws, regulations, and agencies.

Subpart B—Compliance Procedures

21.21 General.
21.23 Planning, application, and compliance reviews.
21.25 Complaints.
21.27 Report to Department of Justice.
21.29—21.39 [Reserved]

Subpart C—Compliance Procedures

21.41 Purpose.
21.43 Conciliation procedures.
21.45 Administration sanctions.
21.47 Hearings on administrative sanctions.
21.49 Decisions and notices.
21.51 Other means of enforcement authorized by law.
Appendix A—Activities to Which This Part Applies.
Appendix B—Programs in Which Employment is Covered by This Part.
Appendix C—Standard DOT Title VI Assurance.
Appendix D—DOT Internal Procedures.
Appendix E—Title VI Assessment Form.
Appendix F—Application of Title VI to Coast Guard Truman-Hobbs Program.
Appendix G—Additional Federal Aviation Administration Requirements.
Appendix H—Federal Highway Administration Compliance Oversight Program.
Appendix I—Examples of the Application of This Part to Recipients of DOT Assistance.

Authority: 42 U.S.C. 2000d et seq. unless otherwise noted; 28 CFR, Part 42.

Subpart A—General

§ 21.1 Purpose.

The purpose of this part is to implement the provisions of Title VI of

the Civil Rights Act of 1964, to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program receiving financial assistance from the Department of Transportation.

§ 21.3 Definitions.

Unless the context requires otherwise, as used in this part: *"Act"* or *"Title VI"* means Title VI of the Civil Rights Act of 1964.

"Applicant" means any person who submits an application, request, or plan to the Department for approval.

"Beneficiary" means a person, other than a recipient or applicant, who receives or is eligible to receive any direct or indirect benefits from a program. An "ultimate beneficiary" is a person who is the final or latest beneficiary, such as a passenger on a transit vehicle or a consumer of a retail operation at an airport.

"Compliance" means conformity to all Title VI requirements.

"Contractor" means a person who participates, through contractual agreement, with a recipient or other contractor at any tier in any program.

"Department" or "DOT" means the Department of Transportation, including all Departmental elements.

"Departmental element" means the following parts of DOT:

(a) The Office of the Secretary (OST)

(b) The Federal Aviation Administration (FAA);

(c) The United States Coast Guard (USCG);

(d) The Federal Highway Administration (FHWA);

(e) The Federal Railroad Administration (FRA);

(f) The National Highway Traffic Safety Administration (NHTSA);

(g) The Urban Mass Transportation Administration (UMTA);

(h) The Research and Special Programs Administration (RSPA); and

(i) The St. Lawrence Seaway Development Corporation (SLSDC).

"Director" means the Director, Departmental Office of Civil Rights. The Director is the responsible Departmental official for civil rights matters.

"Discrimination" means an action or a failure to act which has the effect of excluding a person from participation in, denying a person benefits of, or subjecting a person to unequal treatment and/or to disparate negative effect under, any program receiving DOT financial assistance on the basis of race, color, or national origin.

"Disparate Negative Effect" means providing a lower level of services, benefits, or opportunities to participate to a person on the ground of race, color or national origin than is provided to others under a program, or implementing a program in a manner that subjects such person to more harmful effects than those imposed on others. This term applies only to benefits and services, and does not apply to employment.

"Facility" means any part of structures, equipment or other real or personal property or interests in property. The provision of facilities includes constructing, renovating, remodeling, alterating, or acquiring facilities.

"Financial Assistance" means:

(a) Grants and loans of DOT funds;

(b) Grants or donations of Federal property and interests in property;

(c) The detail of DOT personnel;

(d) Sales and leases of, or permission to use (on other than casual or transient basis), Federal property or any interest in such property without more than nominal consideration, or at a consideration which is reduced to assist a recipient, or in recognition of the public interest to be served by such sale or lease to the recipient;

(e) Licenses required by statute or regulation to construct or operate a program or facility;

(f) Any DOT agreement, arrangement, or other contract which has as one of its purposes the provision of assistance; and

(g) Any other DOT aid to recipients.

"Noncompliance" means a failure to meet the requirements of the Act, this part, or the standard DOT assurance set forth in Appendix C of this part.

"Office" means the Departmental Office of Civil Rights.

"Participant" means any person (except a primary recipient) who is involved in planning, design, construction, property appraisal or acquisition, operation, or provision of benefits under a program, and includes contractors, lessees, and concessionaires.

"Person" means any natural person or group of natural persons, corporation, partnership, utility, unincorporated association, American Indian tribe, group or nation.

"Positive Steps" means all necessary steps to assure equitable services and benefits and to ensure nondiscriminatory results and practices in the future, in all aspects of the planning and execution or programs.

"Program" means the recipient's provision of financial assistance, services, projects, facilities, activities, and other benefits to persons through assistance from the Department of Transportation. Financial assistance, services, projects, facilities, activities and other benefits provided in whole or in part with non Federal funds, property or other resources which are part of a DOT-assisted program are included.

"Recipient" means any person, State or local government and agency, instrumentality, or subdivision of such a government, to which financial assistance is extended, directly or through another recipient, for any program, including participants, but not including ultimate beneficiaries. A *"primary recipient"* is an entity which receives financial assistance directly from the Department of Transportation and transfer any portion of this assistance to another recipient.

"Relocation Assistance" means the provision of replacement housing, moving expenses, and other assistance payments and associated services to persons and businesses displaced by programs, pursuant to the Uniform Relocation Assistance and Real Property Acquistion Policies Act of 1970 (Pub. L. 91–646), as amended.

"Respondent" means an applicant, recipient, participant or other person alleged or determined to be in noncompliance with the Act or this part or to have discriminated..

"Secretary" means the Secretary of Transportation.

"Transportation Planning Process" means any local, State, or Federal planning process which is a prerequisite to the approval of or granting of DOT financial assistance for a program of a recipient.

§ 21.5 Application of this part.

(a) This part applies to any program for which financial assistance is authorized under a law administered by the Department, including those listed in Appendix A to this part. It also applies to money paid, property transferred, or other financial assistance extended under any such program after the effective date of this part.

(b) This part does not apply to:

(1) Any financial assistance by way of insurance or guaranty contracts;

(2) Any assistance to any individual who is the ultimate beneficiary under any such program; or

(3) Any employment practice, employer, employment agency, or labor organization, except to the extent described in § 21.11. DOT assistance activities under which employment practices are covered by Title VI are included in, but not limited to, those which appear in Appendix B to this part.

(c) Whenever a program involves the acquistion of real property or an interest

in real property, to the extent that rights to space on, over, or under any such property are included as part of the program, the requirements of this part extend to any facility, project, or activity located wholly or in part in that space.

§ 21.7 Discrimination prohibited.

(a) *General.* No person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not directly, or through contractual or other arrangements, on the grounds of race, color, or national origin—

(i) Deny a person any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to a person which is different or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any matter related to the receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid or other benefit under the program;

(v) Treat a person differently from others in determining whether a person satisfies any admission, enrollment, eligibility, or membership goal, requirement or condition which persons must meet in order to receive any service, financial aid or other benefit provided under the program, unless such different treatment is under a plan or program approved by DOT;

(vi) Deny a person an opportunity to participate in the program through the provision of services, or otherwise afford a person an opportunity to do so which is different from that afforded others under the program;

(vii) Deny a person the opportunity to participate as a member of planning, advisory or similar body which is an integral part of the program;

(viii) Propose or take any action which would have a negative effect on a person in the planning and operation of a program; or

(ix) Deny a person the opportunity to participate in a program through a contract, lease or other agreement with a person due to race, color, or national origin.

(2) A recipient may not, directly, or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of race, color, or national origin, or have the effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part. This prohibition includes, but is not limited to, determinations by a recipient which affect the quality or distribution of services, benefits, financial aid, or facility provided under a program; or which limit the class of persons which is afforded an opportunity to participate in any program.

(3) A recipient or applicant may not determine the site or location of projects or facilities as part of a program with the purpose or effect of excluding persons from participation in, denying them the benefits of, or subjecting them to discrimination on the grounds of race, color, or national origin, or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

(4) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the scope of the general prohibition of this section. Examples demonstrating the application of this section to certain programs of the Department of Transportation are contained in Appendix I of this part.

§ 21.9 Consideration of race, color or national origin.

This part does not prohibit the consideration of race, color, or national origin as part of efforts to remedy the consequences of past discriminatory practices or impediments which have restricted the availability of, or participation in, the program receiving financial assistance, on the grounds of race, color, or national origin. In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take positive steps to overcome the effects of prior discrimination. Even in the absence of such prior discrimination, a recipient in administering a program may take positive steps to overcome the effects of conditions which resulted in limiting participation by persons on account of race, color, or national origin.

§ 21.11 Employment practices.

(a) Where a primary objective of a financial assistance program is to provide employment, a recipient shall not directly, or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices. Employment practices include recruitment, recruitment advertising, hiring, firing, upgrading, promotion, temporary assignments, details, demotion, transfer, layoff, termination, rates of pay, other forms of compensation, benefits, training, apprenticeship, use of facilities, and treatment of employees. Recipients shall ensure that applicants are hired, and employees are treated, without discrimination because of race, color, or national origin. DOT assistance activities, a primary objective of which is to provide employment are found in Appendix B of this part.

(b) Regardless of the objectives of a financial assistance program, discrimination in recipient employment practices is prohibited where such practices cause a violation of this part with respect to services, opportunities, or benefits. For this reason, employment practices concerning employees, including but not limited to those, who engage in direct contact with beneficiaries, or who engage in the planning of a program, are involved in relocation actions, or conduct public hearings may be covered by this part.

(c) Even where Title VI does not cover employment under a program, employment practices may be covered under Section 30 of the Airport and Airway Development Act of 1970, as amended; Section 19 of the Urban Mass Transportation Act of 1964, as amended; Section 905 of the Railroad Revitalization and Regulatory Reform Act of 1976; 23 U.S.C. Sections 140 and 324 and other statutes prohibiting discrimination on the basis of race, color, national origin, sex or religion.

§ 21.13 Assurances required.

(a) Within 90 days of the effective date of this part, every recipient of financial assistance shall submit a signed standard DOT assurance as contained in Appendix C of this part.

(b) Each recipient of continuing financial assistance shall submit a new signed standard DOT assurance with respect to its total program no later than August 1 of each year or certify compliance with paragraph (a) of this section.

(c) Every application for financial assistance shall contain, as a condition of its approval, a signed standard DOT assurance or a certification of compliance with paragraph (a) of this section.

(d) An applicant or recipient that fails or refuses to submit a signed standard DOT assurance or a certification of compliance as required by this section is deemed to be in noncompliance.

§ 21.15 Title VI assessment.

Every application for financial assistance or project approval shall include a document entitled "Title VI Assessment" found in Appendix E. This document shall contain information sufficient to permit an initial determination by DOT of whether the applicant complies with Title VI requirements. The Title VI Assessment shall also contain the applicant's analysis of the effect of the proposed program upon Title VI concerns. The Title VI Assessment shall include, as a minimum, all information requested in the Title VI Assessment form and a copy of any environmental impact statement required to be submitted to DOT for approval. To the extent Appendix E permits, FAA, FHWA, USCG and NHTSA recipients and applicants provide different information or need not answer certain items in the Assessment form.

§ 21.17 Intimidation and retaliation prohibited.

No applicant or recipient or employee of an applicant or recipient shall intimidate, threaten, coerce or retaliate or discriminate against any individual for the purpose of interfering with any right or privilege secured by the Act or this part or because the individual has made a complaint, testified, or participated in any manner in a review, investigation, hearing or proceeding under this part or has opposed practices made unlawful by Title VI or prohibited under this part. Violation of this prohibition is deemed to be in noncompliance with this part.

§ 21.19 Relationship to other laws, regulations, and agencies.

(a) *Program Statutes.* In addition to Title VI, statutory provisions specific to certain Department of Transportation financial assistance programs, such as those cited in § 21.11, prohibit discrimination. The Department may enforce these statutes and regulations through the substantive and procedural provisions of this part. Where a program statute prohibits discrimination on the basis of sex or another ground, the prohibition of discrimination in this part, as applied to the program concerned, is deemed to extend to sex or the other ground in addition to race, color, and national origin.

(b) *Minority Business Enterprise.* Title VI prohibits the denial to any person of the opportunity to participate in a program through a contract, lease, or other business arrangement on the basis of race, color, or national origin. This prohibition is enforced under the provisions of the Department's regulation on Minority Business Enterprise (49 CFR Part 23), not through this part.

(c) *Delegation and Interagency Cooperation.* From time to time, the Secretary may assign to officials of the Department, or to officials of other Government departments or agencies, responsibilities in connection with carrying out Title VI, program statutes that prohibit discrimination, and this part (except for the responsibility to make final decisions as provided in § 21.49). Any action taken, determination made or requirement imposed by an official of another department or agency acting under an assignment of responsibility under this paragraph shall have the same effect as though the action had been taken by the Secretary. The Secretary may accept such assignments of responsibility from other departments and agencies.

(d) *Additional FAA Requirements.* Special additional requirements applicable only to FAA applicants and recipients are found in Appendix G to this part.

Subpart B—Compliance Procedures

§ 21.21 General.

This subpart contains the requirements and procedures by which the Department of Transportation determines whether or not an applicant or recipient is in compliance with the Department's Title VI program, including planning reviews, application reviews, compliance reviews, and complaint investigations. Planning, application, and compliance reviews are conducted and determinations and findings made by civil rights personnel of the Departmental elements or the Office unless another delegation is made by the Director. The Director may also initiate and conduct special compliance reviews. Complaint investigations and determinations concerning complaints are made by the Office unless the Director designates another civil rights office to carry out these responsibilities. It is the policy of the Department of Transportation to award and to continue to provide financial assistance only to those applicants and recipients who comply with Title VI requirements.

§ 21.23 Planning, application, and compliance reviews.

(a) *Planning Reviews.* (1) Every transportation planning process under which the Department administers programs involving financial assistance is reviewed annually by the appropriate Departmental element office of civil rights for consistency with the goals and purposes of Title VI. This review includes, but is not limited to, the following:

(i) The degree to which plans or applications provide for the equitable distribution or availability of benefits and services to minority persons and communities, and an analysis to identify any disparate negative effects;

(ii) The extent of minority participation in advisory councils, boards and committees;

(iii) The manner and extent to which minority group views of planned actions were solicited including where necessary contracting out with such groups to ensure minority participation as part of the transportation planning process;

(iv) Whether sufficient advance notice was placed in minority and foreign language newspapers and other media of public hearings (to include, where necessary, translation services) conducted as part of the transportation planning process;

(v) The extent of minority representation on the staffs of local planning bodies;

(vi) The manner and extent to which local and State bodies which are part of the transportation planning process have taken positive steps to fulfill their Title VI obligations;

(vii) Whether equitable participation of minority contractors will be ensured in programs administered through the transportation planning process;

(viii) Whether program information is to be provided in languages other than English where a significant number of proportion of the expected service population does not speak English, or speaks English as a second language; and

(ix) Whether the past history of benefit distribution to minorities in programs subject to the transportation planning process evinces a need to take positive steps to remedy the consequences of past inequities.

(2) *Determination.* On the basis of the planning review, the Departmental element office of civil rights makes one of the following determinations:

(i) The transportation planning process is consistent with the goals and purposes of Title VI;

(ii) The transportation planning process is consistent with the goals and purpose of Title VI: *Provided,* That specific remedial actions agreed to by the Departmental element and local or State planning bodies are implemented; or

(iii) There is reasonable cause to believe that the transportation planning process is not consistent with the goals and purposes of Title VI.

(iv) Determinations under paragraph (a)(2) (ii) and (iii) of this section are submitted promptly to the Director. Determinations under paragraph (a)(2)(i) of this section are submitted to the Director monthly.

(3) *Effect of Determination of Noncompliance.* A determination under paragraph (a)(2)(iii) of this section that a transportation planning process is not consistent with the goals and purposes of Title VI results in conciliation or sanction procedures under Subpart C of this part. Sanctions may include denial of planning funds, rejection of applications for financial assistance to programs developed under the transportation planning process, and other administrative sanctions.

(b) *Application Review.* Before the Departmental element grants financial assistance for, or otherwise approves any program, the Departmental element's office of civil rights determines that the applicant is in compliance with Title VI. This determination is based on the applicant's Title VI assessment and any information concerning the applicant developed as part of a transportation planning process. No financial assistance may be approved for the applicant if either the Departmental element office of civil rights has not made a finding of compliance or the Director has determined that the applicant is not in compliance with Title VI.

(1) *Determination.* As a result of its review, the Departmental element office of civil rights makes one of the following written determinations:

(i) The applicant is in compliance with its Title VI obligations.

(ii) There is reasonable cause to believe that the applicant is not in compliance with its Title VI obligations in all respects. The determination specifies the respects in which the applicant appears not to be in compliance.

(iii) It cannot be determined whether or not the applicant is in compliance. When this determination is made the Departmental element office of civil rights takes the following steps:

(A) The applicant is requested to provide additional written material within 30 days. Failure by the applicant to provide such information shall result in the denial of the application for financial assistance by the Departmental element on the ground that the application is incomplete.

(B) If the additional written information does not permit a determination to be made, or in any case in which the concerned office of civil rights determines that an on-site inspection is necessary, that office promptly conducts an on-site inspection, following the procedures set forth in paragraph (c)(4) of this section.

(iv) Determinations under paragraph (b)(1)(ii) and (iii) of this section are submitted promptly to the Director. Determinations under paragraph (b)(1)(i) of this section are submitted to the Director monthly.

(2) *Effect of Determination of Noncompliance.* Departmental elements may defer the approval applications for financial assistance pursuant to the procedures of § 21.43(e) where there is a finding of reasonable cause to believe that the applicant is in noncompliance resulting from an application review. If the application would be approved but for the finding of noncompliance, the disapproval of the application is considered "a refusal to grant assistance", subject to the informal resolution and sanctions procedures set forth in Subpart C of this part.

(c) *Compliance Review*—(1) *General.* Compliance reviews evaluate all pertinent aspects of a recipient's policies and practices under a program. Compliance reviews include a desk audit and, where appropriate, an on-site inspection. At any time, the Director may order a special compliance review of any recipient. Ordinarily, special compliance reviews are conducted by the staff of the Office; however, the Director may request a Departmental element office of civil rights to conduct reviews.

(2) *Review Scheduling Requirements.* Compliance reviews of recipients are conducted:

(i) Within 1 year of the approval of an application for a program expected to take 2 or more years to complete, or at the estimated mid-point of a program expected to be completed in less than 2 years.

(ii) Annually of State agencies or other recipients which administer continuing programs. Such reviews comprehensively evaluate the recipient's total continuing program.

(iii) Within 9 months of the Director's approval of a conciliation agreement. The Director may limit such reviews to the consideration of deficiencies identified by previous reviews and the corrective measures to be taken pursuant to the conciliation agreement.

(3) *Desk Audit.* The desk audit is a review of all material and information concerning the recipient's Title VI performance. If the Departmental element office of civil rights or the Director finds that a determination of a recipient's compliance can be made without an on-site inspection, the compliance review may be concluded after the desk audit. Desk audits are completed within 60 days of initiation.

(4) *On-Site Inspection.* The on-site inspection is a continuation of the compliance review after a desk audit where no determination has been made. It includes interviews with persons in the recipient's organization and beneficiaries. It may also include interviews with persons who have dealt with the recipient as part of a transportation planning process, and other persons likely to have relevant information or views about the recipient's performance; visits to project or facility sites; and inspection of any statistical or documentary materials relevant to the recipient's performance. DOT completes on-site compliance reviews within 45 days after the conclusion of a desk audit.

(5) *Determination.* As a result of its review of the recipient, the Departmental element office of civil rights makes one of the following determinations:

(i) The recipient is in compliance in all aspects with its Title VI obligations;

(ii) There is reasonable cause to believe that the recipient is not in compliance with its Title VI obligations.

(iii) Determinations under paragraph (c)(5)(ii) of this section are submitted promptly to the Director. Determinations under paragraph (c)(5)(i) of this section are submitted to the Director monthly. If reasonable cause is found that a recipient is in noncompliance, efforts at conciliation and sanction procedures are initiated as prescribed in Subpart C of this part.

(d) The Federal Highway Administration and its recipients comply with the requirements of this section through the process set forth in Appendix H of this part.

§ 21.25. Complaints.

(a) *Filing of Complaints*—(1) *Persons Eligible to file.* Any person may file a complaint.

(2) *Time for Filing.* A complaint shall be filed no later than 180 days after:

(i) The date of an alleged act of discrimination; or

(ii) The date on which a continuing course of conduct was disclosed.

The Director may extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reasons for so doing.

(3) *Officials Authorized to Receive Complaints.* Complainants may submit their complaints to the Director, heads of Departmental elements, directors of civil rights of Departmental elements, heads of DOT field offices and installations, or the designees of any of these officials. Any other DOT officer or

employee receiving a complaint immediately forwards it to the nearest such official. All complaints received by officials other than the Director are datestamped and forwarded to the Director immediately.

(4) *Form of Complaints.* Complaints shall be in writing and signed by the complainant or the complainant's representative. Complaints shall set forth as fully as possible the facts or circumstances surrounding the claimed discrimination.

If a person makes an oral complaint of discrimination to a DOT officer or employee, that person is interviewed by a DOT official authorized to receive complaints or the official's designee. If necessary, the official reduces the complaint to writing, submits the written version to the complainant for signature, and files the complaint.

(b) *Processing of Complaints*—(1) *Acknowledgement.* The Public Programs Division of the Office acknowledges the receipt of every complaint in writing within five days of receiving it.

(2) *Determination of Jurisdiction.* Based upon the information in the complaint and the information provided by the Departmental element, the Director determines whether the Department has jurisdiction to pursue the matter. This determination is made within 15 days of receipt by the Office of the information requested from the Departmental element. Upon a determination of jurisdiction, the Public Programs Division notifies the respondent (and the primary recipient, if the primary recipient is not the respondent) that a complaint has been filed.

(3) *Jurisdiction.* The Department has jurisdiction to investigate a complaint if:

(i) The complaint involves a program for which DOT furnishes assistance and;

(ii) The complaint alleges any conduct prohibited by the Act or this part.

(4) *Referral to Other Agencies.* When DOT lacks jurisdiction, the Director, when possible, refers the complaint within ten days of receipt to other Federal or State agencies, informing the parties of this action. The Director may also refer to another agency a complaint over which the Department has jurisdiction.

(5) *Request for Additional Information from Complainant.* If a determination of jurisdiction cannot be made on the basis of the complaint, the Office requests additional information. Such a request is made within 30 days of the receipt of the complaint by the Office and requires the complainant to furnish the information within 30 days.

(c) *Investigation of Complaints.*—(1) *Scope.* Investigations concern the issues and facts relevant to the allegations of the complaint, and include an analysis of information submitted by the complainant, information in the possession of either the respondent or the Department, and information developed as part of a transportation planning process. If any information is discovered which indicates that the respondent engages in a continuing policy or practice of prohibited discrimination, such a policy or practice is deemed to be an issue relevant to the complaint. Investigators who are concurrently conducting a compliance review, gather all information relevant to both purposes. Investigations are completed within 120 days of initiation.

(2) *Confidentiality.* The complainant may request that his or her identity be kept confidential. Upon receipt of such request, the investigator determines if it is possible to proceed with the complaint investigation under this condition and notifies the complainant of the decision. The complainant may then decide whether to pursue the complaint further.

(3) *Cooperation of Respondents.* All respondents shall cooperate fully with investigations. Such cooperation includes, but is not limited to, the following:

(i) *Question Responses.* Officials and employees of the respondent shall answer fully all questions posed to them by the investigator.

(ii) *Compliance Data.* The respondent shall furnish, upon request of the investigator, all relevant compliance data required by the Act or this part.

(iii) *Access to Sources of Information.* The respondent shall allow access to such books, records, accounts, and other sources of information relevant to the investigation.

(iv) *Records in Possession of Third Party.* If any information requested of a respondent is in the exclusive possession of any other agency, institution, or person which refuses or fails to furnish this information, the respondent shall so certify in writing and set forth the efforts it made to obtain the information.

(v) *Interview with Respondent.* The investigator provides the respondent a complete summary of the allegations made in the complaint and an opportunity to rebut or refute information or allegations provided or made by the complainant.

(d) *Complaint Determinations.* After the investigation is completed and within 180 days of receipt of a complaint, the Director makes one of the following determinations:

(1) The respondent has not violated the Act or this part.

(2) There is reasonable cause to believe that the respondent has violated the Act or this part, and efforts at conciliation and sanction procedures are initiated as set forth in Subpart C of this part.

§ 21.27 Report to Department of Justice.

In every case in which it is determined that there is reasonable cause to believe that an applicant or recipient is in noncompliance or has discriminated, the Director shall notify promptly the Assistant Attorney General, Civil Rights Division, Department of Justice, in accordance with Department of Justice Title VI program requirements.

Subpart C—Enforcement Action and Sanctions

§ 21.41 Purpose.

This subpart details enforcement actions which are initiated if reasonable cause is found, as the result of any review or investigation, that an applicant or recipient has discriminated or is in noncompliance with the Act or this part.

§ 21.43 Conciliation procedures.

(a) *General.* If reasonable cause to believe that an applicant or recipient is in noncompliance or has discriminated is found, the office making the determination initiates efforts at conciliation to resolve the matter. The purpose of conciliation is to create a written plan to correct the noncompliance or discrimination and assure continued compliance. The Director approves or disapproves conciliation agreements.

(b) *Responsibilities and Time Limits.* A written notice is sent by certified return receipt mail to the respondent by the civil rights office or the Director, as appropriate, promptly after a determination of reasonable cause is made:

(1) *Notice Content.* Notices include:

(i) A summary of the findings upon which the determination of reasonable cause to believe that there is noncompliance or discrimination is based;

(ii) An opportunity for the respondent, within 30 days of receipt, to engage in conciliation, setting forth the date, time and place for an initial conciliation conference.

(iii) A summary of the steps to be followed in conciliation and notice to the respondent that it may submit a proposal for conciliation at or before the initial conciliation conference.

(2) *Departmental Element Conciliation*—(i) *Successful Conciliation.* Where conciliation is initiated by the Departmental element office of civil rights, if the respondent and the civil rights office are able to arrive at a conciliation agreement, the civil rights office submits two copies of the conciliation agreement to the Director within 5 days of its signing by both parties. The Director approves or disapproves the agreement within 20 days of receiving it. If the Director disapproves the agreement, the reasons therefor are stated in writing. The Director may propose amendments to the agreement. Such amendments are forwarded to the respondent and shall be accepted or rejected within 20 days of receipt.

(ii) *Unsuccessful Conciliation.* If no agreement is signed within 50 days of the notice, negotiations by the Departmental element are terminated and the complete review or investigation report file, including a written report on attempts at conciliation along with copies of all correspondence and proposed conciliation agreements, is submitted to the Director within 5 days, whereupon the Office will initiate sanction proceedings.

(3) *Office Conciliation*—(i) *Successful Conciliation.* If the respondent and the Office staff are able to arrive at a conciliation agreement, the Office staff submits two copies of the conciliation agreement to the Director within 5 days of its signing by the respondent. The Director signs or disapproves the agreement within 20 days of receiving it. If the Director disapproves the agreement, the reasons therefore are stated in writing. The Director may propose amendments to the agreement. Such amendments are forwarded to the respondent and shall be accepted or rejected within 20 days of receipt.

(ii) *Unsuccessful Conciliation.* If no agreement is signed within 50 days of receipt by the Director, negotiations by the Office staff are terminated and the complete review or investigation report file, including a written report on attempts at conciliation along with copies of all correspondence and proposed conciliation agreements, is submitted to the Director within 5 days, and sanction proceedings shall be initiated.

(4) *Notification of Assistant Attorney General.* If negotiations continue beyond 60 days from the date of the notice, the Director promptly notifies the Assistant Attorney General, Civil Rights Division, Department of Justice and states the reasons for the length of the negotiations.

(c) *Effect of Conciliation Agreement.* If a conciliation agreement is approved, the existence of the determination of noncompliance or discrimination does not bar provision of financial assistance if the terms of the agreement are fulfilled within specified periods of time.

(d) *Failure to Effect and Agreement.* If the respondent fails to participate in conciliation efforts, if conciliation efforts fail to produce an approved agreement, or if terms of the conciliation agreement are not implemented satisfactorily, voluntary compliance has not been achieved and administrative sanction procedures are initiated.

(e) *Deferral of Action on Applications.* (1) At any time after the Director or Departmental element office of civil rights, as appropriate, informs a respondent under paragraph (b) of this section that there is reasonable cause to believe that it has failed to comply with this part, the Director or the Departmental element office of civil rights may, subject to subparagraphs (2), (3), and (4) of this paragraph, defer further action by the Department on any application by the respondent for financial assistance or project approval. The Director or the Departmental element office of civil rights shall inform the resondent of a deferral promptly in writing.

(2) Deferrals may be made only with respect to applications for noncontinuing assistance, initial or annual applications for programs of continuing assistance, and requests for approvals of specific projects. Deferrals may not be made where financial assistance is due and payable under a previously approved application for assistance or project approval.

(3) A deferral shall continue in effect until informal resolution is effected, or the respondent is found to be in compliance with this part as a result of a determination by the Secretary or as the result of judicial review of a decision by the Secretary.

(4) Deferrals shall not be used so as to cause an effective refusal to grant financial assistance or project approval. Efforts to secure informal resolution and a hearing and subsequent procedures, if found necessary, shall be made without delay and completed as soon as possible.

§ 21.45 Administrative sanctions.

(a) *Scope.* Administrative sanctions include the refusal to provide, and the termination or suspension of, financial assistance to a respondent. Administrative sanctions contain an order and provisions to ensure that no future financial assistance is provided to the sanctioned respondent in connection with the program found to be discriminatory or in noncompliance. Administrative sanctions are limited in their effect to the particular program in which discrimination or noncompliance is found.

(b) *Preconditions to the Imposition of Administrative Sanctions.* No order suspending, terminating or refusing to grant financial assistance is imposed unless:

(1) The Director determines that compliance cannot be secured through conciliation;

(2) There is an express finding on the record, after opportunity for hearing, that the respondent has failed to comply with the Act or this part;

(3) The Secretary personally approves the finding and administrative sanction; and

(4) The Secretary files a written report of the circumstances of and the grounds for the administrative sanction with the committees of the Senate and the House of Representatives having jurisdiction over the program involved, and 30 days have expired.

(c) *Withholding of Assistance Pending Finding.* After being provided an opportunity for a hearing and until the matter in question is resolved, respondents shall not be eligible for new DOT assistance.

(d) *Post-Termination Proceedings.* A respondent subject to an order terminating, suspending, or refusing to grant Federal financial assistance under this part may ask the Director to authorize payment, or permit resumption, of financial assistance, after six months from the date of such order, on the basis that the respondent has brought its program into compliance with the Act and this part.

(1) The request shall describe in detail the steps which the respondent has taken to achieve compliance and the results of those steps.

(2) If the Director denies the written request, the respondent may request a hearing. The request for hearing shall be in writing, addressed to the Secretary, and made within 30 days of the denial.

(3) The hearing procedures of § 21.47 apply to proceedings held under this paragraph. The sole issue at a post-termination hearing shall be whether the respondent has corrected the discrimination or noncompliance which existed at the time administrative sanctions were imposed.

(4) If the Secretary determines that the respondent's discrimination or noncompliance has not been corrected, the administrative sanctions shall continue in effect. Sanctions remain in effect while proceedings under this paragraph are pending.

(e) *Judicial Review.* Action taken pursuant to Section 602 of the Act is subject to judicial review as provided in Section 603 of the Act.

§ 21.47 Hearings on Administrative Sanctions.

(a) *Opportunity for Hearing.* Whenever an opportunity for a hearing is required by § 21.45(b) before administrative sanctions may be imposed, the Director shall give reasonable notice by registered or certified mail, return receipt requested, to the respondent. This notice shall advise the respondent of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the respondent may request of the Secretary that the matter be scheduled for hearing or (2) advise the respondent that the matter in question has been set down for hearing at a stated place and time. The time and place fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. A respondent may waive a hearing and submit written information and argument for the record. The failure of a respondent to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 21.45(b) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and Place of Hearing.* Hearings shall be held at the offices of the Department in Washington, D.C., at a time fixed by the Secretary unless he or she determines that the convenience of the respondent or of the Department requires that another place be selected. Hearings shall be held before an Administrative Law Judge (ALJ) appointed by the Secretary in accordance with Section 3105 of Title 5, United States Code, or detailed under Section 3344 of Title 5, United States Code.

(c) *Right to Counsel.* In all proceedings under this section, the respondent and the Department shall have the right to be represented by counsel.

(d) *Procedures, Evidence, and Record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with Sections 554 through 557 of Title 5, United States Code, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the respondent shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the ALJ conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied, where reasonably necessary, by the ALJ. For the purposes of these proceedings the rules of evidence are relaxed and witnesses shall be presented as on cross-examination. The ALJ may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues, except to the extent that matters are stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or Joint Hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Secretary may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings or rules or procedures not inconsistent with this part. Final decisions in such cases, shall be made in accordance with § 21.49.

§ 21.49 Decisions and notices.

(a) *Procedure on Decisions by Administrative Law Judge.* After the hearing, the ALJ certifies the entire record including his/her recommended findings and proposed decision to the Secretary for a final decision, and a copy of certification shall be mailed to the respondent. The Director and the respondent may submit written arguments to the Secretary concerning the Administrative Law Judge's recommended findings and proposed decision.

(b) *Final Decision by the Secretary.* When the record is certified to the Secretary by the ALJ the Secretary reviews the record and accepts, rejects or modifies the Administrative Law Judge's recommended findings and proposed decision, stating the reasons therefor.

(c) *Decisions on Record Where a Hearing is Waived.* Whenever a hearing is waived pursuant to § 21.47(a) a decision shall be made by the Secretary on the record, stating the reasons therefor, and a written copy of such decision shall be sent to the respondent and to the complainant, if any.

(d) *Rulings Required.* Each decision of an ALJ or the Secretary shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the respondent has failed to comply.

(e) *Content of Orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such programs to the respondent determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the Secretary that it will fully comply with this part.

§ 21.51 Other means of enforcement authorized by law.

In addition to or in lieu of administrative sanctions, the Department of Transportation may effect compliance with Title VI and this part through any other means authorized by law. No action to effect compliance by such means shall be taken by the Department until—

(a) The Director has determined that compliance cannot be secured by voluntary means;

(b) The respondent has been notified of its discrimination or failure to comply and of the action to be taken to effect compliance; and

(c) The expiration of at least 10 days from the mailing of such notice to the respondent. During this period of at least 10 days, additional efforts shall be

made to persuade the respondent to comply and take such corrective action as may be appropriate.

Appendix A—Activities to Which This Part Applies

1. Use of grants made in connection with Federal-aid highway and related programs (23 U.S.C. 101 *et seq).*

2. Use of grants made in connection with the Highway Safety Act of 1966 (23 U.S.C. 402, 403, *et seq).*

3. Use of grants made in connection with uncodified Federal-Aid Highway Act provisions.

4. Lease of real property and grant of permits, licenses, easements, and rights-of-way covering real property under control of the Coast Guard (14 U.S.C. 93(n) and (o)).

5. Utilization of Coast Guard personnel and facilities by any State, territory, possession, or political subdivision thereof (14 U.S.C. 141(a)).

6. Use of Coast Guard personnel for duty in connection with maritime instruction and training by the States, territories and Puerto Rico (14 U.S.C. 148).

7. Use of obsolete and other Coast Guard material by sea scout service of Boy Scouts of America, any incorporated unit of the Coast Guard auxiliary, and public body or private organization not organized for profit (14 U.S.C. 641(a)).

8. U.S. Coast Guard Auxiliary Program (14 U.S.C. 821–832).

9. Use of grants for the support of basic scientific research by nonprofit institutions of higher education and nonprofit organizations whose primary purpose is conduct of scientific research (42 U.S.C. 1891).

10. Use of grants made in connection with the Federal-aid Airport Program (Sec. 1–15 and 17–20 of the Federal Airport Act, 49 U.S.C. 1101–1114, 1116–1120).

11. Use of U.S. land acquired for public airports under

a. Section 23 of the Airport and Airway Development Act of 1970 (49 U.S.C. 1723).

b. Surplus Property Act of the Surplus Airports and Equipment Act of 1947, as amended (Section 13(g) and Sections 2, 3, and 4; so use Appendix 1622(g) and 1622 a, b, c).

12. Activities carried out in connection with the Aviation Education Program of the Federal Aviation Administration under Sections 305, 311 and 313(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1346, 1352 and 1354(a)).

13. Demonstration projects relating to ground transportation services to airports under the Airport and Airway Development Act Amendments of 1976, (Section 23(a)(i); 49 U.S.C. 1712 note).

14. Use of grants and loans made in connection with Urban Mass Transportation Discretionary Grant or Loan Program—Urban Mass Transportation Act of 1964, as amended. 49 U.S.C. 1602.

15. Use of grants and loans made in connection with Urban Mass Transit Program—Urban Mass Transportation Act of 1964, as amended. 49 U.S.C. 1604.

16. Use of grants made in connection with Urban Mass Transportation Research, Development & Demonstration Projects—Urban Mass Transportation Act of 1964, as amended. 49 U.S.C. 1605.

17. Use of grants made in connection with Urban Mass Transportation Planning and Technical Studies—Surface Transportation Assistance Act of 1978, as amended. 49 U.S.C. 1607.

18. Use of grants made in connection with Urban Mass Transportation Grants for Training Programs—Urban Mass Transportation Act of 1964, as amended. 49 U.S.C. 1607b.

19. Use of grants made in connection with Urban Mass Transportation's Grants for Research and Training in Urban Mass Transportation Problems—Urban Mass Transportation Act of 1964, as amended. 49 U.S.C. 1607c.

20. Use of grants and loans made in connection with Urban Mass Transportation's Planning and Design of Mass Transportation Facilities to meet special needs of the elderly and the handicapped—Urban Mass Transportation Act of 1964, 49 U.S.C. 1612.

21. Use of grants made in connection with Urban Mass Transportation's Formula Grant Program for areas other than urbanized areas——Surface Transportation Assistance Act of 1978. 49 U.S.C. 1614.

22. Use of grants made in connection with Urban Mass Transportation's Human Resource Programs—Surface Transportation Assistance Act of 1978. 49 U.S.C. 1616.

23. Use of grants made in connection with Urban Mass Transportation's Terminal Development Program—Urban Mass Transportation Act of 1964, 49 U.S.C. 1617.

24. Use of grants made in connection with Urban Mass Transportation's Intercity Bus Service—Urban Mass Transportation Act of 1964, as amended. 49 U.S.C. 1618.

25. Use of grants made in connection with the Railroad and Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 801).

26. Grants to Amtrak under section 601 of the Rail Passenger Service Act, 45 U.S.C. 601.

27. Purchase of redeemable preference shares or trustee certificates pursuant to section 505 of the Railroad revitalizations and Regulatory Reform act of 1976, 45 U.S.C. 825.

28. Grants for planning, preservation and conversion of rail passenger terminals of historical or architectural significance pursuant to section 4(i) of the Department of Transportation Act, 49 U.S.C. 1653.

29. Grants to States for rail freight assistance programs pursuant to section 5 of the Department of Transportation Act. 49 U.S.C. 1654.

30. Grants to States for participation in enforcement of FRA rail safety regulations pursuant to section 206 of the Federal Railroad Safety Act of 1970, 45 U.S.C. 435.

31. The construction and operation of a deepwater port or other facility through the grant of a license by the Secretary of Transportation.

Appendix B—Programs in Which Employment is Covered by This Part

The following Paragraph A is a listing of DOT-assisted programs, projects or activities which is not to be considered complete or all inclusive and programs not listed may be covered under provisions of Paragraph B of this Appendix.

A. Programs in which Employment is a Primary Purpose.

1. Use of grants made in connection with Federal-aid highway systems (23 U.S.C. 101 *et seq.*).

2. Use of grants made in connection with the Highway Safety Act of 1966 (23 U.S.C. 402, 403, *et seq.).*

3. Use of grants made in connection with the Federal-Aid Highway Act of 1970 (23 U.S.C. 324, Section 162(a)).

4. Use of grants and loans made in connection with Urban Mass Transportation Capital Facilities Grant and Loan Program—Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602).

5. Use of grants made in connection with Urban Mass Transportation Research and Demonstration Grant Program—Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1605.).

6. Use of grants made in connection with Urban Mass Transportation Technical Studies Grant Program—Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607a).

7. Use of grants made in connection with Urban Mass Transportation Managerial Training Grant Program—Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607b).

8. Use of grants made in connection with Urban Mass Transportation Grants for Research and Training Programs in Institutions of Higher Learning—Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607c).

9. Use of grants made in connection with the Railroad Revitalization and Regulatory Reform Act of 1976 (49 U.S.C. 801).

B. Employment Practices otherwise covered under Title VI.

Regardless of the objectives of a Federal financial assistance program, discrimination in employment practices by recipients is prohibited where such practices cause discrimination in services, opportunities or benefits to the participants or beneficiaries. In this regard, the Department will be particularly concerned with employees who engage in direct contact with beneficiaries, or who engage in the planning and implementation of a program, project, or activity, or who conduct public hearings which have direct impact on participants or beneficiaries would be covered under this Appendix.

Appendix C—Assurances

This Appendix includes the Standard DOT Title VI Assurances. Attachment 1 is to be included in every contract subject to the Act and these Regulations. Attachment 2 is to be included in any deed from the United States effecting a transfer of real property, structure or improvements thereon or interests therein. Attachment 3 is to be included in any future deeds, leases, permits, licenses, or similar agreements entered into by the recipient with other parties. Use of the reverter clause on page 2 of Attachment 2 is not, as a matter of policy, required to be used in all cases but only when necessary in order to implement the provisions of Title VI.

Standard DOT Title VI Assurances

(Name of Recipient) (the recipient) as a condition to receiving any Federal financial assistance from the Department of Transportation and in consideration for the assistance assures that it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d–42 U.S.C. 2000–4 (the Act), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Part 21, (the regulations) the terms of this assurance and other pertinent directives. The recipient promises that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the recipient receives Federal financial assistance from the Department of Transportation, including the (Name of Appropriate Administration). The recipient also promises it will promptly take any measures necessary to effectuate this agreement. This assurance is required by § 21.13 of the regulations, a copy of which is attached.

More specifically and without limiting the above general assurance, the recipient hereby gives the following specific assurances with respect to its (Name of Appropriate Program):

1. The recipient agrees that each "program" as defined in § 21.3 of the regulations, will be conducted or operated in compliance with all requirements imposed by, or pursuant to the regulations.

2. With respect to benefits (including but not limited to services, facilities, financial aid, equipment, opportunities for business, housing, employment, and education of programs, receiving Federal financial assistance from the Department of Transportation), the recipient agrees that;

(a) It will identify the beneficiaries, according to their race, color and national origin, and the benefits to be provided for each program, and take all necessary positive steps to ensure that beneficiaries are not excluded from, denied participation in, or denied the benefits of the program on the basis of race, color or national origin;

(b) It will distribute services and other benefits on an equitable basis among all beneficiaries without regard to race, color or national origin, taking all necessary positive steps to ensure such equitable distribution.

3. With respect to the negative effects of any program receiving Federal financial assistance from the Department of Transportation, the recipient agrees that:

(a) It will identify all negative effects and identify the persons affected by the negative effects by race, color, and national origin.

(b) It will take all necessary positive steps to ensure that negative effects do not disproportionately affect minority persons.

4. With respect to public information concerning any program receiving Federal financial assistance from the Department of Transportation, the recipient agrees that:

(a) It will prepare and cause to be distributed to the public handbooks, manuals, pamphlets and other materials, including posters displayed in conspicuous places, describing the DOT-assisted program, the requirements for participation by beneficiaries and other interested persons, and the rights of beneficiaries and other interested persons concerning the program. This paragraph does not apply to the RSPA Pipeline Safety Grant Program.

(b) It will include in these materials information on DOT Title VI requirements and complaint procedures and a statement that other Title VI information and assistance is available from the Department of Transportation.

(c) Where there is a significant number or proportion of persons likely to benefit from, use, or be adversely impacted by a program whose primary language is other than English, it will make these materials available in that language or languages as well as in English. The recipient further promises that materials in languages other than English will be provided in quantities and in ways that will afford persons whose primary language is not English an equal opportunity with English-speaking persons to learn about the program and applicable civil rights requirements.

5. With respect to citizen participation in the planning and execution of any program receiving Federal financial assistance from the Department of Transportation, the recipient agrees that:

(a) It will take all necessary positive steps to ensure that any boards and commissions formed or used in connection with the planning and execution of the program shall be representative in terms of race, color and national origin of the affected community or communities.

(b) It will provide the maximum possible opportunity for citizens to participate in planning and decision making in regard to DOT-assisted programs.

(c) Where there is a significant number or proportion of persons likely to benefit from, use, or be adversely affected by a DOT assisted program whose primary language is other the English, it will provide information about citizen planning and advisory bodies and notices of public hearings in the language or languages other than English. The recipient further agrees that it will conduct public hearings so that persons whose primary language is not English can participate fully (e.g., by the provision of translation services, bilingual handouts and transcripts, etc.).

(d) It will publicize all public hearings and other opportunities for citizen participation in minority and general media.

(e) If requested to do so by the Department of Transportation or one of its Departmental elements, it will contract for the services of minority civil rights or community organizations to help inform the affected community of the impact of the program. (The cost of such a contract will be an allowable program expense.)

(f) It will take all necessary positive steps to inform all community organizations in the affected community of the program and its impacts inviting these organizations to participate in the planning and decision-making processes.

6. With respect to employment covered by Title VI, the recipient agrees that:

(a) Its employment practices will not result in discrimination against any person on the ground of race, color, or national origin;

(b) It will ensure that its employment practices do not cause any person to be excluded from participation in or to be denied the benefits of, or otherwise to be discriminated against in connection with a DOT-assisted program on the basis of race, color, or national origin;

(c) It will analyze its employment practices to ensure the absence of discrimination and to identify any programs that may exist;

(d) It will ensure that its employment practices with regard to planning and public contact personnel are free from discrimination;

(e) It will monitor the job performance of its employees to ensure that they carry out their functions in accordance with Title VI.

7. With respect to the relocation of persons displaced by DOT-assisted programs, the recipient agrees that:

(a) It will inform each displacee of his or her rights to participate in and receive benefits from the Federal Relocation Assistance Program, providing such material in the primary language of displacees whose primary language is other than English;

(b) It will assist displacees in obtaining replacement housing, relocation payments, compensation and other relocation services, ensuring that such services and benefits are made without regard to the race, color, or national origin of the displacees;

(c) It will take all necessary action to ensure that displacees are relocated, within their financial means, in housing that meets their needs, in areas of their choice on a nondiscriminatory basis. The recipient further promises to avoid relocating persons in a fashion that tends to reinforce patterns of housing discrimination or segregation.

8. The recipient agrees to identify any problem that could result in noncompliance with title VI, the regulations, or this assurance. The recipient promises to cite any such problem in its application, or, with problems identified subsequent to the award of Federal financial assistance, by notice in writing to the director, the recipient further promises to take whatever action is necessary to correct the problem.

9. The recipient agrees to provide to the Department of Transportation all data required for application, the title VI Assessment, compliance reviews, complaint investigations, or any other purpose, upon request of DOT officials. The recipient also agrees to maintain sufficient data to allow DOT officials to make written determinations concerning compliance. The recipient further agrees to provide any information to DOT officials upon request, and is aware that the failure to provide data reasonably available or the falsification of date will place the recipient in noncompliance with title VI.

10. The recipient agrees to insert the clauses of Attachment 1 of this assurance in every contract subject to the Act and the Regulations.

11. The recipient agrees to insert the clauses of Attachment 2 of this assurance, as a covenant running with the land, in any deed from the United States effecting a transfer of real property, structures, or improvements thereon or interests therein.

12. Where the recipient receives Federal financial assistance to construct a facility, or

part of a facility, the recipient agrees that its assurances shall extent to the entire facility and facilities operated in connection with it.

13. Where the recipient receives Federal financial assistance in the form of real property, the recipient agrees that its assurances shall extend to rights to space on, over or under such property.

14. The recipient agrees to include the appropriate clauses set forth in Attachment 3 of this assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the Recipient with other parties: (a) For the subsequent transfer of real property acquired or improved under (Name of Appropriate Program); and (b) for the construction or use or access to space on, over or under real property acquired, or improved under (Name of Appropriate Program).

15. The recipient agrees to be bound by this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the recipient or any transferee or successor in interest for the longer of the following periods:

(a) the period during which the property is used for a purpose for which the Federal financial assistance is extended, for another purpose pursuant to OMB Circular A–102, dated August 24, 1977; or

(b) the period during which the recipient retains ownership, operation, management or possession of the property.

16. The recipient agrees to provide for such methods of administration for the program, as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority, to give reasonable guarantee that it, other recipients, subgrantees, contractors, subcontractors, transferees, and successors in interest of Federal assistance under such program will comply with all requirements imposed or pursuant to the Act, the Regulations and this assurance.

17. The recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this assurance.

18. Failure to abide by any provision of this assurance on the part of the recipient may result in denial of funding and/or imposition of other appropriate administrative sanctions.

19. By signing this assurance, the recipient certifies that the conditions of this assurance can be met to his/her best knowledge and belief. Knowingly making a false or misleading representation by entering into this assurance may subject a recipient to civil and criminal sanctions.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the recipient by the Department of Transportation under the (Name of Appropriate Program) and is binding on recipients, other recipients, subgrantees, contractors, subcontractors, transferees, and successors in interest and in the (Name of Appropriate Program).

The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the recipient.

Dated:_____

_____

(Recipient)

_____

(Signature of Authorized Official)

Attachments 1, 2 and 3.

Department of Transportation

U.S. Department of Transportation Assurance Attachment 1

During the performance of this contract (the contractor), for itself, its assignees and successors in interest agrees as follows:

(1) *Compliance with Regulations:* The contractor shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, DOT), Title 49, Code of Federal Regulations, Part 21, as they may be amended from time-to-time (the regulations), which are incorporated by reference and made a part of this contract.

(2) *Nondiscrimination:* The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by § 21.11 of the regulations, including employment practices when the contract is in connection with a program set forth in Attachment B of the regulations.

(3) *Information and Reports:* The contractor shall provide all information and reports required by the regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the (recipient) or the (Name of Appropriate Administration) to be pertinent to ascertain compliance with such regulations, orders, and instructions. Where any information required by a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the (recipient), or the (Name of Appropriate Administration), as appropriate, and shall set forth what efforts it has made to obtain the information.

(4) *Sanctions for Noncompliance:* In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the (recipient) shall impose such contract sanctions as it or the (Name of Appropriate Administration) may determine to be appropriate, including, but not limited to:

(a) Withholding of payments to the contractor under the contract until the contractor complies; and/or

(b) Cancellation, termination or suspension of the contract, in whole or in part.

(5) *Incorporation of Provisions:* The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the (recipient) or (Name of Appropriate Administration) may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the (recipient) to enter into such litigation to protect the interests of the (recipient), and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

U.S. Department of Transportation

Attachment 2

The following clauses shall be included in any and all deeds effecting or recording the transfer of real property, structures or improvements thereon, or interest therein from the United States.

(Granting Clause)

Now, Therefore, the Department of Transportation, as authorized by law, and upon the condition that the (Name of Recipient) will accept title to the lands and maintain the project constructed thereon, in accordance with (Name of Appropriate Legislative Authority), the regulations for the administration of (Name of Appropriate Administration) of the Department of Transportation and, also in accordance with and in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, (regulations), pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d–4), does hereby remise, release, quitclaim and convey unto the (Name of Recipient) all the rights, titles and interests of the Department of Transportation in and to said lands described in Exhibit "A" attached hereto and made a part thereof.

(Habendum Clause)

To have and to hold said lands and interests unto (Name of Recipient) and its successors in interest, heirs and assigns forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on the (Name of Recipient), its successors and assigns. The (Name of Recipient), in consideration of the conveyance of said lands does hereby convenant and agree as a convenant running with the land for itself, its successors and assigns, that (1) no person shall on the grounds of race, color, or national origin, be excluded from partication in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over or under such lands hereby conveyed and (2) that the (Name of Recipient) shall use the lands and interests in lands so conveyed, in compliance

with all requirements imposed by or pursuant to the regulations may be amended and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department shall have a right to reenter said lands and facilities on said lands, and the above described lands and facilities shall thereon revert to and vest in and become the absolute property of the Department of Transportation and its assigns as such interest existed prior to this instruction or issued. (Include in licenses, leases, permits, etc.)

U.S. Department of Transportation

Attachment 3

The following clauses shall be included in all deeds, licenses, leases, permits, or similar instruments entered into by the (Name of Recipient) pursuant to the Provisions of Assurance 15(a).

The (grantee, licensee, lessee, permittee, etc., as appropriate) for him/herself, his/her heirs, personal representaives, successors in interests, and assigns, as a part of the consideration hereof, does hereby convenant and agree in the case of deeds and leases add "as a convenant running with the land" that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which Department of Transportation assistance is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee etc.) shall maintain and operate such facilities and services in compliance with all other requirements of the regulations and as said regulations may be amended.

(Include in licenses, leases, permits, etc.)

That in the event of breach of any of the above nondiscrimination convenants, (Name of Recipient) shall have the right to terminate the license, permit, etc. and to re-enter and repossess said land and the facilities thereon, and hold the same as if said license, lease, permit, etc. had never been made or issued. (Include in deeds.)

That in the event of breach of any of the above nondiscrimination covenants, (Name of Recipient) shall have the right to terminate the license, lease, permit, etc. and to reenter and repossess said land and the facilities thereon, and hold the same as if said license, lease, permit, etc. had never been made or issued.

(Include in licenses, leases, permit, etc.)

That in the event of breach of any of the above nondiscrimination covenants, (Name of Recipient) shall have the right to re-enter said land and the facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of (Name of Recipient) and its assignments.

(Include in deeds.)

With respect to the Coast Guard Auxiliary program, which does not fit the traditional model of DOT grant programs, applicants shall sign the following assurances instead of the standard DOT Assurance set forth in this Appendix.

United States Coast Guard (USCG)

Assurance of Compliance with Title VI of the Civil Rights Act of 1964

(By the U.S. Coast Guard Auxiliary)

I. (The Coast Guard District Auxiliary (add Region, if appropriate)) (Hereinafter called "Recipient") HEREBY AGREES THAT all divisions and flotillas under its jurisdiction will comply with TItle VI of the Civil Rights Act of 1964 (Pub. L. 88–352) and all requirements imposed by or pursuant to 33 CFR Part 24 and instructions issued by the Commandant U.S. Coast Guard pursuant to that title, to the end that in accordance with Title VI of that Act and pertinent directives, no person in the United States shall, on the grounds of race, color, creed or national origin be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination under any program or activity of the Coast Guard Auxiliary for which the ————(Recipient) receives Federal financial assistance and other benefits from the U.S. Coast Guard and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to any unit of the ————(Recipient), this assurance shall obligate ————(Recipient) for the period during which the real property of structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services of benefits. If any personal property is so provided, this assurance shall obligate the ————(Recipient) for the period during which the Federal financial assistance is extended to it. THIS ASSURANCE is binding on all units of the ————(Recipient) its successors, transferees, and assignees, and the persons whose signatures appear below are authorized to sign this assurance on behalf of the ————(Recipient).

(Date

(Recipient)

(Title)

(Mailing Address of Recipient)

Appendix D—DOT Internal Procedures and Standards

For the information of applicants, recipients, and the public, the Department of Transportation sets forth the following internal procedures and standards which it uses in processing and deciding matters under this part.

1. *Division of Responsibilities.* Title VI compliance responsibilities are divided among the Departmental Director of Civil Rights and head of each of the Departmental elements. These responsibilities are as follows:

a. *Departmental Director of Civil Rights.* The Director acts as the responsible Departmental official in matters relating to Title VI and assists the Secretary in carrying out the Title VI responsibilities of the Department. Specifically, the Director, in addition to the responsibilities elsewhere in this part, has the responsibility to:

(1) Recommend, develop, disseminate, monitor and pursue vigorously Departmental policies on the implementation of Title VI.

(2) Prepare uniform Departmental Title VI regulations and issue Title VI guidelines and program directives.

(3) Advise the Secretary concerning significant developments in the implementation of the Department's Title VI program.

(4) Review, evaluate and monitor vigorously Departmental elements' activities and programs relating to Title VI and make changes to assure consistency and program effectiveness.

(5) Monitor compliance with this part and take appropriate action to assure full and fair implementation.

(6) Provide leadership, guidance and technical assistance to the Departmental elements in the carrying out of their Title VI responsibilities.

(7) Ensure that all complaints of discrimination alleging noncompliance with Title VI are processed, investigated and resolved in a fair and timely manner.

(8) Take appropriate, fair and timely action with regard to all findings of noncompliance under Title VI, by initiating or participating *inter alia* in attempts at informal resolution, hearings, and reports to the Secretary for submission to Congress, ordering the suspension or termination of Federal financial assistance.

(9) Provide primary coordination and liaison with other agencies, offices, and public and private organizations outside the Department and with the Department of Justice, in conjunction with the Office of General Counsel, to achieve program objectives.

(10) Disseminate information to and provide continuous and meaningful consultation with the public concerning the Department's Title VI programs, including, in appropriate situations, the provision of material of languages other than English.

b. *Departmental Elements.* Each Departmental element, with respect to the programs it administers, has the responsibility to ensure that the objectives of Title VI and the regulations of the Department of Justice at 28 CFR Part 42, Subpart F, are achieved. The head of each Departmental element shall

(1) Cause each application for Federal financial assistance:

(a) To be reviewed by its office of civil rights for a written determination as to whether the applicant is in compliance.

(b) To include the Standard DOT Title VI Assurances required by this part.

(2) Assign sufficient personnel to the Office of Civil Rights to implement fully and to ensure compliance with the Title VI program;

(3) Cause each environmental impact review made pursuant to DOT Order 5610.1B in connection with Federal financial assistance programs to be reviewed by its office of civil rights prior to approval in order

to ascertain whether the environmental determinations are consistent with its Title VI program requirements.

(4) Refer all complaints alleging discrimination prohibited by Title VI, and all matters which, based on a compliance review, report or other information, indicate a possible failure to comply with Title VI, to the Director for investigation and handling. Each Departmental element shall cooperate with the Director in handling all such compliance matters.

(5) Carry out the compliance program standards and procedures set forth in this part and cooperate with the Director in all phases of the DOT Title VI Program.

2. *Complaints.* In processing and investigating complaints, under § 21.25 of this part, the following procedure shall be used:

(a) *Information from Departmental Elements.* Immediately upon receiving a complaint, the Office shall request the following information from the Departmental element(s) concerned, which shall furnish the information within ten days of receiving the request:

(1) Program, project, or activity involved and file number(s);

(2) Location and brief description of program, project or activity;

(3) Status of funding for the program, project or activity;

(4) Copies of any compliance reviews of the recipient, contractor or participant with respect to the program, project or activity;

(5) Copies of the Title VI Assessment and nondiscrimination assurances signed with respect to the program, project, or activity;

(6) A statement of whether a compliance review with respect to the program, project or activity has been scheduled or is contemplated within the time allowed for processing of the complaint.

(b) *Information from Other Agencies.* The Office may contact the Equal Employment Opportunity Commission (EEOC), state or local civil rights offices, other Federal agencies providing financial assistance to the respondent, and community organizations to determine whether any other allegations of non-compliance against the respondent exist. The existence of a pattern of such allegations may be ground for the Director to initiate a special compliance review.

(c) *Referral to Other Agencies.* When DOT lacks jurisdiction, the Director shall, when possible, refer the complaint to other State or Federal agencies, informing the parties of this action. For example, the Director could refer complaints regarding noncovered employment to the EEOC or the State anti-discrimination agency.

(d) *Priority Complaint.* All incoming complaints shall be examined to determine whether the discrimination alleged would be irremediable if not dealt with promptly; e.g., complaint of a minority contractor when the contract is to be awarded in a short time. If such determination is made, the complaint shall be given priority status. The processing, investigation, and determination of such complaints shall be accelerated so as to advance significantly the normal completion.

(e) *Assignment of Complaints.* Ordinarily, all complaints are assigned to an investigator within the Office, except where the Director determines that because of workload in the Office, the matter would be expedited if handled by a Departmental element's office of civil rights and that such handling is appropriate in the case. The responsibilities of a Departmental element's office of civil rights to investigate the complaint may not be delegated to any regional field office.

(f) *Investigation Plan.* Prior to contacting the respondent to schedule the complaint investigation, the investigator shall prepare an investigation plan in order to focus on relevant issues; diminish the possibility of inadvertent gaps in the investigation, and note areas in which additional information will be required. Departmental elements conducting an investigation shall submit the investigation plan to the Office for review and approval.

3. *Compliance Standards.* The following material shall guide the Department in determining whether an applicant or recipient is in compliance with its Title VI requirements.

(a) *General.* Each Departmental element is responsible for reviewing each application and for monitoring the performance of each recipient to ensure that each applicant and recipient complies fully with the Act and this part. It is the policy of the Department to award and to continue to provide financial assistance only to those applicants and recipients who comply fully with all requirements. The requirements and compliance standards of this part may be applied to contractors and praticipants by the Department, by a Departmental element, or with the approval of the Director and under the direction of a Departmental element, by a recipient of its subrecipients.

(b) *Beneficiaries.* In order to be in compliance, applicants and recipients shall identify their beneficiaries and take affirmative action to assure that beneficiaries shall not be excluded from participation in or denied the benefits of any assisted program on the ground of race, color, or national origin. Applicants and recipients shall develop and utilize criteria, procedures and administrative methods that do not result in a disparate negative effect in the services or other benefits received or to be received by minorities. Problem identification and corrective action should be developed during the planning stages of the program.

Moreover, a recipient shall also take positive steps to assure that services and other benefits are equally distributed to all participants and beneficiaries irrespective or their race, color, or national origin.

(c) *Negative Effects.* To be in compliance, applicants and recipients must identify negative effects and take positive steps to ensure that such effects do not fall disproportionately upon minorities.

(d) *Citizen Participation.* To be in compliance, applicants and recipients shall make every reasonable effort to consider and resolve amicably those concerns of citizens relating to the program in question. Where there are boards, commissions, councils or committees formed relative to the program, concerted efforts shall be initiated by the recipient to involve persons in the affected community, to assure compliance with the civil rights requirements that no person shall be excluded from participation in, be denied the benefits of or otherwise be subjected to discrimination. Citizen participation shall include maximum feasible opportunity for participation in planning, programming and decision making. This right of participation shall exist for any resident or employee of the target area designated to receive assistance and for persons other than those within the target area when the object of the assistance negatively effects those persons. Where appropriate, bilingual notification shall include similar foreign language descriptions of citizen planning of advisory bodies that provide input to the administrative element.

The thrust of these materials shall be directed at securing participation of a program advisory nature from minorities.

Recipients shall be required to publish and announce notices of public hearings in the general new media and in the minority media, where available, in order to inform fully the community of the policy and procedure with regard to programs, projects, and activities. Recipients shall also make adequate provisions to ensure that the non-English speaking population groups be adequately informed and given an ample opportunity to participate. Such positive steps shall include as necessary and practicable, provisions of translation services, translated transcripts and/or hearings held in languages of the predominant non-English speaking racial/ethnic group(s).

The recipient, where deemed appropriate by a Departmental element, may be required to contract the services of a minority civil rights organization to inform the affected community of the impact of programs. In such instances, it is proper to designate a local agency to review these applications and to inform the local citizenry of the program impact. The expense of reviewing the social impact of the program on the target area shall be an eligible program expense.

(e) *Public Dissemination of Information.* In order to be in compliance, each applicant or recipient shall include information on Title VI requirements, complaint procedures and the rights of beneficiaries in handbooks, manuals, pamphlets and other material which are distributed to the public to describe the recipients and beneficiaries. Recipients shall inform beneficiaries through prominently displayed posters as well as other forms of communications and publications, of their rights and the benefits under the program, the procedures for filing complaints pursuant to Title VI and the availability of Title VI information from the recipient and the Department of Transportation. Where a significant number or proportion of beneficiaries eligible to be served or likely to be directly affected by a program needs assistance in a language other than English in order to participate in or become beneficiaries of such programs, the recipient shall take reasonable steps, considering the scope of the program and the size and concentration of such population, to provide information in appropriate languages to such persons. This requirement applies with regard to written material of the type which is ordinarily distributed to the public as well as at public hearings.

(f) *Relocation.* With respect to persons and businesses displaced by a program, applicants and recipients, to be in compliance, must ensure that all displacees are fully informed of their rights to participate in, and receive benefits from the program. Recipients shall assist relocatees in obtaining relocation payments (replacement housing payments, last resort housing), compensation and personal property move payments. Prompt and equitable treatment shall include assisting relocatees to buy and/or rent in areas of their choice and within their financial means on a nondiscriminatory basis. It is the goal of this Department to administer its relocation assistance program in an affirmative manner which will further the purposes of the Nation's fair housing laws.

(g) *Provision of Data.* All applications must be supported with sufficient data to permit DOT compliance officials to make a written determination whether the applicant is in compliance with Title VI and whether the program, which is funded in whole or in part by such financial assistance, is consistent with the Title VI Program. Each recipient must maintain sufficient data to allow appropriate analysis and review of its programs.

4. *Record Keeping.* (a) The Director shall maintain a log of Title VI complaints identifying each complainant by race, color, or national origin; the recipient; the nature of the complaint; the dates the complaint was filed and the investigation completed; the disposition; the date of disposition; and other pertinent information.

(b) The Director shall maintain a record of application and compliance reviews identifying the recipient, contractor and other participants reviewed, who conducted the review, dates of the review, the determination made, and other pertinent information.

5. *Reports and Determination.* Following each planning review, application review, compliance review or complaint investigation, the office conducting the review or investigation shall prepare a report setting forth its determination.

(a) *Contents.* Each such report shall contain the following:

(1) A statement of the kind of review or investigation involved.

(2) A summary of the information obtained.

(3) Complete Civil Rights Information System (CRIS) data entry form, for reviews only.

(4) Specific findings of the review or investigation.

(5) The results of any efforts at informal resolution to correct noncompliance or discrimination, and signed copies of any resolution agreements reached.

(6) Recommendation or disposition.

(7) Attachments containing all background information relevant to the report, including applicable laws and regulations, written information and statements obtained during the review or investigation, an applicant's Title VI Assessment and relevant portions of an applicant's or recipient's Environmental Impact Statement.

Appendix E—Title VI Assessment Form

Except to the extent noted in this appendix, recipients and applicants are required to complete the following Title VI Assessment Form in order that Title VI compliance can be determined. Departmental elements are also responsible for distribution of the form to applicants and recipients whenever assessment is required.

The following definitions apply to this form:

Jurisdiction Area—the geographical area under the jurisdiction of the applicant/recipient, such as a State, county, airport, transportation district, etc.

Program/Project/Activity Area—the geographical area of the program, project or activity, such as a highway construction project (including right-of-way).

Black, Not of Hispanic Origin—a person having origins in any of the Black racial groups of Africa;

Hispanic—a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race;

Asian or Pacific Islander—a person having originis in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to, China, Japan, Korea, the Phillipine Islands, and Samoa; or

American Indian or Alaska Native—a person having origins in any of the original peoples of North America and who maintains cultural identification through tribal affiliation or community recognition.

White, Not of Hispanic Origin—a person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

BILLING CODE 4910-62-M

Racial/Ethnic Data

	Program/Project/ Activity Area	Jurisdiction Area
1. Total Population		
2. Total Black Population (not of Hispanic Origin)		
3. Total Hispanic Population		
4. Total American Indian or Alaskan Native Population		
5. Total Asian or Pacific Islander Population		
6. White, not of Hispanic Origin		
7. Is there a signed and dated Title VI Assuance?	Yes _____ No _____	
- Has it been signed within the past 12 months?	Yes _____	No _
8. Is a public hearing required?	Yes _____	No _
If so, was it advertised in minority newspapers, or other minority oriented news media?	Yes _____	No _
Is there a public hearing transcript?	Yes _____	No _
9. Relocation		
- Will it be necessary?	Yes _____	No _
- Is there a relocation plan?	Yes _____	No _
- Does it conform to the requirements of the Uniform Relocation		

and Land Acquisition Act? Yes _____ No ___

Please enclose a copy of the relocation plan, if one has been prepared.

	White	Black	Hispanic	American Indian	Asian or Pacific Islander
10. Anticipated beneficiaries of the program, project, or activity.					
11. Estimated number of property owners:					
a. to be relocated					
b. to be negatively effected					
12. Estimated number of families:					
a. to be relocated					
b. to be negatively effected					
13. Estimated number of businesses:					
a. to be relocated					
b. to be negatively effected					
14. Users of services (numbers)					

15. If there is an Advisory Board, what is it composition?

16. If there is an impact on a minority community media (including those in languages other than English, where applicable) been used to inform the community about the project, program or activity and its impacts? Yes_____ No _____

	White	Black	Hispanic	American Indian	Asian or Pacific Islander

17. Is this project being carried out under the aegis of a State or regional planning organization (including a metropolitan planning organization)? Yes _____ No _____

18. Has the project been developed in accordance with the OMB A-95 Process, including referral to State or local planning agencies? Yes _____ No _____

19. Number of projected job opportunities and vacancies created by the program, project, or activity if employment is covered under Title VI?

20. EMPLOYMENT PRACTICES OVER THE PAST YEAR (for employment covered by Title VI).

	Total	White	Black	Hispanic	Indian	Asian
Applicants						
Hires						
Promotion						
Termination						
Lay offs						
Training						

21. Are there any lawsuits or complaints alleging discrimination on the basis of race, color, or national origin filed against the applicant or any of its subgrantees within the 5 years prior to the date of the application?

Yes _____ No _____

a. If so, please specify the name of the complainant.

b. Indicate the status or outcome of each complaint or lawsuit.

c. Have any of these lawsuits or complaints resulted in the termination of funds? Yes _____ No _____

22. Does the applicant or any of its proposed subgrantees have any pending application for Federal financial assistance with any other Federal agency or Federally assisted program, project, or activity?

Yes _____ No _____

If so, please list these Federal agencies, programs, projects, and activities, and current status.

23. Were there any civil rights compliance reviews conducted or are any being conducted on the applicant or any of its proposed subgrantees by any State, local or Federal agency within the 5 years prior to the date of the application?

Yes _____ No _____

Please indicate the status of such review(s), and identify the agency that undertook them.

24. Is there a detailed citizen participation plan?

Yes _____ No _____

(Explain and/or attach a copy)

25. Has there been substantial citizen participatin in planning for the project or program? Yes _____ No _____

Describe it.

26. Is there a person assigned to provide Title VI compliance oversight?

Yes _____ No _____

If so, please give name and job title.

27. Describe all problems related to achieving compliance with Title VI.

28. Additional Comments

29. Determination (to be completed by DOT civil rights official)

Adequate information to assess compliance?

Yes _____ No _____

Compliance Yes _____ No _____

Noncompliance Yes _____ No _____

Explain:

Date: _____ Reviewer: _____

BILLING CODE 4910-62-C

Certain Departmental elements already collect some of the information required on this form or do not need certain items of information. The following information gathering requirements apply to these Departmental elements:

USCG—Coast Guard recipients need answer only items 20–29 on the Title VI Assessment Form.

FHWA—FHWA recipients need answer only items 21 and 23.

FAA—FAA recipients never need to answer items 1–6, 10 and 20. FAA recipients need not complete any items on the form if (1) there has been a finding by FAA, pursuant to an on-site compliance review, that the recipient is in compliance, and this finding has been made within 24 hours of the application date; or (2) there is no relocation caused by the project; or (3) there is no requirement for an Environmental Impact Statement on the project.

NHTSA—Because NHTSA grant programs differ significantly from other major DOT grant programs, NHTSA grantees do not use the DOT Title VI Assessment Form set forth in this Appendix. Rather, NHTSA recipients (State Highway Safety Officer) answer the following questionnaire:

I. Communications With State and Local Civil Rights Enforcement Agencies

A. Please provide a copy of the HSP to the State civil rights enforcement agency to enable it to review and comment on the civil rights aspects of the activities for which NHTSA assistance is sought. A report of the State/subgrantee(s) response to concerns raised shall be included in the Title VI report required in Volume 102—Highway Safety Plan, Chapter V, Paragraph 4.

B. Is the State highway safety agency or any known subgrantee currently the subject of a Federal agency civil rights enforcement action or lawsuit? If so, identify the agency and the NHTSA recipient involved.

II. State Highway Safety Agency/Sub-Grantee Involvement With Minority Citizens

A. List the minority group organizations and their respective contact persons with whom the State and local political subdivisions (LPSs) have made contacts while planning and developing the HSP.

B. To what extent have minority community and foreign language media been used to inform minority group persons about the aspects of the program?

C. To what extent have 403 monies been used to translate highway safety program materials (brochures, driver manuals, etc.) Describe the extent to which bilingual persons are used to facilitate the delivery of highway safety program-related services to the public.

D. Describe any other Public Information and Education measures to be taken to ensure that minorities will be adequately informed about the programs and activities contained in the HSP.

E. Have any organizations representing minorities, women, or the handicapped objected to any specific activities receiving NHTSA/assistance under the HSP? If so, what measures are

F. Identify the citizen/consumer and technical advisory committees that advise the State highway safety agency and denote the extent to which they have minorities, women, and the handicapped among their membership.

G. Describe the manner and extent to which racial/national data was used in the State and local problem identification processes.

III. EEO Impact of the Highway Safety Plan

A. Attach a completed State and Local Government Information Report (EEO–4) covering the employment profile of the State highway safety agency.

B. Identify all other NHTSA-assisted jobs (excluding III–A data) to be created or supported by 402 monies by employer, job title, and salary.

C. Attach a copy of the EEO affirmative action plan under which the State highway safety agency operates.

IV. State Highway Safety Agency's Oversight of Title VI Compliance

A. Describe the nature and extent to which the Governor's Highway Safety Representative will provide Title VI-related compliance oversight regarding HSP-assisted activities carried out by other State agencies and LPSs.

B. Explain the procedures used to respond to Title VI-related complaints or grievances. If such procedures involve referring complaints to a civil rights enforcement agency, please identify the agency and provide the name and address of its director.

C. Provide the name(s) and the job title(s) of the persons assigned as the State highway safety agency's agency's Title VI, EEO, and MBE coordinator(s).

Appendix F—Applicability of Title VI Regulations to the Act of June 21, 1940 "Truman-Hobbs Act"

Actions under the Act of June 1940 ("The Truman-Hobbs Act", 33 U.S.C. 511, et seq.) are subject to Title VI of the Civil Rights Act of 1964, as implemented by Executive Order 11764, as the Act provides for Federal financial assistance. Under the Act (33 U.S.C. 513), the Commandant of the Coast Guard, under authority delegated by the Secretary of Transportation, issues to a bridge owner an order to alter a bridge that the Commandant finds unreasonably obstructs the free navigation of a navigable water of the United States. Also under the Act (33 U.S.C. 516), the bridge owner receives Federal financial assistance for the alteration so ordered.

For the purposes of the Department of Transportation Title VI regulations, the bridge owner is a "recipient" of Federal financial assistance; however, the bridge owner receives the assistance because of a Federal order to alter the bridge and is therefore not an "applicant" for the purposes of those regulations. The "beneficiary" in a Truman-Hobbs Act action, for the purpose of these regulations, is primarily the navigation interests that benefit by the alteration.

Appendix G—Federal Aviation Administration (FAA)

Modification of Requirements as Applied to the Airport Sponsor

(1) *Additional Requirements.* The airport sponsor shall comply with the requirements listed below in addition to those applicable in the foregoing regulation.

(a) The airport sponsor shall comply with this part as made applicable, where appropriate, to nondiscrimination and affirmative action on the basis of sex or creed, as authorized by Section 30 of the Airport and Airway Development Act of 1970, as amended, and § 21.19(a) of this part.

(b) Each airport sponsor shall, within 15 days or receipt, forward to the Civil Rights Staff of the Federal Aviation Administration Region in which the airport is located, a copy of each written complaint received by the airport sponsor charging discrimination because of race, color, creed, sex, or national origin in violation of this part, together with a statement describing all actions taken to resolve the matter, and the results thereof.

(c) Each airport sponsor shall give written notice annually to each tenant, contractor, and concessionaire that is signatory to the nondiscrimination provisions required by this part, of its obligation to comply with such provisions.

(2) *Definition of Specific Requirements.* The airport sponsor will comply with specific provisions of this part by taking the action described in each case below.

(a) The airport sponsor will include the reverter clause (found in Attachments 2 and 3 of Appendix C) in deeds, licenses, leases, and permits only when the grant agreement specifically states that the FAA Office of Civil Rights has determined that its inclusion is necessary to implement the provisions of Title VI. In all other cases, the reverter clause will not be included.

(b) In cases where reversion or any other form of sanction is proposed by the airport sponsor, such reversion of land or facilities or other sanctions based on a violation of this part, may be effected only with the written concurrence of the FAA Office of Civil Rights.

(c) In order to comply with Sections 4 (a) and (b) of Appendix C, the airport sponsor shall take at least the following actions:

(i) Conspicuously display a sign or signs, furnished by the FAA, in the main public area or areas of the airport, stating that discrimination based on race, color, creed, national origin, or sex is prohibited on the airport;

(ii) Make a copy of this part available at the airport hours by any person asking for it; and

(iii) State in notices of opportunity for public hearing published in newspapers, as required by 14 CFR Part 152.73, Federal Aviation Regulations, that the proposed project is an equal opportunity program.

Appendix H—Federal Highway Administration

1. *Authority.* In addition to Title VI and this part, this appendix implements section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); 49 CFR Part 27; 28 CFR 50.3;

23 U.S.C. 324; Executive Order 11764; Federal-Aid Highway Acts and related statutes; and assurances signed by each state under this part.

2. *Purpose.* The purpose of this appendix is to implement Title VI of the Civil Rights Act of 1964, this part, and related statutes and regulations to ensure that no person in the United States shall, on the grounds of race, color, religion, sex, age, handicap, or national origin, be excluded from participating in, be denied the benefits of, or be otherwise subjected to discrimination under any program receiving Federal financial assistance from the Federal Highway Administration (FHWA). This appendix also provides guidance to State Highway Agencies (SHA) in carrying out this purpose through the program procedures and regulations of the Federal-aid highway program.

3. *Policy.* (a) It is the policy of FHWA to follow a "Systematic Interdisciplinary Approach" (SIA) to implement Title VI and this part. The SIA is a managerial process in which civil rights and program officials of the SHA and the FHWA work jointly to implement their responsibilities under Title VI, this part and other authorities by carrying out program responsibilities, procedures, and operations in such a way that no person is excluded from participating in, denied the benefits of, or otherwise subjected to discrimination under any program or project receiving Federal-aid highway funding because of race, color, religion, sex, age, handicap, or national origin.

(b)(1) Under the SIA, FHWA and SHA officials must carry out their responsibilities, procedures, and operations in such a way that there will be equal treatment and opportunity for all persons participating in benefiting from, or being affected by any program, project, or activity receiving Federal-aid funding.

(b)(2) Where the results of a particular FHWA program office's standard procedures are not likely to be equal (e.g., compensation under acquisition and relocation procedures), the FHWA Office of Civil Rights (Washington Headquarters) (OCR) must concur in such standard procedures as being in compliance with Title VI. This approval does not relieve the program office from responsibility for seeing that the procedures are carried out in compliance with Title VI, nor does it relieve the FHWA Office of Civil Rights from responsibility in the instance of a discrimination complaint or any other reason to suspect the existence of discrimination.

(c) Through the SIA, SHA and FHWA program and Civil Rights officials are responsible for indentifying potential areas of discrimination and taking corrective action immediately in order to prevent discrimination from occurring. As part of the SIA, SHA and FHWA program and Civil Rights officials periodically review programs to determine the degree and adequacy of compliance with Title VI and related authorities. These reviews are conducted consistent with this part and the State's approved Title VI plan as set forth in paragraph 5 of this appendix.

(d) When requested to do so by the Department of Transportation Office of Civil Rights, the FHWA Office of Civil Rights investigates discrimination complaints. The FHWA Headquarters Office of Civil Rights may assign complaints to Regional Offices of Civil Rights for investigation to expedite the processing of appropriate cases. Program area personnel assist the Office of Civil Rights in providing background and resource material.

(e) Cooperation by FHWA and SHA program and civil rights staff of projects and program elements through the SIA is designed to ensure that these projects and programs elements comply with Title VI and other authorities. However, such joint participation and approval of basic procedures does not preclude a subsequent finding by the Department of Transportation or FHWA Office of Civil Rights that a project or program element is in noncompliance since the purpose of Title VI is to achieve a non-discriminatory result.

4. *Applicability.* (a) This appendix is applied by the FHWA Office of Civil Rights and the FHWA program offices with respect to all programs, projects, procedures, and responsibility that are part of the Federal-aid highway program. While SHA and FHWA civil rights and program officials carry out their responsibilities in coordination with each other, the FHWA Office of Civil Rights has the primary responsibility and lead role in carrying out all FHWA responsibilities for Title VI and related statutes, as required by the Department of Justice.

(b)(1) This applies to employment practices of states or contractors where the primary or sole objective of Federal-aid highway funding is to provide employment opportunities on Appalachian projects, including complaints related to age, sex, religion and handicap.

(b)(2) In addition, this appendix applies to employment pratices concerning which discrimination in employment has resulted in discrimination or an allegation of discrimination, or a reason to suspect discrimination by OCR, FHWA, against participants, beneficiaries or potential beneficiaries of the program. Discrimination in employment practices of the SHA which has not yet been suspected to have resulted in discriminationagainst participants or beneficiaries (e.g., affirmative action plans of the SHAs) are covered under Title VII.

(b)(3) Nothing in this appendix is intended to limit the scope of coverage of employment practices under 49 CFR Part 27 (i.e., non-Title VI).

(c) The Title VI requirements of this appendix are still to be applied regardless of a full or partial approval of State Certification Acceptance as described in 23 U.S.C. 117.

5. *Title VI Assessment.* (a) Interdisciplinary working and review groups made up of SHA and FHWA employees are responsible for ensuring the achievement of Title VI program responsibilities during highway and transportation planning and project development. Periodically, these groups conduct specific Title VI reviews in order to ensure Title VI compliance at various stages of program or project development. These reviews are conducted and assessed in the context of the SIA.

(b) Specific actions to be completed through the SIA include the following:

(1) The appropriate FHWA Washington Headquarters civil rights and program officials work jointly to ensure that program directives and implementing procedures are consistent with this part and this appendix. In addition, civil rights and program officials work jointly to ensure that nondiscrimination is an integral part of the annual and/or continuing monitoring and evaluation process of all program responsibilities, procedures, and operations.

(2) The appropriate FHWA field offices and SHA civil rights and program official work jointly to prevent and/or correct discrimination during the implementation of FHWA responsibilities, procedures, and operations for systems planning (e.g., urban transportation planning process), project development (e.g., location, environmental, relocation, right-of-way acquisition, and preliminary and final design, etc.), and construction and maintenance.

(c) In the area of contract administration, the appropriate FHWA (Washington Headquarters and field offices), and SHA civil rights and program officials will work jointly to ensure that all their responsibilities, procedures, and operations for the advertisement (in native language, when needed), review, and selection of contracts on programs and/or projects receiving Federal-aid highway funding comply with Title VI and related authorities. This includes contracts awarded for work involving systems planning, preliminary and final engineering, design, location studies, environmental studies, relocation assistance and right-of-ways acquisition, construction and maintenance operations, legal services, research, administrative service, etc.

(d) All activities and written approvals indicating Title VI compliance performed jointly by civil rights and program officials of the FHWA and SHAs are documented and maintained in the appropriate program or project file for review and reporting. However, the major concentration should be on maintaning documentation and records reflecting compliance with Title VI as part of the normal program or project file. In addition, statistical data relative to race, color, religion, sex, age, handicap or national origin should be (1) collected, maintained and evaluated as part of the ongoing program or project planning, development and decisionmaking, and (2) used as a source to ensure that no person is excluded from participation in, be denied the benefits of or be subjected to any form of discrimination on any Federal-aid highway funding activity.

6. *State Title VI Plan.* (a) Each SHA shall prepare or revise its Title VI plane to incorporate Title VI responsibilities, procedures, and operations consistent with this appendix in its program and/or operating manuals. The Title VI plan shall be reviewed, and amended if necessary, annually. The performance under the plan will be constantly reviewed for sufficiency. The Title VI plan shall include the following:

(1) A description of the SHA's Civil Rights unit with a Title VI Coordinator or Title VI designee with authority and responsibility to effectively implement this part and this appendix. This authority will include direct access to the head of the SHA.

(2) A procedure for prompt processing of Title VI complaints including immediate forwarding to FHWA who will forward to Director, Civil Rights DOT for investigations and resolution.

(3) A compilation of the Title VI responsibilities, procedures, and operations required by this appendix that shall be incorporated in the SHA's program and/or operating manuals.

(4) A statement of whether the applicant or any of its proposed subgrantees have any pending application for Federal financial assistance with any other Federal agency or Federally assisted program, project, or activity; plus a list of those Federal agencies, programs, projects, and activities, and current status.

(5) A statement whether there were any civil rights compliance reviews conducted or are any being conducted on the applicant or any of its proposed subgrantees by any State, local or Federal agency within the 5 years prior to the date of the plan or update plus the status of such reviews.

(b) The initial Title VI plan and the manuals as well as all subsequent updates shall be submitted to the FHWA Division Administrator for submission with recommendations to the Regional Administrator for review and approval. The plan must also be approved by the regional civil rights director. Civil rights and program officials will monitor the approved Title VI plan on a continuing basis under the direction of the Division Administrator.

(c) The Title VI plan, or affected portions of the Title VI plan, and the manuals must be resubmitted for FHWA approval when there has been a change in the SHA's capabilities to carry out the Title VI responsibilities, procedures, and operations outlined in this appendix. If the FHWA determines that the SHA's capabilities are insufficient for the SHA to properly carry out its Title VI responsibilities, FHWA will bring that determination to the attention of the SHA for corrective action. Subsequent failure to correct the insufficiency will result in a nonapproval of the State Title VI plan.

Appendix M—Application of This Part to Recipients of DOT Federal Financial Assistance

The following examples illustrates the application of the nondiscrimination provisions of this part to projects, programs, and activities receiving financial assistance from the Department Of Transportation.

(a) *Federal Aviation Administration* (1) The airport sponsor shall not differentiate between members of the public because of race, creed, color, national origin, or sex in furnishing, or admitting to, waiting rooms, passenger holding areas, aircraft tiedown areas, restrooms, or facilities operated under the compatible land use concept.

(2) The airport sponsor must offer to all members of the public the same degree and type of service without regard to race, creed, color, national origin, or sex.

(3) The airport sponsor shall not design, locate, construct, or operate an airport, a runway, or a runway extension so as to discriminate against any person because of race, creed, color, national origin, or sex.

(4) The airport sponsor shall not discriminate on the basis of race, creed, color, national origin, or sex against any property owner, family, or individual in providing benefits or assistance for relocation.

(5) Participation at public hearings held by the airport sponsor will be available without regard to race, creed, color, national origin, or sex.

(6) Airport plans shall be coordinated with local transportation authorities and the Urban Mass Transportation Administration to assure adequate public transportation, particularly to nearby disadvantaged communities so that minority employment opportunities will be enhanced.

(7) Airport sponsors shall inform local minority businesses of contract opportunities, solicit bids from qualified minority firms, and award contracts without regard for race, creed, color, national origin or sex.

(8) Opportunities for participation as a concessionaire or lessee shall be structured in a fashion which has the effect of including minority and women businesses.

(b) *Federal Highway Administration.* In connection with highway construction projects or other activities assisted by the Federal Highway Administration, no State shall:

(1) Locate or design a highway in a manner which requires the relocation of any person on the basis of race, color, or national origin.

(2) Locate, design, or construct a highway in a manner which denies individuals access or use or causes disparate negative effect on the basis of race, color, or national origin.

(3) Differentiate among individuals eligible for relocation payments or advisory assistance on the basis of race, color, or national origin.

(4) Discriminate on the basis of race, color, or national origin in its employment practices, or permit its contractors to engage in discriminatory employment practices.

(5) Discriminate against any user of a highway on the basis or race, color, or national origin in the provision of public accommodations. Public accommodations include eating, sleeping, rest, vehicle servicing and recreational facilities, constructed on, over, or under a highway right-of-way.

(6) Discrimination on the basis of race, color, or national origin in the selection and retention of contractors, or permit its contractors to discriminate in the selection and retention of subcontractors. This requirement applies to all contractors for construction, research, highway safety, or right-of-way acquisition.

(c) *Urban Mass Transportation Administration.* (1) No person shall be subjected to discrimination on the basis of race, color or national origin in the provision of transportation services furnished as part of a project receiving UMTA financial assistance.

(2) All passengers on vehicles operated as part of a project shall be seated without regard to race, color, or national origin.

(3) Routing, scheduling, age and quality of vehicles and station quality shall not be determined on the basis of patrons' race, color, or national origin.

(4) No person shall be denied transportation on a public vehicle operated as part of an UMTA-assisted program on the basis of race, color, or national origin.

(5) No sponsor, lessee, concessionaire, contractor, licensee, or organization furnishing public transportation as part of a project shall discriminate in its employment practices on the basis of race, color, or national origin.

(6) Site selections for facilities requiring land acquisition or the displacement of individuals shall be made without regard to race, color, or national origin in a manner which minimizes adverse effects.

(7) Relocation payments and advisory assistance shall be provided without regard to race, color, or national origin.

(d) *National Highway Traffic Safety Administration.* Title VI compliance requirements applicable to each State Highway Safety Agency and its recipients' State and local operating agencies within the NHTSA-assisted State and Community Highway Safety Program include, but are not limited to, the following:

(1) All advisory committees serving as an adjunct to the highway program planning process shall be constituted in a manner that ensures nondiscrimination because of race, color, or national origin;

(2) All highway safety program activities contracted out to organizations other than the State or local operating agencies shall be awarded with proper consideration given to furthering opportunities for minority business enterprise participation;

(3) Highway and safety-related public education and information messages designed to enhance awareness and support for traffic safety programs must include foreign language translations where a sizeable percentage of the audience is non-English speaking;

(4) The distribution of training stipends and opportunities to attend traffic safety conferences and workshops must be provided without regard to race, color, or national origin;

(5) Alcohol education and rehabilitation programs for drinking drivers must not result in disproportionate involuntary termination or dropout rates on account of race, color or national origin;

(6) Law enforcement activities directed at reducing accident producing traffic law violations must not improperly result in a minority community perception of disparate negative effect; such targeted enforcement must be properly based upon impartial problem identification and data base analysis;

(7) The distribution of traffic safety-related hardware such as ambulances, communications equipment, police cars, etc., must be implemented in a manner that does not subject minority communities to discrimination or result in inferior service when compared to nonminority communities;

(8) Driver education programs must be administered in a manner that results in racial and ethnic minorities being fairly represented within traffic safety education classes; and

(9) A program record keeping system incorporating racial/ethnic data elements is to be established; also, the State traffic record system shall incorporate racial and national origin data to the extent practicable.

[FR Doc. 81-1840 Filed 1-16-80; 8:45 am]

BILLING CODE 4910-62-M

federal register

Monday
January 19, 1981

Part XXIII

Environmental Protection Agency

State Hazardous Waste Programs; Requirements for Public Participation in State Enforcement Process During Interim Authorization

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[SWH-FRL 1627-2]

State Hazardous Waste Programs; Requirements for Public Participation in the State Enforcement Process During Interim Authorization

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule and request for comments.

SUMMARY: This rule revises the provision for requirements for enforcement authority to clarify the Agency's State program requirements for public participation in the State enforcement process during interim authorization under Subtitle C of the Resource Conservation and Recovery Act and to define the types of enforcement actions to which such requirements apply. This amendment which takes effect immediately, is necessary to clarify requirements for Agency approval of State applications for interim authorization.

DATES: *Effective Date:* The provisions of this amendment are effective January 19, 1981.

Comment date: Comments are due March 20, 1981

ADDRESSES: Comments on this amendment should be sent to: Docket Clerk (Docket 123), Permits Division (EN-336), Office of Water Enforcement, U.S. Environmental Protection Agency 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Joel G. Blumstin, Office of Water Enforcement (EN-336), U.S. Environmental Protection Agency, Washington, D.C. 20460, (202) 426-4793.

SUPPLEMENTARY INFORMATION:

I. Authority

This amendment is issued under the authority of Sections 1006, 2002(a), 3006 and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6905, 6912(a), 6926 and 6974.

II. Introduction

On May 19, 1980, EPA published regulations (45 FR 33290) establishing minimum requirements for States seeking interim authorization for their hazardous waste programs under Section 3006(c) of the Resource Conservation and Recovery Act. These requirements are contained in 40 CFR Part 123, Subpart F. Among these is the requirement that a State program provide for public participation in its enforcement process. 40 CFR 123.128(f)(2).

Section 123.128(f)(2) requires States to satisfy one of two alternatives for ensuring public participation in the enforcement process. The first alternative requires States to allow intervention as of right in enforcement actions by any citizen having an interest which is or may be adversely affected. As opposed to "permissive intervention," "intervention as of right" cannot be denied by a court if minimium requirements are met. The second alternative requires that three assurances be given by the State: 1) that it will investigate and provide written responses to all citizen compliants; 2) that it will not oppose intervention where permissive intervention is authorized; and 3) that it will publish and provide the public thrity days to comment on any proposed settlement of a State enforcement action.

In the course of reviewing State hazardous waste programs for interim authorization, numerous questions have arisen regarding the meaning of the requirements for public participation in enforcement. These questions relate primarily to the types of enforcement actions to which the public participation requirements apply. In particular, States asked whether EPA has authority to extend the public participation requirements of §§ 123.128(f)(2)(i) and 123.128(f)(2)(ii)(C) to administrative enforcement actions or whether those requirements should be limited to civil actions. States also raised questions as to who in the State is responsible for satisfying these requirements and the types of approaches, other than the two specified, which would be acceptable.

This **Federal Register** publication announces an amendment to 40 CFR 123.128(f)(2) which clarifies the requirements for public participation in the State enforcement process and specifies the types of State enforcement actions to which such requirements are applicable. Amendments to §§ 123.128(f)(2)(i) and (ii) are discussed below with an explanation of why such changes are appropriate.

III. 40 CFR 123.128(f)(2)(i)—Intervention as of right

States which seek to satisfy 40 CFR 123.128(f)(2)(i), the first of the two options, as amended, must have:

Authority which allows intervention as of right in any civil action to obtain the remedies specified in paragraph (f)(1)(ii) and (iii) of this section by any citizen having an interest which is or may be adversely affected;

Today's amendment incorporates two changes to § 123.128(f)(2)(i). The first change eliminates the requirement that States have authority which allows intervention as of right in "administrative" actions. Such authority is now required only in civil actions. This change has been made because, as correctly pointed out by some States, to require intervention as of right authority in administrative, as well as civil, actions would require States to have broader authority than that granted EPA under Section 7002 of RCRA. Section 7002 of RCRA allows that "any person may intervene as a matter of right" in an enforcement action brought in a court of the United States. RCRA does not extend this right to administrative actions (i.e., actions not in a court of the United States). Further, EPA's consolidated rules of practice, which govern administrative actions under RCRA, do not provide for an unconditional right to intervention (40 CFR 22.11). As amended, 40 CFR 123.128(f)(2)(i) will provide the public with intervention rights equal to those provided under RCRA.

The second change from the May 19, 1980, intervention as of right provision clarifies that States are not required to have authority to allow intervention as of right in a civil action which is designed to immediately restrain an action which is endangering or causing damage to public health or the environment. These actions are normally of an emergency nature in which the need to act quickly is paramount. As originally drafted, 40 CFR 123.128(f)(2)(i) was not intended to cover such actions. Any interpretation of this provision which implies such coverage would not be consistent with the Agency's intent. To clarify this, the amended provision refers specifically to civil actions to obtain remedies specified in § 123.128(f)(1) (ii) and (iii), actions to enjoin and actions to recover civil penalties for program violations.

IV. 40 CFR 123.128(f)(2)(ii)—Assurances

States which seek to satisfy 40 CFR 123.128(f)(2)(ii), as amended, must provide:

(A) Assurance by the appropriate State agency that it will investigate and provide written responses to all citizen complaints submitted pursuant to the procedures specified in paragraph (g)(2)(iv) of this section;

(B) Assurance by the appropriate State enforcement authority that it will not oppose intervention by any citizen when permissive intervention is authorized by statute, rule, or regulation; and

(C) Assurance by the appropriate State enforcement authority that it will publish notice of and provide at least 30 days for public comment on all proposed settlements of civil enforcement actions, except in cases where a settlement requires some immediate action (e.g., cleanup) which if otherwise delayed could result in substantial damage to either public health or the environment.

Numerous questions arose under the May 19, 1980, promulgation of this provision as to who in the State was required to provide the three assurances required by 40 CFR 123.128(f)(2)(ii). It was unclear to these questioners whether all three assurances could be provided by the same individual. The provision has been amended, therefore, to make clear from whom each assurance is required. The intent is that each assurance be provided by the responsible official of that State agency which can best carry out the aim of the required assurance (i.e., to allow citizens the opportunity to participate in the enforcement process). Thus, the assurance that citizen complaints be investigated and responded to in writing is charged to the lead State agency (i.e., the agency to whom citizen complaints would likely be sent and which is best situated to respond to them).

On the other hand, assurances that intervention in enforcement actions not be opposed and that notice of proposed settlements be published must be provided by the agency (agencies) in the State which is (are) charged with enforcement authority. The assurances of another agency would not effectively provide the public with the opportunities intended. Therefore, if the Attorney General's office represents the State in court on enforcement matters pertaining to the State program, the Attorney General, along with the head of the lead State agency, are the appropriate officials to provide the needed assurances regarding intervention and publishing notice of proposed settlements. The Attorney General's statement which must accompany the interim authorization application would be the proper place for the Attorney General to make the assurances. If the State agency acts as its own attorney of record in State enforcement actions, then it alone would be the appropriate State enforcement authority. The Memorandum of Agreement included in the interim authorization application would be the proper place for the State agency to make the required assurances.

Questions have arisen with regard to the scope of § 123.128(f)(2)(ii)(B). This provision is intended to ensure that States do not erect barriers to citizen intervention in enforcement actions. Where an existing statue, rule, or regulation authorizes permissive intervention and a citizen meets the requirements of the statute, rule, or regulation for intervention, the State enforcement authority must not oppose this intervention. The provision does not require the State to adopt a permissive intervention requirement.

Most questions concerning public participation focused on the assurance required by § 123.128(f)(2)(ii)(C). This provision requires the State agency to assure EPA that it will publish and provide at least 30 days for public comment on any proposed settlement of a State enforcement action. During the course of reviewing State applications for interim authorization, the following questions arose: (1) who must give this assurance, (2) must the settlement itself be published, (3) does the term "State enforcement action" mean both civil and administrative actions, and (4) can there be any exception to the 30 day requirement in emergency situations? Section 123.128(f)(2)(ii)(C) has been amended in response to these questions.

First, as discussed above, § 123.128(f)(2)(ii)(C) has been amended to make it clear that the required assurance must be provided by the appropriate enforcement authority.

Second, this section has been amended to include the word "notice" in the requirement that the appropriate State enforcement authority publish and provide at least 30 days for public comment on all proposed settlements. The addition of the word "notice" clarifies EPA's original intent that only notice of the settlement must be published; the proposed settlement itself need not be published. (See 45 FR 33383.)

The third change to § 123.128(f)(2)(ii)(C) clarifies that this requirement applies only to civil enforcement actions. This was EPA's original intent. The scope of this provision is in keeping with the practice of the Department of Justice, whose guidelines, published in 28 CFR 50.7, served as the model for EPA's provision. Of course, the appropriate State enforcement authority may always expand the scope of this provision by agreeing to publish notice and provide opportunity for public comment on proposed settlements of administrative enforcement actions as well.

The final change to this section allows for an exception to the 30 day notice and comment period. Public notice and opportunity for comment on all proposed settlements of civil enforcement actions may now be for less than 30 days, or, in some cases, may be completely eliminated where the 30 day period for notice and comment would itself cause substantial damage to either public health or the environment by preventing immediate action. Settlements involving cleanup are examples of such cases and are specifically referenced in the regulation itself.

V. Alternative Approaches

EPA has been asked, during the course of reviewing State applications for interim authorization, whether the two options specified in § 123.128(f)(2) are the only acceptable methods of satisfying the Agency's public participation in enforcement requirements. The answer to this question is no. The same public participation provisions were required elsewhere in the consolidated regulations, at 40 CFR 123.9. As stated in the preamble to this other section (45 FR 33382–3), these two options represent minimum guidelines to ensure that the public has an adequate opportunity to participate in the State enforcement process. EPA intended that the same meaning apply to § 123.128(f)(2). States are always free to impose more stringent requirements. In this case, the test for stringency is whether the State program provides greater opportunity for public participation in enforcement than does one of the two options set out in § 123.128(f)(2). A hybrid of the two options specified in § 123.128(f)(2) which provided a greater opportunity for public participation would be acceptable.

As an example, some States have the authority to allow intervention of right in a manner analogous to Rule 24(a)(2) of the Federal Rules of Civil Procedure. This rule allows intervention if the applicant can demonstrate to the satisfaction of the court that he or she "claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." A State which allows intervention in a manner analogous to Federal Rule 24(a)(2), and which provides an assurance by the appropriate State enforcement authority that it will not oppose intervention under the State analogue to Rule 24(a)(2) on the ground that the applicant's interest is adequately represented by the State, is a hybrid public participation provision that would satisfy § 123.128(f)(2).

While this approach does not contain provisions relating to citizen complaints and notice of proposed settlements, intervention by right in civil actions of the nature provided by a Rule 24(a)(2)

does provide a significantly greater opportunity for the public to participate in the State enforcement process than do the assurances of § 123.128(f)(2)(ii). A State must have a lawfully adopted rule analogous to Federal Rule 24(a)(2) which allows citizen intervention as of right. As discussed above, § 123.128(f)(2)(ii) can be satisfied by a State absent a statute, rule, or regulation providing for permissive intervention in State enforcement actions. Furthermore, the required State assurance that it will not oppose intervention under its analogue to Federal Rule 24(a)(2) ensures for individuals that the opportunities for intervention in enforcement actions provided under the rule will not be subjugated by the State on the theory that the State adequately represents the public interest in all enforcement actions.

VI. Interim Final Promulgation

EPA believes that use of advance notice and comment procedures for clarification to § 123.128(f)(2) would be unnecessary and contrary to the public interest, and therefore finds that good cause exists for adopting this change in interim final form (see 5 U.S.C. 553(b)(B)). The changes made by this regulation are minor and, in large part, are clarifications to the May 19, 1980 promulgation of the public participation in enforcement requirements.

Many States are in the process of completing applications for interim authorization under Section 3006(c) of RCRA. Thus, the need to make the clarifications contained in this regulation effective immediately is pressing both for States who must know what requirements they must satisfy and for EPA when determining whether a State program is approvable. To delay approving State programs under this amended regulation would be contrary to the public interest and would result in a waste of public resources. There are compelling reasons for issuing this amendment in interim final form, effective immediately.

To afford the public an opportunity to comment on the changes, EPA will accept comments until March 20, 1981. These comments will be considered in developing a final regulation.

Dated: January 13, 1981.

Douglas M. Costle,

Administrator.

Authority: Secs. 1006, 2002(a), 3006 and 7004, Pub. L. 94–580, 90 Stat. 2802, 2804, 2809–2810, and 2826–2827 [42 U.S.C. 6905, 6912(a), 6925 and 6974].

§ 123.128 [Amended]

40 CFR 123.128(f)(2) is revised to read as follows:

* * * * *

(f) * * *

(2) Any State administering a program under this Subpart shall provide for public participation in the State enforcement process by providing either:

(i) Authority which allows intervention as of right in any civil action to obtain the remedies specified in paragraph (f)(1)(ii) and (iii) of this section by any citizen having an interest which is or may be adversely affected; or

(ii)(A) Assurance by the appropriate State agency that it will investigate and provide written responses to all citizen complaints submitted pursuant to the procedures specified in paragraph (g)(2)(iv) of this section;

(B) Assurance by the appropriate State enforcement authority that it will not oppose intervention by any citizen when permissive intervention is authorized by statute, rule, or regulation; and

(C) Assurance by the appropriate State enforcement authority that it will publish notice of and provide at least 30 days for public comment on all proposed settlements of civil enforcement actions, except in cases where a settlement requires some immediate action (e.g., cleanup) which if otherwise delayed could result in substantial damage to either public health or the environment.

[FR Doc. 81–1921 Filed 1–16–81; 8:45 am]

BILLING CODE 6560–30–M

federal register

Monday
January 19, 1981

Part XXIV

Community Services Administration

Civil Rights Regulations; Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting From Financial Assistance Provided by CSA; Implementation of Section 504 of the Rehabilitation Act, as Amended, and Executive Order 12250

COMMUNITY SERVICES ADMINISTRATION

45 CFR Part 1012

Civil Rights Regulations; Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting From Financial Assistance Provided by CSA; Implementation of Section 504 of the Rehabilitation Act, as Amended, and Executive Order 12250

AGENCY: Community Services Administration.

ACTION: Final rule.

SUMMARY: This rule defines and prohibits discrimination against qualified handicapped persons by CSA grantees. The rule is needed to implement Section 504 of the Rehabilitation Act of 1973, as amended, and is required by Executive Order 12250.

DATES: The rule becomes effective February 18, 1981. Notification of nondiscriminatory policies must begin by May 18, 1981. Program access must be provided by April 20, 1981.

The Self-Evaluation and the Transition Plan must be submitted by August 18, 1981. Structural changes to achieve program access must be completed by February 18, 1983.

FOR FURTHER INFORMATION, CONTACT: Jill Robinson, Acting Director, Disability Unit, Office of Human Rights, Community Services Administration, 1200 19th Street, N.W., Washington, D.C. 20506, (202) 653–5675 (voice) or 254–5463 (TDD).

For Taped, Brailled or Spanish Copies: Call or write Jill Robinson at number or address above.

SUPPLEMENTARY INFORMATION:

A. Background—§ 504

In September of 1973, Section 504 of the Rehabilitation Act of 1973 was enacted. That section provides:

> No otherwise qualified handicapped individual in the United States . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
>
> (29 USC 794)

By November of 1974 when Congress amended some of the other provisions of the Rehabilitation Act, implementation of Section 504 had not begun. The Senate Report (No. 93–1297, November 26, 1974) which accompanied those amendments indicated that the Congressional intent in the enactment of Section 504 was to enact for the benefit of handicapped persons a civil rights statute on the magnitude of those protecting racial minorities and women:

> Section 504 was patterned after, and is almost identical to, the antidiscrimination language of section 601 of the Civil Rights Act of 1964, 42 USC 2000d–1 (relating to race, color, or national origin), and section 901 of the Education Amendments of 1972, 42 USC 1683 (relating to sex) . . . It does not specifically require the issuance of regulations or expressly provide for enforcement procedures, but it is clearly mandatory in form, and such regulations and enforcement are intended.
>
> The language of section 504, in following the above-cited acts, further envisions the implementation of a compliance program which is similar to those acts . . .

In April of 1976, President Ford issued Executive Order 11914 (41 FR 17871, April 28, 1976). This Executive Order directed the Secretary of HEW to coordinate the Government-wide implementation of Section 504 and to define handicapped persons and discriminatory practices. Each grant-making agency was directed to issue regulations consistent with HEW's.

In May of 1977, HEW issued its final substantive Section 504 regulation (42 FR 22676, May 4, 1977) and in January of 1978 it issued a regulation to implement Executive Order 11914. (43 FR 2132, January 13, 1978.)

HEW's Executive Order regulation contains three subparts: The first deals with the responsibility each grant-making agency has to implement Section 504, the second contains standards for determining who are handicapped individuals, and the third establishes the minimum criteria for determining what are discriminatory practices.

CSA published its proposed Section 504 rule on Friday, June 30, 1978 (43 FR 28757). During the comment period, which was extended until October 13, 1978 (43 FR 36489, Thursday, August 17, 1978), about sixty comments were received. These comments were carefully weighed during the drafting of the final rule.

On November 2, 1980, President Carter signed Executive Order 12250, which assigns to the Department of Justice (DOJ) responsibility to coordinate Federal nondiscrimination provisions. The HEW agency-wide guidelines are deemed to have been issued by DOJ until DOJ issues its own guidelines.

B. CSA's Special Interest in Section 504

The mission of the Community Services Administration (CSA), and its predecessor, the Office of Economic Opportunity (OEO) is:

> . . . to eliminate the paradox of poverty in the midst of plenty in this Nation by opening to everyone the opportunity for education and training, the opportunity to work, and the opportunity to live in decency and dignity.
>
> (Economic Opportunity Act of 1964, as amended, 42 USC 2701).

Through its grantees, OEO/CSA has been working to achieve this goal with respect to much of the low-income population.

HEW figures indicate that 36 million Americans have handicapping conditions. Of these thirty-six million, over 7.5 million are low-income individuals.

CSA is committed to intensifying its efforts to serve low-income handicapped individuals. One of the first steps in this process is necessarily full and effective implementation of Section 504.

Frequently, handicapped persons, like other minorities, have incomes below poverty level only because of the discrimination they experience daily—in securing employment and in securing services designed to increase employability, for example.

C. The Problem of Discrimination

The problem of ending discrimination on the basis of handicap involves extremely complex issues. The diversity of types of handicaps, as well as the wide variety of programs and activities receiving financial assistance, makes the task of prescribing general rules of non-discriminatory treatment a difficult one. The goal throughout has been to draft a regulation that fully and effectively prohibits denial, exclusion and other forms of discrimination while avoiding the imposition of unnecessary or counterproductive administrative obligations on grantees.

In drafting the regulation, it became clear that different treatment of handicapped persons, because of their handicaps, may be necessary in a number of contexts in order to ensure equal opportunity. For example, an equal opportunity to participate in an advisory board meeting is not provided to a deaf person who understands only sign language if all the other participants speak English or Spanish and no interpreter is provided. Similarly, an equal opportunity to participate in a training program is not provided to a blind person unless the content of written material is communicated in some other way.

The provision of equal access and equal opportunity to handicapped persons will involve an administrative and financial burden on CSA grantees. This fact has been taken into consideration in establishing the regulatory schemes and timetables

under which the eliminations of the discriminatory barriers and practices will be required.

D. Overview of the Regulation

The final rule has been broken up into shorter Subparts. This should enhance the readability of the rule, and make finding particular provisions easier. There are now eleven Subparts.

Subpart A, General, contains definitions and general statements of purpose, policy, and applicability which apply throughout the entire regulation.

Subpart B, General Prohibitions Against Discrimination, states, in very general terms, the kinds of discriminatory practices which are prohibited by Section 504. These general prohibitions are the guiding principles of the regulation.

Other Subparts interpret these principles in particular contexts—for example, the employment context, or the communications context. The general prohibitions provide guidance on prohibited behavior for situations in which a more specific Subpart is not applicable, and they also provide a framework in which the other, more specific Subparts, can be interpreted.

Subpart C, Administrative Requirements, states the administrative action grantees must take in coming into compliance with the regulation.

Subpart D, Employment, bars discrimination by CSA grantees in recruitment, hiring, compensation, job assignments and classification, and fringe benefits. It also requires employers to make reasonable accommodation to qualified handicapped applicants and employees unless it can be demonstrated that the accommodation would impose an undue hardship on the employer.

Subpart E, Communications Access, requires that communications be presented in a way understandable to qualified handicapped individuals. Telecommunications devices; interpreters; readers, brailling or taping; and simplified language are required.

The next three Subparts deal with physical accessibility. Subpart F, Access to and Use of Newly Constructed Facilities, states the requirement that facilities or parts of facilities which are constructed or renovated by a CSA grantee after [February 18, 1981] must be constructed or renovated in conformity with the "American National Standard Specifications for Making Buildings and Facilities Accessible To, and Usable by the Physically Handicapped," ANSI A117.1–1961 (R1971).

Subpart G, Access to and Use of Newly Acquired Facilities, is published as a proposed rule. It proposes for public comment, a separate requirement for facilities which are leased, purchased or otherwise acquired by a grantee after the date the Subpart becomes effective. Those facilities would have to conform to the accessibility standards in "Appendix A—Performance Standards for Determining the Accessibility and Usability of Existing Facilities" before grantees could begin to use them. A renewal of a lease is considered a lease.

DOJ, in its role ensuring government wide consistency in the implementation of Section 504, considers this Subpart to be a deviation from the current government wide standard. However, DOJ is interested in considering comments on the Subpart and the Standards in the Appendix to help it determine whether to incorporate a similar requirement in the government wide standard it will soon prepare. CSA is anxious to receive comments on this Subpart and the standards in the Appendix from grantees, handicapped individuals and their organizations, barrier free designers, local, state and federal agencies, and other interested parties. Public comment will assist both CSA and DOJ to make an informed decision on the merits of the standard proposed.

Subpart H, Access to and Use of Existing Facilities, deals with those facilities which the grantee had already leased, purchased, begun to use or otherwise acquired on or before [February 18, 1981]. A program or activity conducted in those facilities must be operated so that the program or activity, when viewed in its entirety is readily accessible to handicapped individuals. Where structural changes are needed to acheive program access, a Transition Plan is required and two years are allowed before the structural changes must be completed.

Subpart I, Programs and Activities, prohibits discrimination by grantees in program eligibility requirements, in the administration of programs and activities, and in recruitment and outreach. Additionally, the Subpart requires grantees to make intensive efforts to undertake a program adapted to the needs of any segment of the low-income handicapped population which is, on account of handicap, unqualified to participate in an existing or planned program.

Subpart J, Transporation, requires a grantee that provides transportation services to provide comparably efficient transportation services to handicapped persons.

Subpart K, Procedures for Enforcement, references CSA's procedures for enforcing Title VI of the Civil Rights Act of 1964, 45 CFR Part 1010. The Title VI procedures will be used in the enforcement of Section 504.

E. Analysis of Comments Received on and Changes Made in the Rule

Most of the commentors addressed the issues raised by the proposed "facility access" standard. Some comments submitted by organizations of disabled persons and by grantees expressed their support for the standard, and indicated their agreement that full and equal access is necessary to the implementation of Section 504. Many grantee commentors concurred with this philosophy, while expressing frustration with the practical difficulties the standard presents them. Other grantee commentors and a few disabled commentors could not agree with the philosophy of equal access precisely because of the financial and administrative burden the standard imposes.

The physical access requirements have been changed in the final rule to continue the "facility access" requirement for newly constructed and newly acquired facilities, but to excuse existing facilities from that standard if program access can be provided without full facility access.

Communications Access

The proposed rule did not contain a Subpart specifically requiring that communications be made accessible to handicapped individuals. That accessibility was required by the application of the general principles of nondiscrimination to situations involving communications. The proposed rule also stated, in the Appendix containing the access requirements for existing buildings, a requirement that a teletypewriter (TDD) be provided. It became apparent that this approach to communications access would not be adequate. Consequently, a Subpart specifically stating the communications access requirements has been incorporated in the final rule.

Investigation showed that among grantees which were aware of the requirements of Section 504, there was at least a general awareness that architectural barriers had to be removed from buildings to make them accessible to mobility limited individuals. A similar awareness did not, for the most part, exist with respect to communications barriers. This may be due, at least in part, to the fact that the Section 504 regulations which had up to that time been published, did not include any specific provisions articulating the minimum requirements for communications access as they did for physical access.

A minimum level of communications access is a prerequisite to a communications impaired person's ability to participate in programs and activities just as a minimum level of physical access is to the mobility impaired person's ability to participate. For example, a grantee must have an established system for the provision of interpreters. Waiting until a deaf person shows up to determine how to find, schedule and reimburse an interpreter is quite like waiting until a wheelchair user shows up to install a ramp. The need could not be met until long after it has arisen. Deciding not to install a TDD until deaf people start to call on the phones is like deciding not to move from a second floor walk-up until wheelchair users start walking-up. The removal of basic communications barriers is as essential to the implementation of Section 504 as is the removal of physical barriers.

The Communications Subpart articulates a minimum level of communications accessibility which each grantee must maintain: (1) availability through TDD; (2) ability to provide appropriate and qualified interpreters; (3) ability to provide reader service, taping or brailling on request; and (4) use of simplified language.

The section requiring TDDs does not necessarily require a grantee to have a TDD at each office or site. If one TDD shared by all the grantee's offices and sites can effectively handle the volume of calls received by using a message relay system, one shared TDD is adequate. However, when that system can no longer handle the calls received, one or more additional TDD's must be installed.

The section also requires that the TDD be reliably answered. Like conventional telephones, TDDs do not answer themselves. The staff members who will be responsible for answering the TDD must know how to do so. People who are unaccustomed to the noise which indicates an incoming TDD call frequently hang up the phone, assuming the connection is bad or that someone is playing a trick. If a TDD is installed, but is not reliably answered, it does not satisfy the requirement of this section.

Amplifiers for telephones are available from the phone company for a slight charge. Not all telephones are compatible with hearing aids. The phone company knows which is which, and will provide compatible phones at no extra charge.

The interpreter section is rather more elaborate than the parallel reader section. This is because the process is more complex, not because it is more important. There is no one single language used by hearing-impaired people. Despite the fact that only approximately 30 to 50 percent of the English language is visible on the lips, some hearing-impaired people communicate through spoken English by reading lips and by talking. For others this is neither an effective nor a feasible method of communication, and frequently these individuals will use a form of manual communication. Again, there is no one manual language. American Sign Language (ASL), used by most people who grow up in deaf families, or go to schools for the deaf, is a language more different from English than is Russian or Chinese. Very well educated hearing-impaired people may use ASL as a native language, but may prefer to use Signed English (in which manual signs are substituted for spoken English) when communicating through an interpreter with English speaking persons. People less well educated may not know English, and in fact, in written communication their attempt to write ASL may strike the reader as very bad English. Additionally, interpreters may be needed for people with other disabilities. Speech impaired people, for example, may require an interpreter to convey communications to people unaccustomed to their speech.

The section requiring the establishment of a system to provide interpreters is designed to be flexible enough to meet the requirements of a large variety of handicapped individuals, but tight enough to clearly require that the interpreter service provided meet the needs of the individual for whom the service is provided.

Interpreters for hearing-impaired persons should be selected from the list of certified interpreters prepared periodically by the National Registry of Interpreters for the Deaf (RID), or state chapters of the RID, from lists of qualified interpreters compiled and used by the National Association of the Deaf, state associations of the deaf, state commissions or councils of the deaf, existing recognized state interpreter referral services, and post-secondary educational programs that provide training for interpreters or have interpreter referral services. If an appropriate and qualified interpreter from these lists is not available, or if the person for whom he or she is interpreting cannot communicate effectively through an interpreter selected from these lists, the grantee should locate an interpreter who is acceptable to the individual. Often, the individual may know of an interpreter through whom he or she can communicate effectively.

The provision of readers, taping and Brailling will not vary as much from individual to individual as the provision of interpreters. Nevertheless, a grantee must be sure to provide the appropriate service for each individual. For example, providing a copy of a Brailled pamphlet to someone who does not read Braille is obviously not appropriate, and would not satisfy the requirement of this section. Which method is appropriate will depend on the abilities and preferences of the handicapped person involved, and the nature of the communication.

Other Comments

General: The comments submitted by several organizations revealed a misunderstanding of the way the various sections and Subparts of the regulation interact. For example, several comments asserted that the "undue hardship" provision (which is a part of the reasonable accommodation standard in the Employment Subpart) would negate the impact of the access Subparts. The reasoning was that major access changes would constitute an undue hardship and would therefore not be required.

A more careful reading of the regulation is necessary. The "undue hardship" provision ONLY applies in the determination whether an accommodation to an employee or applicant is reasonable and whether it must be made. The provision does not create a waiver in any other Subpart of the regulation. The availability of a waiver of certain administrative requirements for certain grantees does not mean those grantees will be excused from other requirements.

Readers should be careful not to misinterpret the regulation by taking specific provisions out of their context.

Subpart A, § 1012.7: Many commentors pointed out the weakness of the physical access requirement which resulted from the faulty definition of "facility". Roads, walks, parking lots and other real property were inadvertently dropped from that definition. They have been reincorporated.

Subpart B, § 1012.25: Several commentors pointed out the confusion which arose from the absolute requirement of the proposed rule that handicapped persons be afforded an equal opportunity to obtain the same result, to gain the same benefit or to reach the same level of achievement, "in an integrated setting." In some cases, it was pointed out, handicapped persons can have this equal opportunity only in

a less than fully integrated setting. An example illustrates the point: wheelchair users should have an equal opportunity to engage in team sports and get vigorous, competitive exercise. Providing this opportunity through a participation on an able-bodied basketball team would not be appropriate to the wheelchair user's needs. A wheelchair basketball team, though not itself integrated, would provide the opportunity, and would be an appropriate way to provide the wheelchair users with an equal opportunity to compete. The language was changed by substituting "in the most integrated setting appropriate to the person's needs."

Subpart C, § 1012.41: Several commentors suggested eliminating the requirement that a grantee designate a § 504 officer because grantees could not afford to allocate a full-time position to that task. There is no requirement that the § 504 officer perform only that function. In some cases, it would be logical for the already-existing Equal Opportunity Officer to assume the role. However, since the bulk of the § 504 officer's work must be done within the first year of implementation—the self-evaluation and transition planning period—many grantees may want to add a temporary full-time employee to get implementation well underway.

Subpart C, § 1012.45: Several commentors expressed confusion over the necessity of using all five methods listed for providing notice of a grantee's nondiscrimination policy. The section does not use the word "shall", indicating an absolute requirement, nor does it use the word "may", indicating complete discretion; instead the word "should" is used. This indicates that although all five methods listed need not be used, enough of them must be used to provide the appropriate notification. Local conditions will dictate the number of methods needed to achieve that level of notification. If that level of notification has not been reached, failure to have used the listed methods may indicate that a less than good faith effort was made.

Subpart D: The comments of diverse organizations recommended dropping the proposed section on Fringe Benefits. The section proposed would have allowed for differences in benefits or contributions between handicapped and nonhandicapped persons when the difference could be justified on an actuarial basis. Actuarial data and experience do not now provide the basis for a regulation which determines that this disparate treatment is nondiscriminatory. Therefore, the section has been dropped from the final rule.

Subparts F, G, and H—General: Misunderstanding arose over the applicability of the physical access requirements to homes weatherized or repaired by grantees. The physical access provisions of the regulation apply only to grantee facilities. They do not apply to privately owned homes.

Subpart I: Several commentors expressed a serious concern that CSA backed away from its full accessibility standard in the transportation area. They pointed out that access to transportation is no less important than access to facilities; that it is no less discriminatory to be refused access to a transportation vehicle than to a facility; and that to be consistent with its own definition of nondiscrimination, CSA should requre full access in all vehicles. The position of these commentors however, was refuted by other commentors who pointed out that the limited transportation that grantees provide is usually individualized—from home to service and back. This kind of service can easily be made accessible on an individualized basis. If a mobility handicapped person is on a particular van route for example, the van used for that route can be the accessible one. The entire stock of vehicles need not be accessible unless that is necessary to provide integrated, efficient service.

CSA has determined not to require full accessibility to transportation vehicles. Factors which weighed heavily in this decision included: the practical/technical difficulties of retrofit, the expense of retrofit weighed against the frequently short-lived benefit gained by retrofitting already old worn-out vehicles, and the relatively low number of grantee employees whose duties require use of the vehicles.

CSA believes that the standard enunicated for transportation vehicles will ensure that handicapped persons are provided integrated, efficient transportation service, and that that standard is the highest that can be implemented at this time.

Regulatory Analysis

Executive Order 12044, 43 FR 12661 (March 24, 1978) requires that agencies prepare Regulatory Analyses for regulations that may have major economic consequences. The Order defines major economic consequences as (1) an annual effect on the economy of $100 million or more, or (2) major increases in costs or prices for individual industries, levels of government or geographic regions.

Most of the costs involved in the implementation of this regulation will be in (1) renovating or relocating for physical access, (2) providing communications access, and (3) making reasonable accommodations. These costs are not limited to individual industries, levels of government or geographic regions. CSA's one thousand grantees share its $650 million annual budget. The costs these few and small grantees will incur in compliance with this regulation, many of which are one time costs likely to result in a return to the economy in the form of the contributions of persons enabled by participation in CSA programs to become self-supporting, will not produce an annual $100 million effect on the economy.

It has, therefore, been determined that a Regulatory Analysis is not required.

Dated: January 14, 1981.

Richard Rios,

Director, Community Services Administration.

The following is added as 45 CFR Part 1012:

PART 1012—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITTING FROM FINANCIAL ASSISTANCE PROVIDED BY CSA; IMPLEMENTATION OF SECTION 504 OF THE REHABILITATION ACT, AS AMENDED, AND EXECUTIVE ORDER 12250

Subpart A—General

Sec.

1012.1 Purpose.
1012.2 Policy.
1012.3 Application.
1012.4 Handicapped person defined.
1012.5 Qualified handicapped person defined.
1012.6 Federal financial assistance defined.
1012.7 Facility defined.
1012.8 Other definitions.
1012.9 Effect of Conflicting State or local requirements.
1012.10 Effect of Federal Law Limiting Programs.
1012.11 Effect of limited employment opportunities.
1012.12–1012.22 [Reserved]

Subpart B—General Prohibitions Against Discrimination

1012.23 General prohibition.
1012.24 Provision of aid, benefits, services.
1012.25 Equally effective defined.
1012.26 Criteria or methods of administration.
1012.27 Site and facility selection.
1012.28 Participation In Non-Separate Programs.
1012.29–1012.39 [Reserved]

Subpart C—Administrative Requirements

1012.40 Self-evaluation.
1012.41 504 Officer.
1012.42 Remedial action.

Sec.
1012.43 Voluntary action.
1012.44 Grievance procedures.
1012.45 Notification of policy.
1012.46 Publications.
1012.47 Waiver of administrative requirements for small grantees.
1012.48 Assurances required.
1012.49–1012.59 [Reserved]

Subpart D—Employment

1012.60 General employment policy.
1012.61 Employment decisions.
1012.62 Contractual or other relationships.
1012.63 Employment practices covered.
1012.64 Reasonable accommodation—requirement to make.
1012.65 Reasonable accommodation—examples for employees.
1012.66 Reasonable accommodation—examples for applicants.
1012.67 Reasonable accommodation—undue hardship determination.
1012.68 Reasonable accommodation—denial based on, prohibited.
1012.69 Employment selection criteria—prohibited tests.
1012.70 Employment selection criteria—administration of tests.
1012.71 Handicapped status—preemployment inquiry, prohibited.
1012.72 Handicapped status—preemployment inquiry, permissible invitation.
1012.73 Handicapped status—preemployment inquiry, medical exam.
1012.74 Handicapped status—confidentiality of information.
1012.75–1012.85 [Reserved]

Subpart E—Communications Access

1012.86 General communications access policy.
1012.87 Telecommunications devices for the deaf—described.
1012.88 Telecommunications device for the deaf—required.
1012.89 Telephones available to the public.
1012.90 Establishment of system to provide interpreters required.
1012.91 Provision of interpreters.
1012.92 Establishment of system to provide reader, taping, and brailling service required.
1012.93 Provision of reader, taping and brailling service.
1012.94 Simplified language.
1012.95–1012.105 [Reserved]

Subpart F—Access to and Use of Newly Constructed Facilities

1012.106 General access and use policy.
1012.107 Defined.
1012.108 Requirement.
1012.109 Standards.
1012.110–1012.117 [Reserved]

Subpart G—[Reserved]

1012.118–1012.130 [Reserved]

Subpart H—Access to and use of Existing Facilities

1012.131 General access and use policy.
1012.132 Defined.
1012.133 Requirement.
1012.134 Methods.
1012.135 Time for compliance.
1012.136 Transition plan.
1012.137 Notice of compliance required.
1012.138–1012.145 [Reserved]

Subpart I—Programs and Activities

1012.146 General programs and activities policy.
1012.147 Program eligibility requirements.
1012.148 Administration of programs and activities.
1012.149 Recruitment and outreach.
1012.150 Program design.
1012.151 1012.164 [Reserved]

Subpart J—Transportation

1012.165 General transportation policy.
1012.166 Adequate number of accessible vehicles required.
1012.167–1012.177 [Reserved]

Subpart K—Procedures for Enforcement

1012.178 Procedures.

[Remainder of Part 1012 is Reserved]

Authority: Section 504, Rehabilitation Act of 1973, Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794); Section 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93–516, 88 Stat. 1619 (29 U.S.C. 706); Section 120(a), Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. 95–602, 92 Stat. 2955 (1978); Executive Order 11914, April 28, 1976, and 45 CFR Part 85.

Subpart A—General

§ 1012.1 Purpose.

The purpose of this Part is to implement Section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

§ 1012.2 Policy.

(a) CSA's mission is to enable low-income individuals to become self-sufficient, and to live decent, dignified lives. Conservative estimates indicate that well over 7.5 million low-income individuals are handicapped individuals. Handicapped individuals frequently have low incomes only because of the discrimination they experience daily. Many cannot get jobs because job sites are physically inaccessible to them, or because job vacancies are announced using methods of communication closed to them. For the same reasons, handicapped individuals are denied access to the services designed to help them achieve economic self-sufficiency.

(b) To the extent that CSA grantees exclude handicapped individuals from or segregate them in programs or employment, CSA grantees are part of the cause of rather than the cure for poverty among handicapped individuals.

(c) This Part is intended to prohibit all forms of discrimination against handicapped persons by CSA grantees.

§ 1012.3 Application.

This part applies to all grantees, and the delegate agencies of all grantees, receiving financial assistance from CSA, and to each program or activity that receives or benefits from such assistance.

§ 1012.4 Handicapped person defined.

(a) "Handicapped person" means any persons who—

(1) Has a physical or mental impairment which substantially limits one or more major life activities;

(2) Has a record of such an impairment; or

(3) Is regarded as having such an impairment.

(b) As used in the preceding paragraph, the phrase—

(1) "Physical or mental impairment" means—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(2) "Physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(3) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(4) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(5) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a grantee as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments listed above but is treated by a grantee as having such an impairment.

§ 1012.5 Qualified handicapped person defined.

"Qualified handicapped person" means—

(a) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question; and

(b) With respect to programs and activities, a handicapped person who meets the essential eligibility requirements.

§ 1012.6 Federal financial assistance defined.

"Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which CSA provides or otherwise makes available assistance in the form of—

(a) Funds;

(b) Services of Federal personnel; or

(c) Real and personal property or any interest in or use of such property, including:

(1) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(2) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

§ 1012.7 Facility defined.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property (excluding transportation vehicles).

§ 1012.8 Other definitions.

As used in this Part, the term: "The Act" means the Rehabilitation Act of 1973 (Pub. L. 93–112), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516).

"Applicant for assistance" means one who submits an application, request or plan required to be approved by a CSA official or by a grantee as a condition to becoming a grantee.

The "Associate Director for Human Rights" means the CSA official responsible for implementing and enforcing CSA's Civil Rights program, or his or her designee.

"CSA" means the Community Services Administration.

"Delegate agency" means any organization or entity to which a grantee delegates any part of its work program.

"Grantee" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another grantee, including any delegate agency, but excluding the ultimate beneficiary of the assistance.

"Handicap" means any condition that renders a person a "handicapped person" as defined in § 1012.4.

"Section 503" means Section 503 of the Act.

"Section 504" means Section 504 of the Act.

§ 1012.9 Effect of conflicting State or local requirements.

The obligation to comply with this Part is not obviated or alleviated by the existence of any State or local law or other requirement that, on the basis of handicap, imposes prohibitions or limitations upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

§ 1012.10 Effect of Federal law limiting programs.

The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

§ 1012.11 Effect of limited employment opportunities.

The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

§§ 1012.12–1012.22 [Reserved]

Subpart B—General Prohibitions Against Discrimination

§ 1012.23 General prohibition.

No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

§ 1012.24 Provision of aid, benefits, services.

(a) Each grantee, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(1) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(2) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(3) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(4) Provide different or separate aid, benefits or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(5) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the grantee's program;

(6) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(7) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit or service.

(b) As used in this Subpart, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased, or rented, or otherwise, acquired in whole or in part, with Federal financial assistance.

§ 1012.25 Equally effective defined.

For purposes of this Part, aids, benefits, and services to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit or to reach the same level of achievement in the most integrated setting appropriate to the person's needs.

§ 1012.26 Criteria or methods of administration.

Each grantee may not, directly or through contractual or other arrangements, utilize criteria or methods of administration—

(a) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the grantee's program with respect to handicapped persons;

(b) That have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap; or

(c) That perpetuate the discrimination of another grantee if both grantees are subject to common administrative control or are agencies of the same State.

§ 1012.27 Site and facility selection.

In determining the site or location of a facility and in selecting a particular facility, an applicant for assistance or a grantee may not make selections—

(a) That have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance; or

(b) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

§ 1012.28 Participation in non-separate programs.

Despite the existence of separate or different programs or activities provided in accordance with this Part, a grantee may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different.

§§ 1012.29–1012.39 [Reserved]

Subpart C—Administrative Requirements

§ 1012.40 Self-evaluation.

(a) Each grantee and each applicant for assistance whose application is submitted on or before August 18, 1981, shall—

(1) By August 18, 1981; and

(2) After consultation with interested persons, including low-income handicapped persons or their representatives or organizations representing handicapped persons;

(i) Evaluate its current policies and practices and the effects thereof that do not or may not meet the requirements of this Part; and

(ii) Modify any policies and practices that do not meet the requirements of this Part; and

(iii) Take appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(b) Each applicant for assistance whose application is submitted after August 18, 1981, shall conduct the self-evaluation described in paragraph (a) of this section prior to submitting its application and shall submit with its application the written self-evaluation described in paragraph (c) of this section.

(c) Each grantee and applicant for assistance shall submit to CSA a copy of the results of the self-evaluation conducted in accordance with paragraph (a) of this section. For headquarters grants and applications for assistance, the self-evaluation shall be submitted to the Associate Director for Human Rights. For regionally administered grants, the self-evaluation shall be submitted to the Regional Director. In its self-evaluation, a grantee or applicant for assistance shall include—

(1) The name, address and telephone number of the interested persons consulted (subject to their consent);

(2) A description of areas examined and problems identified;

(3) The rationale for not adopting any recommendation of the interested persons consulted which was not adopted;

(4) A description of modifications made and of remedial steps taken;

(5) A copy of the transition plan if one is required by Subpart H; and

(6) The name and title of the Section 504 officer designated pursuant to § 1012.41.

(d) Each grantee shall—

(1) Maintain the written self-evaluation on file for three (3) years;

(2) Make it available for public inspection; and

(3) Deliver a copy of it to each of the interested persons consulted in accordance with sub-paragraph (a)(2) of this section.

§ 1012.41 504 officer.

Each grantee shall designate a Section 504 officer to coordinate its efforts to comply with this Part. This employee shall also be responsible for assisting handicapped applicants, employees and beneficiaries with special problems they encounter, on account of handicap, in their dealings with the grantee.

§ 1012.42 Remedial action.

(a) If the Associate Director for Human Rights or the Regional Director finds that a grantee has discriminated against persons on the basis of handicap in violation of Section 504 or this Part, the grantee shall take such remedial action as the Associate Director for Human Rights or Regional Director deems necessary to overcome the effects of the discrimination.

(b) Where a grantee is found to have discriminated against persons on the basis of handicap in violation of Section 504 or this part and where another grantee exercises control over the grantee that has discriminated, the Associate Director for Human Rights, or Regional Director, where appropriate, may require either or both grantees to take remedial action.

(c) The Associate Director for Human Rights or Regional Director may, where necessary to overcome the effects of discrimination in violation of Section 504 or this Part, require a grantee to take remedial action—

(1) With respect to handicapped persons who are no longer participants in the grantee's program but who were participants in the program when the discrimination occurred; or

(2) With respect to handicapped persons who would have been participants in the program had the discrimination not occurred.

§ 1012.43 Voluntary action.

Each grantee may take steps in addition to any action that is required by this Part, to overcome the effects of conditions that resulted in limited participation in the grantee's program or activity by qualified handicapped persons.

§ 1012.44 Grievance procedures.

Each grantee shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution and complaints alleging any action prohibited by this Part. A beneficiary, employee or applicant shall allow a grantee twenty-one (21) days to resolve a complaint prior to filing a complaint with CSA; however, if a grantee has no grievance procedures or fails to act upon a complaint, a beneficiary, employee, or applicant may immediately file a complaint with CSA.

§ 1012.45 Notification of policy.

(a) Each grantee shall take appropriate and continuing steps to notify participants, beneficiaries, applicants and employees, including those with impaired vision or hearing,

and those with mental handicaps, and unions or professional organizations holding collective bargaining or professional agreements with the grantee that it does not discriminate on the basis of handicap in violation of Section 504 and this Part.

(b) The notification shall—

(1) Contain the information and be given in the modes of communication necessary to apprise interested persons, including those with impaired vision or hearing, and those with mental handicaps, of the protections against discrimination assured them by Section 504 and this Part;

(2) State that the requirement not to discriminate extends to admission, access, and employment; and

(3) State that inquiries concerning the application of Section 504 and this Part to the grantee may be referred to the Section 504 officer designated pursuant to § 1012.41 of this Subpart, to the Regional Director or to the Associate Director for Human Rights.

(c) Each grantee shall make the initial notification required by paragraph (a) of this section by May 18, 1981. Notification should include publication in—

(1) Newpapers and magazines operated by, for, or in connection with the grantee;

(2) Newpapers and magazines operated by, for, or in connection with local organizations representing handicapped individuals;

(3) Local newpapers of general circulation;

(4) Memoranda or other communications which the grantee makes available to participants, beneficiaries and employees; and

(5) Public service radio and television spots.

§ 1012.46 Publications.

If a grantee disseminates general information regarding its programs, activites or employment opportunities to participants, beneficiaries, applicants or employees, it shall make such information available to those with impaired vision or hearing, and those with mental handicaps, and it shall include with that information a statement of the policy described in § 1012.45.

§ 1012.47 Waiver of administrative requirements for small grantees.

If a grantee with fewer than fifteen employees can prove that compliance with § 1012.41, § 1012.44, or § 1012.46 will significantly impair the ability of the grantee to provide benefits or services, the grantee may apply to the Associate Director for Human Rights for a waiver of the requirements of one or more of those sections.

§ 1012.48 Assurances required.

(a) Assurances. Each grantee or an applicant for assistance to which this Part applies shall submit an assurance on a form specified by the Associate Director for Human Rights that the program will be operated in compliance with Section 504 and this Part. Each grantee shall prepare an assurance form which shall be submitted to the grantee by each of its delegate agencies, that the delegate agency's program will be operated in compliance with Section 504 and this Part.

(b) Duration of obligation.

(1) Real property. In the case of Federal assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the grantee, or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used or the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Personal property. In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the grantee for the period during which it retains ownership or possession of the property.

(3) Other assistance. In all other cases the assurance will obligate the grantee for the period during which Federal financial assistance is extended.

(c) Real Property—Covenant with Assurance.

(1) Where Federal financial assistance is provided in the form of real property or interest in the property from CSA, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the grantee shall agree to include the covenant described in subparagraph (c)(1) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from CSA, the covenant shall also include a condition coupled with a right to be reserved by CSA to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Associate Director for Human Rights may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

§§ 1012.49–1012.59 [Reserved]

Subpart D—Employment

§ 1012.60 General employment policy.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this Part applies.

§ 1012.61 Employment decisions.

Each grantee—

(a) Shall make all decisions concerning employment under any program or activity to which this Part applies in a manner which ensures that discrimination on the basis of handicap does not occur; and

(b) May not limit, segregate, or classify applicants or employees in anyway that adversely affects their opportunities or status because of handicap.

§ 1012.62 Contractual or other relationships.

(a) Each grantee may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this Subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the grantee, and with organizations providing training and apprenticeship programs.

(b) A grantee's obligation to comply with this Subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

§ 1012.63 Employment practices covered.

The provisions of this Subpart apply to—

(a) Recruitment, advertising and the processing of applications for employment;

(b) Hiring, upgrading, promotion, award of tenure, demotion, transfer, lay-

off, termination, right of return from lay-off and rehiring;

(c) Rates of pay or any other form of compensation and changes in compensation;

(d) Job assignments, job classifications, organizational structures, position descriptions, lines of progression and seniority lists;

(e) Leaves of absence, sick leave or any other leave;

(f) Fringe benefits available by virtue of employment, whether or not administered by the grantee;

(g) Selection and financial support for training, including apprenticeship, professional meetings, conferences and other related activities, and selection for leaves of absence to pursue training;

(h) Employer sponsored activities, including social or recreational programs; and

(i) Any other term, condition, or privilege of employment.

§ 1012.64 Reasonable accommodation—Requirement to make.

Each grantee shall make reasonable accommodation to known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the grantee can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

§ 1012.65 Reasonable accommodation—Examples for employees.

Reasonable accommodation to an employee may include—

(a) Making facilities and communications used by employees more accessible to and usable by handicapped persons;

(b) Job restructuring, part-time or modified work schedules;

(c) Acquisition or modification of equipment or devices;

(d) The provision of readers, notetakers or interpreters; and

(e) Other similar actions.

§ 1012.66 Reasonable accommodation—Examples for applicants.

Reasonable accommodation to an applicant for employment may include—

(a) Making job announcements available in a form readily understandable by mentally handicapped persons and by persons with impaired vision or hearing;

(b) Providing readers, interpreters and other aides and assistance during application, testing and interviewing processes; and

(c) Other similar actions.

§ 1012.67 Reasonable accommodation—Undue hardship determination.

In determining pursuant to § 1012.64(a) of this Subpart whether an accommodation would impose an undue hardship on the operation of a grantee's program, factors to be considered include—

(a) The overall size of the grantee's program with respect to number of employees, number and type of facilities and size of budget; and

(b) The type of the grantee's operation, including the composition and structure of the grantee's workforce; and

(c) The nature and cost of the accommodation needed.

§ 1012.68 Reasonable accommodation—Denial based on, prohibited.

Each grantee may not deny an employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

§ 1012.69 Employment selection criteria—Prohibited tests.

Each grantee may not make use of any employment test or other selection criteria that screens out or tends to screen out handicapped persons or any class of handicapped persons unless—

(a) The test score or other selection criteria, as used by the grantee, is shown to be job-related for the position in question; and

(b) Alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Associate Director of Human Rights to be available.

§ 1012.70 Employment selection criteria—Administration of tests.

Each grantee shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, reading, writing or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude or whatever other factor the test purports to measure rather than reflecting the applicant's or employee's impaired sensory, manual, reading, writing or speaking skills (except where those skills are the factors that the test purports to measure).

§ 1012.71 Handicapped status—Preemployment inquiry, prohibited.

Except as provided in § 1012.77 and § 1012.78, each grantee may not conduct a preemployment medical examination or make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A grantee may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

§ 1012.72 Handicapped status—Preemployment inquiry, permissible invitation.

(a) When allowed. A grantee may invite applicants for employment to indicate whether and to what extent they are handicapped only when the grantee is taking—

(1) Remedial action to correct the effects of past discrimination pursuant to § 1012.42;

(2) Voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 1012.43;

(3) Affirmative action pursuant to Section 503 of the Act.

(b) Requirements for Permissible Invitations. When a grantee invites applicants for employment to indicate whether and to what extent they are handicapped, the grantee shall state clearly on any written questionnaire used for this purpose or make clear orally if no written questionnaire is used—

(1) That the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts;

(2) That the information is being requested on a voluntary basis;

(3) That it will be kept confidential as provided in § 1012.79;

(4) That refusal to provide it will not subject the applicant or employee to any adverse treatment; and

(5) That it will be used only in accordance with this Part.

§ 1012.73 Handicapped status—preemployment inquiry, medical exam.

This Subpart does not prohibit a grantee from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty if—

(a) All entering employees are subjected to such an examination regardless of handicap; and

(b) The results of such an examination are used only in accordance with the requirements of this Part.

§ 1012.74 Handicapped status—confidentiality of information.

Information obtained in accordance with this Subpart as to the medical

condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that—

(a) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(b) If a condition might require emergency treatment, first aid and safety personnel may be informed, where appropriate; and

(c) Government officials investigating compliance with the Act shall be provided relevant information upon request.

§§ 1012.75–1012.85 [Reserved]

Subpart E—Communications Access

§ 1012.86 General communications access policy.

No qualified handicapped person shall, because a grantee's communications are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation or employment in, or otherwise be subjected to discrimination under any program or activity to which this Part applies.

§ 1012.87 Telecommunications devices for the deaf—described.

A telecommunications device for the deaf (TDD) is a device which, coupled with a telephone, makes that telephone accessible to persons unable to hear voices or speak understandably. In the current state of the art, TDD's have a typewriter-like keyboard on which messages are typed and a digital display or paper printout on which the typed message appears. Both parties to the call must have a TDD.

§ 1012.88 Telecommunications device for the deaf—required.

(a) Availability through TDD. Each grantee which is available by telephone shall be equally available through TDD. Each grantee available by telephone shall maintain and reliably answer at least one TDD.

(b) Shared Systems May be Permissible. If each of a grantee's offices, programs and activities can be quickly, conveniently and reliably available through a TDD and message relay system, the grantee is not required to have a TDD in each of its offices, or the site of each program or activity. An office or site is required to have its own TDD when the number of TDD calls would be so great that a shared TDD and message relay system could not effectively handle the TDD calls.

(c) Presumption of Need for own TDD. A presumption that a grantee should install a TDD at an office or the site of a program or activity is created by either—

(1) A high frequency of calls on a shared TDD; or

(2) Written request for the installation of a TDD from potential users.

§ 1012.89 Telephones available to the public.

(a) Amplifiers. If a grantee makes one or more telephones available to the public, it shall equip at least one of these telephones with an amplifier in the handset.

(b) Compatability with Hearing Aids. All telephones available for public use shall be compatible with hearing aids.

§ 1012.90 Establishment of system to provide interpreters required.

(a) The System. Each grantee shall establish a permanent and reliable system for the provision of appropriate and qualified interpreters to qualified handicapped individuals. This provision does not require a grantee to have a full-time interpreter on staff, but does require a grantee to be able to provide appropriate and qualified interpreters on reasonable notice.

(b) "Appropriate." As used in paragraph (a) of this section, the term "appropriate" refers to the mode of communication used by the interpreter and the person for whom he or she interprets. Modes may include, but are not limited to, oral or manual interpreting. Modes of manual interpreting may include, but are not limited to, the use of Signed English, American Sign Language and fingerspelling. An "appropriate" interpreter shall use the mode preferred by the qualified handicapped individual.

(c) "Qualified." As used in paragraph (a) of this section, the term "qualified" refers to the interpreter's degree of skill. An interpreter may have a different level of skill in different modes. Within one mode, an interpreter may have one skill level for translating spoken language into that mode and another level of skill for translating from that mode into spoken language. An interpreter's level of skill may also vary due to fatigue caused by the speed, length or difficult nature of the communication. A "qualified" interpreter shall have the level of skill necessary to accurately and fluently interpret from or to the preferred mode in the case of one-way communications, or the level of skill necessary to accurately and fluently interpret both from and to the preferred mode, in the case of two-way communications.

(d) Notice. Each grantee shall effectively notify qualified handicapped persons of the availability of interpreter service, and may require qualified handicapped persons to provide reasonable notice of the need for an interpreter.

§ 1012.91 Provision of interpreters.

(a) Program Participation. Each grantee shall provide appropriate and qualified interpreters to program participants and applicants for program participation at their request.

(b) Employment. Each grantee shall provide appropriate and qualified interpreters to employees and applicants for employment as required as a reasonable accommodation without undue hardship under Subpart D.

§ 1012.92 Establishment of system to provide reader, taping and brailling service required.

Each grantee shall establish a permanent and reliable system to provide appropriate reader, taping and Brailling service to qualified handicapped persons. This provision does not require a grantee to have a full-time reader, taper or Brailler on staff, but does require a grantee to be able to provide appropriate reader, taping and Brailling service on reasonable notice. Each grantee shall effectively notify qualified handicapped persons of the availability of reader, taping and Brailling service, and may require qualified handicapped persons to provide reasonable notice of the need for reader, taping or Brailling service.

§ 1012.93 Provision of reader, taping and brailling service.

(a) Program Participation. Each grantee shall provide appropriate reader, taping and Brailling service to program participants and applicants for program participation at their request.

(b) Employment. Each grantee shall provide appropriate reader, taping and Brailling service to employees and applicants for employment as required as a reasonable accommodation without undue hardship under Subpart D.

§ 1012.94 Simplified language.

Whenever a grantee prepares a communication, it shall use the most simple language capable of carrying the meaning and intent of the communication.

§§ 1012.95–1012.105 [Reserved]

Subpart F—Access to and Use of Newly Constructed Facilities

§ 1012.106 General access and use policy.

No qualified handicapped person shall, because a grantee's facilities are

inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation or employment in, or otherwise be subjected to discrimination under any program or activity to which this Part applies.

§ 1012.107 Defined.

A "newly constructed facility" means a facility or part thereof which is constructed or renovated by a grantee after February 18, 1981. If an existing facility is renovated, the renovated portion is a "newly constructed facility."

§ 1012.108 Requirement.

Each newly constructed facility shall be accessible to and usable by handicapped persons before a grantee begins to use the facility. Exterior access, accessible entrance, interior access, and usability shall be provided. Interior access shall be provided—

(a) Between an accessible entrance and each level and area within the facility which is open to the public;

(b) Between an accessible entrance and each level and area within the facility which is used by employees;

(c) Between an accessible entrance and each level and area within the facility in which people reside; and

(d) Between each accessible area and a fire-safe means of egress or a fire-safe place of refuge.

§ 1012.109 Standards.

(a) Each newly constructed facility shall be considered accessible and usable only if—

(1) It conforms to the "American National Standard Specifications for Making Buildings and Facilities Accessible To, and Usable by the Physically Handicapped," published by the American National Standards Institute, Inc. ANSI A117.1–1961 (R1971), which is incorporated by reference in this Part; or

(2) The grantee can demonstrate and make clearly evident that equivalent accessibility and usability is provided.

(b) ANSI A117.1–1961 (R. 1971), The "Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," is available from the American National Standards Institute, Inc., 1430 Broadway, New York, New York, 10018 (212–354–3300). As of July, 1980, single copies cost $2.75 each, but there is a minimum charge of $5.00. Added to this $5.00 is a $2.00 handling charge. This incorporation by reference was approved by the Director of the Office of the Federal Register by letter dated July 25, 1980.

§§ 1012.110–1012.1117 [Reserved]

Subpart G—[Reserved]

§§ 1012.118–1012.130 [Reserved]

Subpart H—Access to and Use of Existing Facilities

§ 1012.131 General access and use policy.

No qualified handicapped person shall, because a grantee's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation or employment in, or otherwise be subjected to discrimination under any program or activity to which this Part applies, except as provided in the remainder of this Subpart.

§ 1012.132 Defined.

An "existing facility" means a facility or part thereof constructed on or before February 18, 1981], which a grantee uses, leases, owns or otherwise acquires on or before [February 18, 1981[, or at the time the grantee becomes a grantee, whichever is later.

§ 1012.133 Requirement.

Each program or activity to which this part applies and which is conducted in an existing facility shall be operated so that the program or activity, when viewed in its entirety, is readily accessible to handicapped persons.

§ 1012.134 Methods.

(a) Options. A grantee may achieve program access through such methods as renovation of existing facilities in conformity with the requirements of Subpart F, relocation of meetings, home visits, making services provided in inaccessible areas available in accessible areas, or any other method which results in program access.

(b) Selection. While a grantee is not required to make structural changes in existing facilities where other methods are effective in achieving program access, a grantee shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate to the handicapped person's needs and abilities.

§ 1012.135 Time for compliance.

Each grantee and each applicant which becomes a grantee on or before [April 20, 1981] shall provide program access by [April 20, 1981] except that where structural changes in existing facilities are necessary, those changes shall be made as expeditiously as possible, but in no event later than [February 18, 1983]. Each grantee which becomes a grantee after [April 20, 1981] shall provide program access on becoming a grantee, except that where structural changes in existing facilities are necessary, those changes shall be made as expeditiously as possible, but in no event later than two years from the date it becomes a grantee.

§ 1012.136 Transition plan.

(a) Who must submit. Each grantee that must make structural changes in order to provide program access shall submit a Transition Plan.

(b) When. If required by paragraph (a) of this section, a Transition Plan shall be submitted with the grantee's Self Evaluation (see § 1012.40).

(c) Consultation Requirement. The Transition Plan shall be developed in consultation with interested persons, particularly handicapped persons who will benefit from the structural changes.

(d) Contents of Transition Plan. The Transition Plan shall include at a minimum—

(1) An inventory of the grantee's existing facilities, indicating for each facility whether it was donated, leased, purchased or otherwise acquired. For each leased or donated facility, the duration of the lease or donation agreement shall be indicated in the Transition Plan, and a copy of the agreement shall be appended;

(2) Identification of the physical obstacles in each of the grantee's facilities which prevent program access;

(3) Detailed description of the methods which will be used to make the facility or part thereof accessible, and a specific timetable for making the contemplated changes;

(4) Priorities for making the changes, established on the basis of those facilities and parts thereof which are most essential to the grantee's beneficiaries and employees;

(5) The name, address and phone number of each of the interested persons consulted in the preparation of the plan (subject to their consent); and

(6) The name, address, phone number and title of the person(s) responsible for preparing and implementing the plan.

§ 1012.137 Notice of compliance required.

(a) Each grantee shall ensure that interested persons, particularly low-income handicapped persons, are able to obtain information about—

(1) Facilities or parts thereof that are accessible and usable;

(2) The provisions for program access; and

(3) The contents of the Transition Plan.

(b) Each grantee shall make this information available in a form which

provides effective notice to persons with impaired vision or hearing, and those with mental handicaps.

§§ 1012.138–1012.145 [Reserved]

Subpart I—Programs and Activities

§ 1012.146 General programs and activities policy.

No qualified handicapped person shall, because of the manner in which a grantee plans or operates its programs and activities, be denied the benefits of, be excluded from participation or employment in, or otherwise be subjected to discrimination under any program or activity to which this Part applies.

§ 1012.147 Program eligibility requirements.

Program eligibility requirements for each of a grantee's programs and activities shall be scrutinized and modified as necessary to ensure that the requirements are essential to achieving the purpose of the program or activity and that they do not exclude qualified handicapped persons on the basis of handicap.

§ 1012.148 Administration of programs and activities.

In the administration of its programs and activities, a grantee shall take whatever steps are necessary to ensure that qualified handicapped persons are afforded an equal opportunity to participate in or benefit from the grantee's programs and activities.

§ 1012.149 Recruitment and outreach.

If a grantee engages in recruitment or outreach efforts, it shall make equally effective recruitment and outreach efforts with respect to handicapped persons.

§ 1012.150 Program design.

(a) Adapted Program Required. If, in the planning or operation of a program or activity, a grantee discovers that a segment of the low-income handicapped population is, on account of handicap, unqualified to participate in that program or activity, and if the purpose of the program or activity is to fulfill a need shared by that segment of the population, then the grantee shall investigate the feasibility of and make intensive efforts to undertake a similar program or activity which is designed to achieve the same purpose with respect to that segment, taking physical or mental limitations into account.

(b) Feasibility Determination. In determining the feasibility of undertaking an adapted program or activity, a grantee shall consider—

(1) The size of the population to be served by the adapted program or activity;

(2) The severity of the need which it is the purpose of the program to fulfill; and

(3) If adapting an existing program, the extent of the modifications needed.

(c) Prohibition Against Limiting Participation. If a grantee does establish such an adapted program, it shall not require a handicapped person to participate in that program, nor shall it prohibit a qualified handicapped person from participating in programs which are not so adapted.

§§ 1012.151–1012.164 [Reserved]

Subpart J—Transportation

§ 1012.165 General transportation policy.

No qualified handicapped person shall, because a grantee's transportation vehicles are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation or employment in, or otherwise be subjected to discrimination under any program or activity to which this Part applies.

§ 1012.166 Adequate number of accessible vehicles required.

A grantee that provides transportation services shall make transportation services which they can effectively utilize available to handicapped persons. A grantee is not required to retrofit each of its transportation vehicles, but is required to have or to have access to the number of accessible transportation vehicles necessary to transport handicapped persons as efficiently as nonhandicapped persons are transported.

§§ 1012.167–1012.177 [Reserved]

Subpart K—Procedures for Enforcement

§ 1012.178 Procedures.

The procedural rules for enforcement of Section 504 and this Part are those which CSA uses for enforcement of Title VI of the Civil Rights Act of 1964. These procedures are found in 45 CFR Part 1010.

[The remainder of Part 1012 is reserved.]

[FR Doc. 81–1935 Filed 1–16–81; 8:45 am]
BILLING CODE 6315–01–M

COMMUNITY SERVICES ADMINISTRATION

45 CFR Part 1012

Civil Rights Regulations; Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting From Financial Assistance Provided by CSA; Implementation of Section 504 of the Rehabilitation Act, as Amended, and Executive Order 12250

AGENCY: Community Services Administration.

ACTION: Proposed rule.

SUMMARY: This rule proposes that facilities acquired by grantees after the date Subpart G becomes effective must be accessible to handicapped persons as defined by the standards in the appendix to this document. This proposed rule is needed to implement Section 504 of the Rehabilitation Act of 1973, as amended.

DATES: Comments received on or before March 20, 1981 will be considered in writing the final rule.

ADDRESS: Comments should be addressed to Jill Robinson, Acting Director, Disability Unit, Office of Human Rights, Community Services Administration, 1200 19th Street, NW., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Jill Robinson, (202) 653–5675 (Voice) or 254–5463 (TDD).

SUPPLEMENTARY INFORMATION: Please refer to the Preamble of CSA's Section 504 final regulation published in this Part of today's **Federal Register** for supplementary information.

Dated: January 14, 1981.

Richard Rios,

Director, Community Services Administration.

45 CFR Part 1012 is proposed to be amended by adding the following new Subpart G:

Subpart G—Access to and Use of Newly Acquired Facilities

1012.118 General access and use policy.
1012.119 Defined.
1012.120 Requirement.
1012.121 Standards.
1012.122—1012.130 [Reserved]
Appendix A: Performance Standards for Determining the Accessibility and Usability of Existing Facilities.

Authority: Section 504, Rehabilitation Act of 1973, Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794); Section 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93–516, 88 Stat. 1619 (29 U.S.C. 706); Section 120(a), Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. 95–602, 92 Stat. 2955 (1978); Executive Order 11914, April 28, 1976, and 45 CFR Part 85.

Subpart G—Access To and Use of Newly Acquired Facilities

§ 1012.118 General access and use policy.

No qualified handicapped person shall, because a grantee's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation or employment in, or otherwise be subjected to discrimination under any program or activity to which this Part applies.

§ 1012.119 Defined.

A "newly acquired facility" means an existing facility or part thereof which is leased, purchased or otherwise acquired by a grantee after [the effective date]. For the purpose of this Subpart, the term "leased" includes a renewal of a lease. A facility, the use of which is donated to a grantee after [the effective date], is a "newly acquired facility."

§ 1012.120 Requirement.

Each newly acquired facility shall be accessible to and usable by handicapped persons before a grantee begins to use the facility. Exterior access, accessible entrance, interior access, and usability shall be provided. Interior access shall be provided—

(a) Between an accessible entrance and each level and area within the facility which is open to the public;

(b) Between an accessible entrance and each level and area within the facility which is used by employees;

(c) Between an accessible entrance and each level and area within the facility in which people reside; and

(d) Between each accessible area and a fire-safe means of egress or a fire-safe place of refuge.

§ 1012.121 Standards.

Each newly acquired facility shall be considered accessible and usable only if it complies as a minimum with each standard of "Appendix A—Performance Standards for Determining the Accessibility and Usability of Existing Facilities."

§§ 1012.122—1012.30 [Reserved]

Subpart J—Procedures for Enforcement

§ 1012.178 Procedures.

The procedural rules for enforcement of Section 504 and this Part are those which CSA uses for enforcement of Title VI of the Civil Rights Act of 1964. These procedures are found in 45 CFR Part 1010.

(The remainder of Part 1012 is reserved.)

Appendix A—Performance Standards for Determining the Accessibility and Usability of Existing Facilities

Index

Part I: Introduction
2 Standards for New Facilities
4 Standards for Existing Facilities
6 Prescriptive vs. Performance Standards
8 Purpose of This Standard
10 Scope of This Standard
12 Use of This Standard
14 Interpretation of This Standard
Part II: Reference Measurements and Concepts
16 Introduction
18 Lengths, Widths, and Heights of Average Adult Plus Wheelchair
20 Range of Reach for Average Adult Wheelchair User
22 Operational Requirements for Average Adult Wheelchair User
24 Inclines
26 Long Cane Touch Technique
Part III: Basic Minimum Performance Requirements
28 General
Subpart A: Exterior Requirements
30 Parking Area
32 Accessible Path
34 Ramps
36 Signage
Subpart B: Accessible Entrance
38 One Principal Entrance
40 Required Features
42 Doors
Subpart C: Accessible Routes of Circulation
44 Required Features
46 Doors
48 Ramps
50 Elevators
52 Platform Lifts
Subpart D: Usability
54 Toilet Rooms
56 Drink of Water
58 Public Telephones
60 Counters, Etc.
62 Carpet

Part I: Introduction

2 Standards For New Facilities.

The standards and specifications generally available for making facilities accessible to and usable by handicapped persons are designed to be applicable to new construction and to renovation. Many of the features they require are absolutely necessary, that is, they must be provided if a handicapped person is to be able to make use of the facility (for example, an alternative to stairs *must* be provided if a wheelchair user is to gain access to a facility). Other features commonly required by access standards are intended to make use of a facility more convenient (for example, it is more convenient for a wheelchair user to go through a 32 inch door than a 30 inch door, although the majority of wheelchair users could squeeze through

a 30 inch door). A few features commonly required are somewhat redundant (for example, the nosing of stairs should be rounded for people who walk with crutches and braces, but if an elevator is also required, people will not have to use the stairs). At least one common feature is disclaimed by many of the handicapped persons it is intended to benefit (the two major national organizations of blind people do *not* advocate for knurled door knobs at potentially hazardous doorways).

Features which are not absolutely necessary, such as those provided for convenience, those which are somewhat redundant, or those upon which there is not complete agreement are included in standards applicable to new facilities because they provide a benefit (be it convenience or increased options in the use of the facility) and are easily and cheaply incorporated in the design of a new facility.

4 Standards For Existing Facilities.

There appears to be no generally accepted standard which can be used to determine whether an existing facility provides all of those features which are absolutely necessary to its use by handicapped persons and which is specifically designed to ensure that the resources used for renovations undertaken to provide access are allocated most effectively. Such a standard would mandate only features of a facility which are absolutely necessary to its use by handicapped persons.

6 Prescriptive vs. Performance Standards.

The accessibility standards generally available are prescriptive standards—that is, they prescribe the exact minimum measurements which are permissible. When the standards are applicable to new facilities, the prescribed measurements may be easily and economically incorporated during the design stage. Incorporating the prescribed measurements in an existing facility may be neither easy nor economical and, indeed, may be unnecessary. Frequently, the need which a particular set of measurements addresses may be met in several ways—the method prescribed by the standard being only one. If a method other than that rescribed by a standard is as effective, and if that method is easier and more economical, it should be used. A performance standard permits this flexibility—a prescriptive standard does not. A performance standard lists the ends that must be accomplished. The designer is free to choose the most practical and economical method of achieving the end, and indeed may discover a creative new solution to an old problem.

The danger involved in the use of a performance standard is that it may not give enough guidance, so that even well-intentioned designers may make mistakes.* CSA believes that the need for flexibility in a standard applicable to existing facilities outweighs the potential dangers of a flexible standard. It is recommended, however, that this standard be used in conjunction with the technical assistance of design professionals and of handicapped persons.

8 Purpose of This Standard

This standard is intented to be used to determine whether a facility has features which prevent its use by handicapped persons. The standard is intended to ensure that handicapped persons are not excluded by barriers from facilities or parts of facilities to which they are entitled to go, and thereby to ensure that handicapped persons are not segregated into separate facilities or parts of facilities.

10 Scope of This Standard

This standard addresses the architectural needs of only a portion of those handicpped persons entitled to the protection of Section 504. It is only the needs of persons who walk with difficulty or use standard wheelchair [2] persons who have impaired vision or hearing that this standard takes into account. If other handicapped persons have architectural needs, those needs are not addressed either because there is no general consensus as to the nature of the need or because there is no general consensus on an appropriate response to the need. The requirement of Section 504 that all handicapped persons be provided access to and use of each facility or part thereof is not alleviated by the failure of this standard to address a particular need.

The standard itself is divided into two parts (Part II and Part III). The second part lists design considerations, the third part identifies the features of a facility to which those considerations shall be applied. The two parts must be read together. For example, Part III requires that a door be wide enough to accommodate a wheelchair user. Part II indicates that an average person plus his/her wheelchair is commonly 28 inches wide. A doorway, then, must provide at least 30 inches clear open space for te wheelchair user and a little maneuvering room. (Clear open space is measured between the edge of the opened door and the opposite door jamb.)

14 Interpretation of This Standard

This standard shall be interpreted liberally to ensure that handicapped applicants, employees and beneficiaries have full access and use of each CSA funded facility or part thereof.

Part II: Reference Measurements and Concepts

16 Introduction

This part establishes the reference measurements and concepts which shall be applied to the performance requirements of Part III. Although this part lists only reference measurements and concepts relevant to wheelchair users and blind persons who use a long cane, the needs of all handicapped persons are to be accommodated in the application of the performance requirements of Part III.

18 Lengths, Widths and Heights of Average Adult Plus Wheelchair. (In Inches)

	Height at	range	Most common
A	Length	39.5 to 54	48
B	Overall width	18.5 to 32.5	28
C	Width at footplates	17 to 19	18

*A General Accounting Office Report to the Congress entitled "Further Action Needed to Make All Public Buildings Accessible to the Physically Handicapped" (FPCD–75–166; July 15, 1975) summarized the results of an ivestigation of compliance with the ANSI access standard. The report noted that 26% of the buildings studied had a ramp with a slope greater than the required 8.33%, 26% had doors with less than the required 32 inch clear opening, 64% had steps without the required 32 inch handrail, and 62% had restrooms with toilet stall doors of a width less than the required 32 inches. Since the ANSI standard is a prescriptive one, these results suggest that non-compliance may be caused by something other than a lack of guidance.

[2] Generally, the needs of persons who walk with difficulty, particularly those who use walking aids, are met if the needs of wheelchair users are met. Throughout the standard, the term "wheelchair user" appears alone where "person who walks with difficulty or wheelchair user" would be more appropriate. This is done for no reason other than a need which is different than that of wheelchair users, a separate requirement is stated.

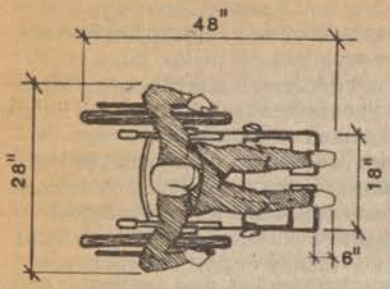


FIGURE 1: LENGTHS AND WIDTHS OF AVERAGE PERSON PLUS WHEELCHAIR

Height at	range	Most common
DEye level	43 to 51	43–51
ELap	23 to 28	27
FWheelchair seat	17 to 22	19
GWheelchair armrest	19.5 to 33.5	29

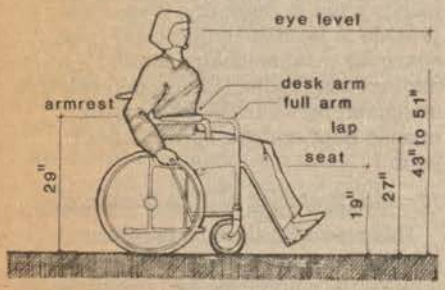


FIGURE 2: HEIGHTS OF AVERAGE PERSON PLUS WHEELCHAIR

20 Range of Reach of Acerage Adult Wheelchair User.

A The reaching abilities of wheelchair users vary widely. The upward or verticial reach ranges from 44 inches to 72 inches above floor level. Horizontal forward reach ranges from 28 inches to 52 inches.

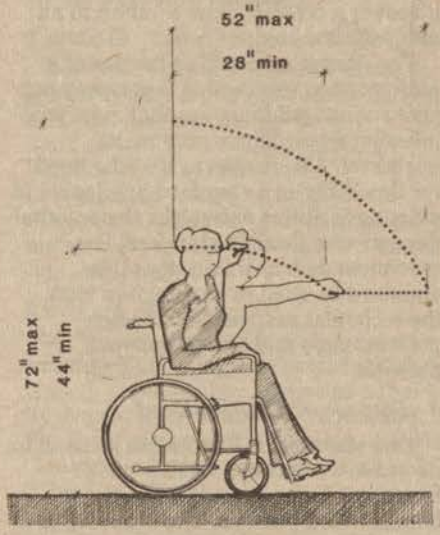


FIGURE 3: RANGE OF VERTICAL AND HORIZONTAL REACH

B The direction of approach and the height of the object influence the comfortable reaching limits acceptable to most people. At desk or counter height (from 30 to 36 inches above the floor) a forward reach of 24 inches is an acceptable design limit, while at shelf height (from 44 to 48 inches above the floor) a forward reach of 15 inches is comfortable and 20 inches is considered maximum.

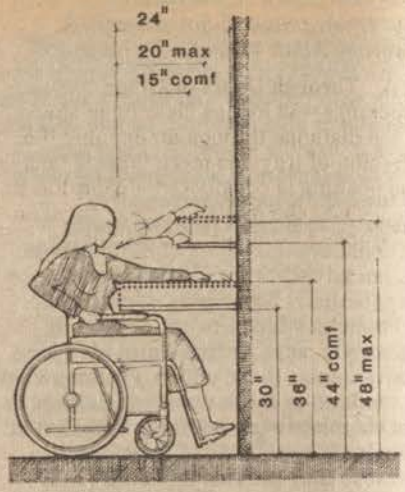


FIGURE 4: RANGE OF FORWARD REACH

C The limits of side reach measured horizontally from the plane of the pushrim of a wheelchair ranges from 15 inches to 24 inches in heights of from 36 inches (normal counter height) ot 46 inches above the floor. The limits of side reach measured vertically from the floor vary from a height 9 inches above the floor to a maximum of 62 inches; however, a vertical limit of 54 inches is comfortable for most wheelchair users and is the recommended maximum for design purposes.

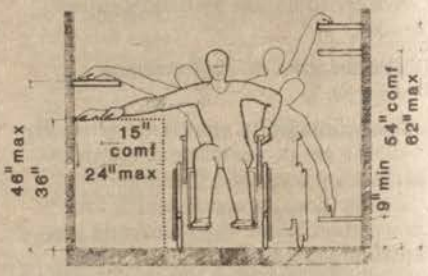
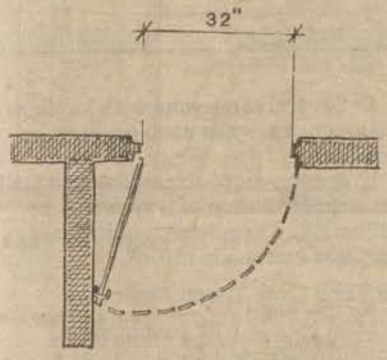
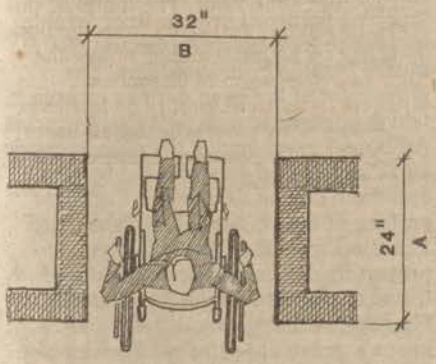


FIGURE 5: RANGE OF SIDE REACH

22 Operational Requirements for Average Adult Wheelchair User.

A Through Doors or Other Openings—32 inches clear open space. If the distance through an opening the directon of travel is more than 24 inches the opening is considered a cooridor. In such cases the minimum clear corridor clearance (36 inches) should apply.





note: If A exceeds 24 inches, B should be at least 36 inches

FIGURE 6: CLEAR OPENINGS

B Corridors—36 inch width for one way wheelchair passage; 60 inch width for two way wheelchair passage.

C 180 Degree Turn—60 inch diameter space with one wheel moving forward and one wheel moving in reverse.

D L Turn—36 inch-wide right angle path.

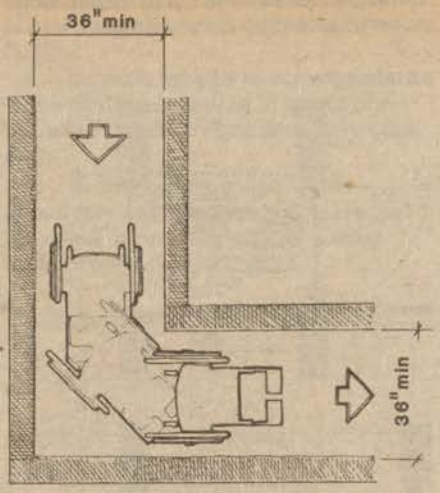


FIGURE 7: CLEARANCE L-TURN

E Maneuvering Clearances at Doors—Recommended clear area at either side of openings for manually operated hinged doors are as follows:

1 For direct frontal approach:

At the pull side of the door—54 inches in front of the door opening and 18 inches side clearance at the latch jamb

At the push side of the door—48 inches in front of the door opening and at least 36 inches wide

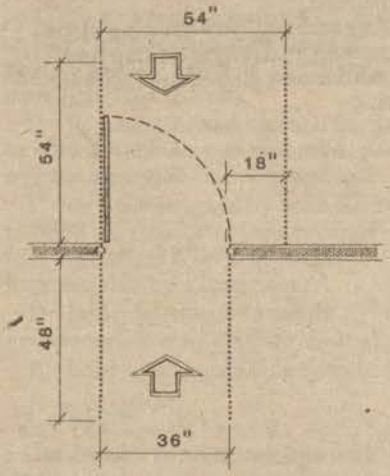


FIGURE 8: CLEARANCES FOR FRONTAL APPROACH TO DOOR

2 For side approach to the door opening:

a With door swinging away from the line of approach and with latch jamb at approach side—

At pull side of door—48 inches in front of door

At push side of door—42 inches in front of door

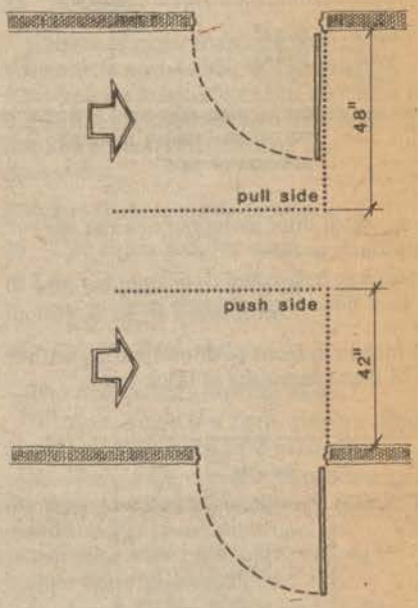


FIGURE 9: CLEARANCES FOR SIDE APPROACH TO DOOR—LATCH JAMB AT APPROACH SIDE

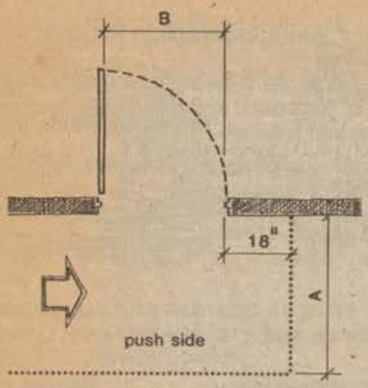
b With door swinging away from line of approach and with hinge jamb at approach side—

18 inch side clearance at latch jamb and

42 inches in front of the door for 32 inch clear openings, or

39 inches in front of the door for 34 inch clear openings, or

36 inches in front of the door for 36 inch opening.



A=42" if B=32"
A=39" if B=34"
A=36" if B=36"

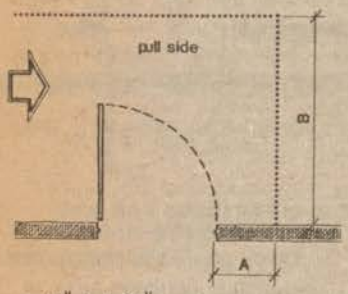
FIGURE 10: CLEARANCE FOR SIDE APPROACH TO DOOR – HINGE JAMB AT APPROACH SIDE

c With door swinging against the approach path—

60 inches in front of door opening and 18 inch clearance at latch jamb

or

54 inches in front of door opening with 24 inch clearance at latch jamb.



A=18" if B=60"
A=24" if B=54"

FIGURE 11: CLEARANCE FOR SIDE APPROACH – DOOR SWINGING AGAINST APPROACH PATH

d For hinged door openings in series as in a vestibule space: A minimum space 36 inches wide by 48 inches long not obstructed by door swings.

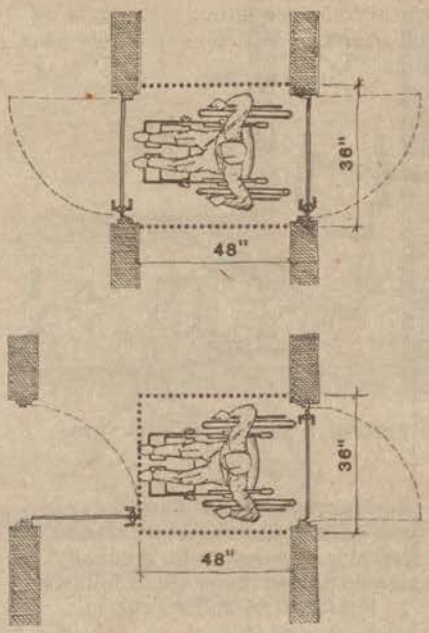


FIGURE 12: VESTIBULE CLEARANCES

24 Inclines.

A Any vertical rise exceeding one half (½) inch cannot be negotiated by the average adult wheelchair user unless it is inclined.

B Any inclined way having a slope greater than 1:20 (5%) is a ramp and shall conform to the requirements for ramps.

C The maximum slopes which can be negotiated by the average adult wheelchair user are:

Table 3

Maximum slope [1]	Maximum vertical	Maximum horizontal run (feet)
1:8	3	2
1:10	9½	8
1:12	30	30
1:16	30	40
1:20	30	50

[1] Note: Ratio of Rise to Run.

D Several ramp runs with landings or rest stops between each run may be combined.

E A cross-slope exceeding 1;50 (2%) makes negotiation of level surfaces difficult and negotiation of inclined surfaces extremely difficult.

26 Long Cane Touch Technique.

Most people with severe visual impairments use a long cane as a mobility aid. A person moving forward and using a touch technique swings the cae rhythmically from side to side touching points at or near floor level in an area extending approximately 6 inches outside both shoulders. The movement of the cane defines an area in which hazards can be detected by touch. An object overhanging the path as much as 12 inches and encountered by direct approach can be detected if the lower surface of the object is not higher than 27 inches from the floor. Objects projecting or overhanging the path of travel at the side cannot be detected. However, since the cane technique keeps a person approximately 6 inches from the path edge, a very limited overhang is not hazardous.

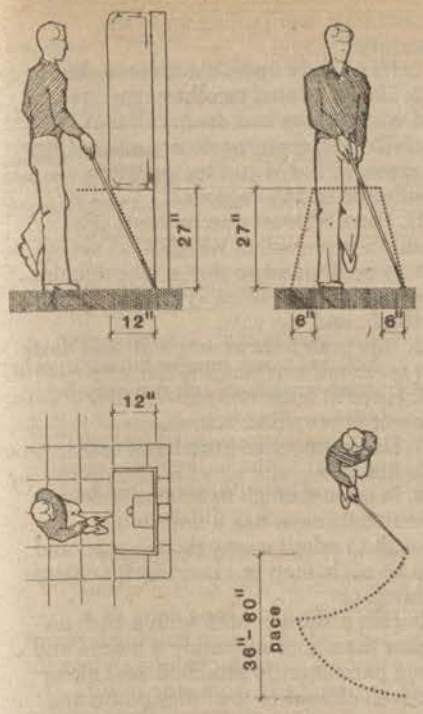


FIGURE 13: CLEARANCES FOR LONG CANE TOUCH TECHNIQUE

Part III: Basic Minimum Performance Requirements

28 General

Barriers which restrict the free and independent movement of handicapped persons to and through each facility or part thereof shall be removed. Handicapped persons shall be allowed access to and use of the exterior environment of each facility, allowed to enter the facility, and allowed access to and use of the interior of the facility.

Subpart A: Exterior Requirements

30 Parking Area.

If parking is provided, parking spaces reserved for handicapped persons shall—

A Be provided in a number sufficient to accommodate the number of handicapped drivers using the facility, but in no case less than one space for each 50 spaces provided or a minimum of one space;

B Be located so that there is an accessible path, with no curb, step or other adrupt grade change, leading to an accessible entrance to the building or facility;

C Be wide enough to accommodate a wheelchair user getting in or out of a full-sized care with one door fully open and;

D Be marked by a sign which effectively notifies potential users that the space is one reserved for use by handicapped persons only.

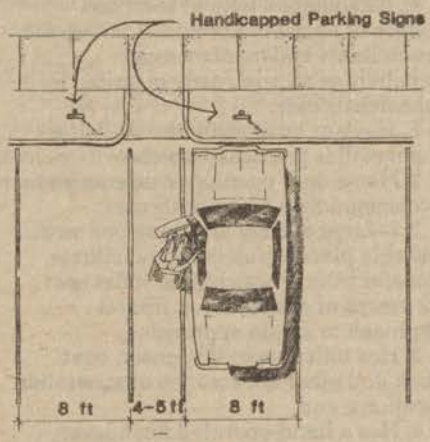


FIGURE 14: ACCEPTABLE PARKING SPACE DIMENSIONS

32 Accessible Path

If a path of travel is intended to be an accessible path, it shall—

A Be ramped wherever a curb, step or other abrupt change in grade is present (slopes listed in Part II are considered maximum);

B Be unobstructed by such barriers to wheelchair users as turnstiles, posts, overhanging growth, snow and ice;

C Be unobstructed by such hazards to blind persons as objects protruding into the path at a level or height undetectable by a long cane;

D Be wide enough to safely accommodate a wheelchair user; and

E Lead to an accessible entrance.

34 Ramps

Each ramp in an accessible path shall—

A Have the minimum slope practicable (slopes listed in Part II are considered as maximum);

B Be wide enough to safely accommodate a wheelchair user (a clear width of 36 inches is considered minimum);

C Have a handrail on each side if the slope is greater than 5% (1:20) and the length greater than 6 feet, except that handrails are not required for curb ramps; and

D Have a level landing at the top and bottom of each run which is as wide as the ramp and long enough to accommodate a wheelchair user.

36 Signage

If there is more than one path, but only one is accessible, the accessible one shall be marked at each entrance to the path by a sign which effectively notifies potential users that it is accessible.

Subpart B: Accessible Entrance

38 One Principal Entrance

At least one principal entrance to a facility shall be accessible.

40 Required Features

The accessible entrance shall:

A Be ramped if a curb, step, or other abrupt charge in grade is present;

B Have a clear level area in front of the door opening large enough and positioned to accommodate a wheelchair user pulling or pushing a hinged door fully open; and

C Have an accessible and usable door.

42 Doors

An accessible and usable door shall—

A Be operable by easy effort without fine hand control;

B Be with enough and positioned to accommodate a wheel-chair user (the average adult wheelchair plus user is 28 inches wide, so 30 inches is a practical minimum under average conditions);

C Be unobstructed by barriers such as turnstiles, post and thick or heavily textured door mats;

D Have a threshold, if at all, with a change in level or slope which does not impede the mobiliy of a whelchiar user; and

E Have clear area between doors i nseries (such as vetibule doors) sufficient to accommodate a wheelchair user maneuvering through both doors.

Subpart C: Accessible Routes of Circulation

44 Required Features

An accessible route of circulation shall—

A Use ramps or an elevator or a combination of both for vertical circulation, except that a platform life may be used if the change in floor elevation is less than one story;

B Be wide enough to safely accommodate a wheelchair user (36 inches is a generally accepted minimum);

C Be unobstructed by such barrier to wheelchiar users as turnstiles, posts, furniture or thick or unsecured carpet; and

D Be unobstructed by such hazards to blind persons as objects protruding into the path at a level or height undetectable by a long cane.

46 Doors

Each door in an accessible route of circulation shall comply with the requirements of section 42 regarding doors at an accessible entrance.

48 Ramps

Each ramp in an accessible route of circulation shall comply with the requirements of section 34 regarding ramps in an accessible path.

50 Elevators

If an elevator is used to provide vertical circulation in an accessible route of circulation, the elevator shall—

A Be fully accessible to an usable by handicapped persons;

B Have a cab large enough to allow a wheelchair user to enter, operate the controls, get out of the door closing line, and exit safety;

C Be equipped with a door reopening device which stops and reopens a cab door and the adjacent hoistway door when eithr door is obstructed; and

D Be equipped with controls and related devices arranged to permit independent operation of the elevator by a wheelchair user.

52 Platform Lifts

If a platform lift is used to provide vertical circulation in an accessible route of circulation, it shall—

A Be independently operable by a wheelchair user;

B Be spacious enough to safely accommodate a wheelchair user; and

C Respond to a call from each level which it serves.

Subpart D: Usability

54 Toilet Rooms

Accessible toilet rooms shall—

A Be provided in the number necessary to provide handicapped persons with convenience equivalent to that provided for all users of the facility;

B. Be located on an accessible path;

C. Have an accessible entrance with doors, vestibules, and privacy screens, if any, arranged to permit a wheelchair user to enter and leave the room;

D. Have sufficient clear floor space to permit a wheelchair user to maneuver in the room;

E. Be equipped with at least one fixture of each kind provided within the reach limits and maneuvering capabilities of, and easily operable by a wheelchair user;

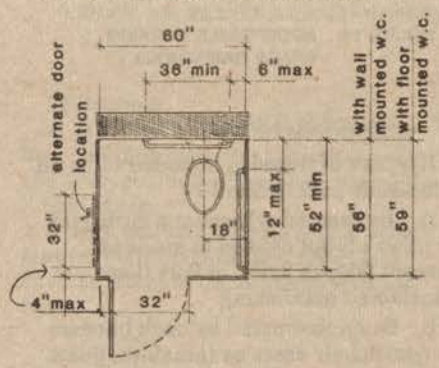
F. Have at least one toilet stall, if a toilet stall is provided, which—

1. Has a door opening wide enough to accommodate a wheelchair user;

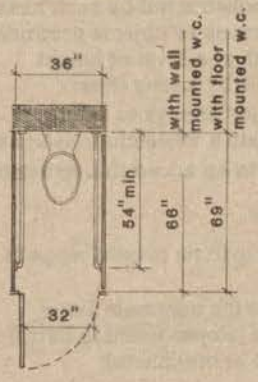
2. Is large enough and equipped with suitably placed grab bars to facilitate transfer from wheelchair to toilet seat by means of either direct, frontal approach or a side approach;

3. Has toilet paper dispenser, coat hook and other accessories at accessible locations; and

4. Has a hand-operated flush lever;



A. side approach



B. frontal approach

FIGURE 15: PREFERRED TOILET STALL DIMENSIONS

G. Have at least one accessible lavatory, if a lavatory is provided, which—

1. Has enough clear space both in front and underneath to accommodate a wheelchair user pulling up to the lavatory;

2. Has easily operable faucets; and

3. Has insulated or otherwise covered hot water pipes and drains so that surface temperatures do not exceed 120 degrees, or has water temperature controlled to 115 degrees.

H. Have at least one bathtub, if a bathtub is provided, which—

1. Is positioned so that a wheelchair user can pull up sideways along side the bathtub; and

2. Has grab bars at end wall and along the rear wall surrounding the tub;

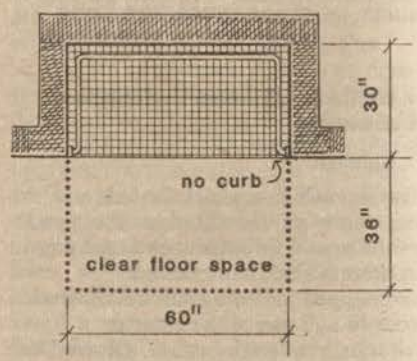
I. Have at least one shower, if a shower is provided, which—

1. Has supportive grab bars; and

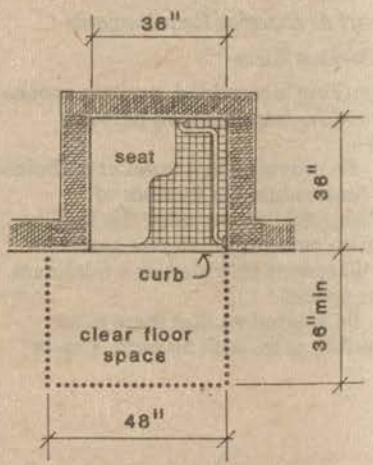
2. Either—

a. Is large enough to accommodate a wheelchair user, has a door wide enough to admit a wheelchair user, and has no curb, step or other abrupt change in level; or

b. Has a shower stall with a curb no higher than approximately 4 inches and has a permanently attached seat along the wall closest to the entry point; and



A. roll-in shower



B.shower with seat

FIGURE 16: PREFERRED SHOWER DIMENSIONS

J. Have at least one mirror, if a mirror is provided, which can be effectively utilized by a wheelchair user.

56. Drink of Water

A convenient, obvious, and reliable method of getting a drink of water shall be provided wheelchair users.

58. Public Telephones

If public telephones are provided, at least one shall—

A. Be mounted so that all operable parts of the telephone are within the reach of limits of a wheelchair user;.

B. Not have any enclosure or other structure which impedes approach to or use of the telephone by wheelchair user;

C. Have a telephone book, if one is provided, within the reach and viewing limits of a wheelchair user; and

D. Be equipped with a volume control handset.

60. Counters, etc

If counters, cabinets, tables, shelves, chairs, stoves, refrigerators, work benches, and similar accommodations are provided, an adequate number of them shall be usable by handicapped persons.

62. Carpet

If used, carpet shall not impede the mobility of wheelchair users.

[FR Doc. 81-1936 Filed 1-16-81; 8:45 am]
BILLING CODE 6315-01-M

federal register

Monday
January 19, 1981

Part XXV

Department of the Interior

National Park Service

National Park System Units in Alaska

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

National Park System Units in Alaska

AGENCY: National Park Service.

ACTION: Proposed rule.

SUMMARY: On December 2, 1980, President Carter signed into law the Alaska National Interest Lands Conservation Act (P.L. 96–487) which established or expanded units of the National Park System in Alaska, and provided management direction for these units. In today's publication, the National Park Service is proposing regulations to provide relief from existing regulations that govern public use and recreation (*e.g.*, camping, picnicking, gathering of renewable resources, transportation methods, and the carrying of firearms) on lands administered by the National Park Service in Alaska, and also to establish administrative procedures necessary to implement or clarify various provisicns of the Alaska National Interest Lands Conservation Act (e.g., subsistence, use of cabins, access). The National Park Service deems these proposed regulations as the minimal necessary to provide proper management in park areas in Alaska. These proposed regulations are not intended, however, to result in final comprehensive regulations for these park areas. The National Park Service will undertake additional rulemaking as appropriate for issues not covered in this proposal. Public comments on these proposed regulations are solicited for 45 days.

DATES: Written comments should be submitted on or before March 5, 1981.

ADDRESS: Comments should be directed to: Alaska Regional Director, National Park Service, 540 West 5th Avenue, Anchorage, Alaska 99501.

FOR FURTHER INFORMATION CONTACT: John Cook, Alaska Regional Director, National Park Service, 540 West 5th Avenue, Anchorage, Alaska 99501, Telephone: (907) 271–4196.

SUPPLEMENTARY INFORMATION:

Background

On December 2, 1980, President Carter signed into law the Alaska National Interest Lands Conservation Act ("Alaska Lands Act" or "Act") as Public Law 96–487. The Alaska Lands Act addresses a broad range of land-related conservation issues in the State of Alaska. Most relevant here, the Act established new units and expanded existing units of the National Park System. It also established Federal policy concerning subsistence uses by rural Alaskan residents, access, fishing and hunting, mineral development, and cabin use within park areas in Alaska.

The Act specifically directs that 13 units of the National Park System be managed in accordance with the provisions of the Act and the provisions of the Act of August 25, 1916, as amended and supplemented (39 Stat. 535; 16 U.S.C. 1, 3, 4), under appropriate regulations. The Secretary delegated to the Director of the National Park Service administrative and regulatory authority over these units, and one wild and scenic river.

Under the Alaska Lands Act and secretarial delegations, the areas to be managed as units of the National Park System in Alaska are as follows: Aniakchak National Monument and Preserve, Bering Land Bridge National Preserve, Cape Krusenstern National Monument, Gates of the Arctic National Park and preserve, Kenai Fjords National Park, Kobuk Valley National Park, Lake Clark National Park and Preserve, Noatak National Preserve, Wrangell-St. Elias National Park and Preserve, Yukon-Charley National Preserve, Denali National Park and Preserve, Katmai National Park and Preserve, Glacier Bay National Park and Preserve, and Alagnak National Wild River. These proposed regulations, when finalized, will provide public guidance on the permissible uses in these 14 park areas, as well as Klondike Gold Rush and Sitka National Historical Parks, which were established prior to the Alaska Lands Act and are affected by this Act.

With the recent relinquishment of certain State of Alaska land selections pursuant to section 1322 of the Alaska Lands Act, the Alaska National Monuments established by President Carter on December 1, 1980, were rescinded as of December 2, 1980, and the regulations of 36 CFR 7.87 are no longer applicable. Until this proposed rulemaking is finalized, the existing regulations of 36 CFR Parts 1–9 shall apply to National Park System units in Alaska, except as modified by the provisions of the Alaska Lands Act.

Need for Expeditious Rulemaking

These proposed rules for public uses of park areas in Alaska would provide relief from existing National Park System regulations in 36 CFR Parts 1–9 which are inappropriate in the unique Alaska setting. These proposed rules would also establish administrative procedures necessary to implement several provisions of the Alaska Lands Act. For these reasons and as further developed below, the National Park Service has determined that there is a need for expeditious rulemaking. Accordingly, the Service has adopted a 45 day comment period (which is longer than required under 5 U.S.C. 553) for these proposed rules and plans to issue final regulations in March of 1981. The bases for this approach are summarized below.

First, many sections of these proposed regulations relieve restrictions on allowable public uses of park areas in Alaska that would otherwise be applicable under 36 CFR Parts 1–9. For example, opportunities for access, carrying of firearms for personal protection, camping, picnicking, and personal collection of natural resources are greatly enhanced under these proposed regulations. Since these proposed regulations would relieve restrictions and remove hardships on the Alaskan lifestyle that apply by virtue of 36 CFR Parts 1–9, NPS believes that there is a need for immediate public guidance.

Second, there is a need to establish administrative procedures for implementing the new directives of the Alaska Lands Act. The Act's provisions on subsistence, access, and cabins require administrative mechanisms for public guidance and necessary permits. These proposed regulations establish the administrative channels for obtaining these permits, and the public comment on these procedural rules is requested.

Third, with the new directives in the Alaska Lands Act, there is considerable confusion as to which public uses of park areas are authorized under 36 CFR Parts 1–9 and the Act. For instance, 36 CFR 2.2 and 2.34 generally prohibit aircraft and snowmobile use in parks subject to the penalties of 36 CFR 1.3, while section 1110(a) of the Alaska Lands Act authorizes aircraft and snowmobile use. Additionally, 36 CFR 2.32 prohibits hunting in parks, while Title II of the Alaska Lands Act authorizes sport hunting in preserves and subsistence hunting in certain park areas. In order to harmonize the statutory directives with existing regulations and to alleviate public fears of criminal prosecution, the Service desires to provide public guidance as soon as practicable.

Finally, as developed below in the "Previous Notice and Comment" section, the National Park Service has twice before solicited and received public comment on the identical issues addressed in these regulations. To the greatest extent possible consistent with the Alaska Lands Act, these proposed

regulations follow public desires on open access, carrying of firearms, subsistence and other issues. With this substantial prior public comment, the Service believes that a lengthy public comment period on identical issues is unwarranted.

The regulations proposed here constitute the bare minimum required for interim management of the Alaska park areas and implementation of the Alaska Lands Act. The proposed regulations either relieve regulatory restrictions which are inappropriate in the Alaska setting *(e.g.,* carrying of firearms, camping, picnicking, unattended property), or implement crucial provisions of the Alaska Lands Act *(e.g.,* subsistence, access, cabins, taking of fish and wildlife). The limited agenda of these proposed regulations in general covers only those topic areas which had been subject to prior public notice and comment in the Alaska National Monument rulemakings.

Additional topic areas not addressed in this proposed rulemaking may be the subject of future regulatory exercises. The National Park Service will strive for substantial public comment periods in any future rulemakings proposed by the Service or other parties.

Previous Notice and Comment

The proposed regulations presented here either repeat, or significantly relax, regulations which were published and subject to extensive public notice and comment during the administration of the Alaska National Monuments.

On December 1, 1978, President Carter signed proclamations establishing 15 new and enlarging two existing national monuments in Alaska. On December 26, 1978, the National Park Service promulgated interim rules to give short-term guidance on subsistence, access, firearms, hunting and fishing, and other uses of the new NPS-administered national monuments. Although these regulations were effective upon publication, the National Park Service invited comments and suggestions on this interim rule.

The National Park Service published an Advanced Notice of Proposed Rulemaking on February 28, 1979 (44 FR 11242). This notice identified the subject matter of the anticipated "final" rulemaking, including the subjects addressed here today, and posed questions for public consideration. The National Park Service received 248 letters from individuals, organized groups or associations, and State and local governments, as well as 1,731 form letters sponsored by the Alaska Outdoor Association in response to this Notice.

On June 28, 1979, the National Park Service published Proposed General Management Regulations for the Alaska National Monuments (44 FR 37732). Again, this proposed rulemaking included the subject matter addressed in today's interim rules. Informal public meetings were held in virtually every community affected by the proposed rules and formal public hearings were held in Anchorage and Fairbanks. A total of 245 letters from individuals, organized groups or associations, and State and local governments were received.

To the greatest extent possible, consistent with the Alaska National Interests Lands Conservation Act, today's proposed rulemaking responds positively to the public comments received on the two previous Federal Register publications on Alaska.

For example, today's proposed regulation on unattended and abandoned property responds to public comment by accommodating subsistence and recreational users who find it necessary to leave personal property unattended for reasonable periods of time. Almost all of the commentors on the above publication advocated the carrying of firearms for reasons of personal safety. These proposed regulations would permit the carrying of firearms within park areas in Alaska, except as restricted by the Superintendent in accordance with certain closure provisions. All of the public comments previously received were in support of the use of dead standing wood in Alaska. Today's proposed rules would provide for such use.

Section-by-Section Analysis: Subpart A—Public Use and Recreation

Applicability and Scope

The proposed regulations set forth herein would apply to all persons using, entering or visiting within the boundaries of park areas in Alaska. These regulations would supplement the regulations of Parts 1 through 9 of Title 36 of the *Code of Federal Regulations.* These Part 1–9 regulations would remain applicable except as they are modified by final regulations. The preamble material below attempts to identify the major provisions of 36 CFR Parts 1–9 which would be superseded or modified by these regulations. Anyone desiring more specific information on the applicability of 36 CFR Parts 1–9 in the interim period before final regulations may contact the NPS Alaska Regional Director for further clarification.

These proposed regulations are divided into three parts. Subpart A, Public Use and Recreation, contains regulations that would govern activities such as use of aircraft, snowmobiles, and motorboats, carrying of weapons, camping, cabin occupancy and other activities related to access or general public use and recreation. These proposed regulations would apply to all of the park areas in Alaska, except as indicated in the regulations. They would amend the provisions of the general regulations found in 36 CFR, Parts 2 through 9, and are necessary to implement or clarify various provisions of the Alaska Lands Act.

Subpart B contains proposed regulations that would govern subsistence activities within the park areas in Alaska. These regulations would apply to all park areas except Kenai Fjords National Park, Katmai National Park, Glacier Bay National Park, Klondike Gold Rush National Historical Park, Sitka National Historical Park, and parts of Denali National Park (the former Mt. McKinley National Park area). The proposed regulations in Subpart B would amend the regulations contained in Parts 2 through 9 of 36 CFR and Subpart A of Part 13.

Subpart C contains proposed regulations for individual park areas. These proposed regulations would apply to a specific area and may amend the provisions of the general regulations found in 36 CFR, Parts 2 through 9, or Subpart A or B of this Part.

Sections 103(c) and 906(o) of the Alaska Lands Act generally restrict the applicability of National Park Service regulations to federally owned lands within park area boundaries. Consistent with the statute and the explanatory legislative history appearing at 126 *Congressional Record* H11115 (November 21, 1980) and S15130–15131 (December 1, 1980), § 13.2(e) would restrict the applicability of these regulations to "federally owned" lands (defined to mean all land interests held by the Federal government including unconveyed Native selections) within park area boundaries. With the legislative conveyance of 98 million acres of State selections in section 906 of the Act, no unconveyed State selections remain within park areas. These proposed regulations would not apply to activities occurring on State lands. Similarly, these proposed regulations would not apply to activities occurring on Native or any other non-federally owned land interests located inside park area boundaries.

Access: Sections 13.10–13.15 of these regulations would implement sections 1110 and 1111 of the Alaska Lands Act, concerning access by the public across

park areas. *See, also,* §§ 13.45 and 13.46. These proposed regulations generally relax restrictions on access that are applicable to National Park System units outside of Alaska. They are necessary to meet the special needs in Alaska for reasonable access across largely undeveloped park lands. The proposed access regulations of §§ 13.10–13.15 would supersede the access-related provisions of 36 CFR 2.2, 2.34, 3.2, 4.19, 7.23(a), 7.44, 7.46, 7.87 and Part 9 insofar as these new sections would authorize additional access (N.B., the public safety, endangered species, and other aspects of these earlier regulations, such as 36 CFR 2.34(d), 7.23(b)–(f), 9.5, and 9.7, would not be superseded). These sections are designed to, and are presented in an order which will, funnel the vast majority of access needs away from a system of individual access permits. Sections 13.10–13.12 would initially open all park areas to access by snowmobile, aircraft and motorboat for any purpose. (Additional provisions for access for subsistence uses are set forth in §§ 13.45 and 13.46, explained below.) Section 13.13 would provide a mechanism for establishing common corridors and areas for off-road vehicle use. In the less common situation where §§ 13.10–13.13 do not accommodate a park "inholder's" need for access, § 13.14 would provide for individual permits that guarantee adequate and feasible access, while minimizing damage to park resources. Finally, where §§ 13.10–13.14 do not otherwise provide temporary access, § 13.15 would create another means for obtaining desired access.

Sections 13.10–13.12 of these proposed regulations initially open all park areas in Alaska to access by snowmobile (on areas with adequate snow cover or frozen rivers), motorboat, and aircraft, without the need for individual access permits. Access by these methods of transportation is authorized for any purpose (e.g. travel between villages, to a homesite, for mineral development, for recreation, or for traditional activities) except as is specifically provided for subsistence uses in §§ 13.45 and 13.46 discussed below under subsistence. Sections 13.10–13.12 implement section 1110(a) of the Alaska Lands Act which provides access for "traditional activities * * * and for travel to and from villages and homesites." This approach extends the statutory concept to access for all purposes, except the special provisions concerning access for subsistence uses and the special rules for Glacier Bay National Park and Preserve. As provided in § 13.11, the special regulations of 36 CFR 7.23(b)–(f) (*see* 45 FR 32228 (may 15, 1980) and 45 FR 85741 (December 30, 1980)) would continue to govern boating and fishing operations within Glacier Bay Park and Preserve, in order to protect the endangered humpback whale. Consistent with section 1110(a) of the Act, section 13.30 authorizes the closure of certain park areas to snowbobile, aircraft, and motorboats access only after notice and hearing. Even after closure, emergency landing of aircraft (e.g., because of severe weather or vehicle failure) would not be prosecuted. This general authorization of access by snowmobile, motorboat, and aircraft should greatly reduce the need for persons to obtain specific access permits under §§ 13.14 or 13.15, since, in most cases, reasonable access will already be granted under §§ 13.10–13.12.

Section 13.13 of these proposed regulations provides a procedure for supplementing access needs without the need for individual access permits.

While all park areas are initially closed to off-road vehicle use, § 13.13 authorizes the park Superintendent to designate off-road vehicle routes and areas. It is anticipated that this procedure will be used most often to designate common corridors for off-road vehicle travel between villages, and similar situations where a single route can satisfy the access needs of rural Alaskan groups. Section 13.13 implements the directive of section 1110(b) of the Alaska Lands Act to provide "adequate and feasible" access and does so through a methodology that will reduce the need for individual access permits. Furthermore, as in any situation involving rulemaking, persons may petition the Superintendent under the procedures of 43 CFR 14.6 to have a route or area designated as open for off-road vehicle use, should the Service fail to identify or propose that route or area as open.

If § 13.10–13.13 have not already provided "adequate and feasible" access for persons with valid property or occupancy interests which are surrounded or effectively surrounded by park area lands, proposed § 13.14 creates a procedure for obtaining this access. "Adequate and feasible" access is defined in § 13.1 in terms of an economically practicable method and route of access (but not necessarily the most economically feasible alternative), consistent with the legislative history appearing in *Senate Report 96–413,* 96th Congress, 2nd Session, 248–249 (November 14, 1979). Section 13.14 applies only when an area has been closed to snowmobile, aircraft or motorboat use, or when no designated off-road vehicle route exists that would satisfy the "adequate and feasible" access needs of the landowner. In such cases, the landowner applies to the park Superintendent for an access permit (additional information is required for mineral exploration or development, as discussed below).

The park Superintendent is directed to issue an access permit for the routes and methods desired by the applicant unless the Superintendent determines that such access would cause significant damage to park resources, or would jeopardize public health and safety (including concerns for subsistence uses and adjacent landowners), and in either case, that adequate and feasible access otherwise exists (e.g. a different route exists which would minimize park damage, snowmobile or airplane access already provides "adequate and feasible" access).

If the Superintendent makes one of these adverse determinations, then he/she must specify in a permit such other alternate methods and routes of access as will provide adequate and feasible access to the applicant, while minimizing damage to park resources. A landowner may appeal the Superintendent's decision to the Regional Director under § 13.31. Of course, the access routes and methods finally authorized may be used by guests and invitees of the permittee.

Thus, proposed § 13.14 implements section 1110(b) of the Alaska Lands Act by guaranteeing adequate and feasible access to park "inholders" through an individual permit process, which should be utilized only when the non-permit provisions of § 13.10–13.13 do not provide reasonable access.

Subsection 13.14(c) provides special information requirements for access inside park areas for mineral exploration or development. Consistent with the open access for other purposes, these special information requirements are not applicable when the inholder does not require access across park area lands (e.g. aircraft landings on non-federally owned lands) or when access has already been provided pursuant to §§ 13.10–13.13 of these regulations (*e.g.,* the information requirements of § 13.14(c) and 36 CFR Part 9 would not apply when access across park areas for mineral exploration or development is available by snowmobile, airplane, motorboat or off-road vehicle under §§ 13.10–13.13). This limits the special information requirements to situations where the potential for damage to park resources is the greatest (e.g. bulldozer and production equipment access). In the situations where § 13.14(c) is applicable, prospective mineral

developers must apply for an access permit and include information on planned access, mineral operations, and compliance with applicable laws. The more extensive information requirements of 36 CFR 9.9 and 9.36 would not be applicable.

This procedure will provide the Superintendent with necessary information on planned access and minerals operations, so that the adverse impacts on park resources of such access and operations can be reasonably assessed.

In accordance with section 1110(b) of the Alaska Lands Act, the Superintendent is directed to grant a mineral access permit providing adequate and feasible access, while minimizing park resource damage, in lieu of any other access standard contained in 36 CFR Part 9 or the Mining in the Parks Act (16 U.S.C. 1901 *et seq.*). Thus, § 13.14 is a new approach to access to mining claims within park areas in Alaska which would control over any inconsistent provision of 36 CFR Part 9.

Proposed § 13.15 completes the implementation of the Alaska Lands Act provisions for public use access by implementing section 1111 through a permitting mechanism for obtaining temporary access across a park area for purposes of survey, geophysical, exploratory, or other temporary uses of non-federal lands located outside park area boundaries. Section 13.15 requires an access permit only where §§ 13.10–13.13 do not provide the desired access, and where § 13.14 is not applicable (*e.g.*, if a park area "inholder" or a person effectively surrounded by Federal lands requires temporary access across park area, section 1110(b) of the Alaska Lands Act and § 13.14 of these regulations grant greater access privileges). Where temporary access is otherwise unavailable, the person applies to the park Superintendent for an access permit. The permit application must indicate the proposed route and method of access, what temporary use the applicant proposes to undertake, and, in the case of mineral exploration, the information on the planned mineral operations during the course of the permit. The Superintendent is directed to grant the desired temporary access if no permanent harm to park resources will result. If permanent harm would result, the Superintendent is directed to include such stipulations and conditions (*e.g.*, alternate methods and routes of access) on the temporary access as will ensure consistency with park purposes and no permanent harm to park resources.

In summary, §§ 13.10–13.15 of these proposed regulations would implement the array of access provisions contained in the Alaska Lands Act (except as specifically further provided for subsistence uses) through a series of sections designed to minimize the need for an individual access permit.

1872 Mining Law Claims

Sections 13.10–13.14 of these proposed regulations would amend 36 CFR Part 9 insofar as access to mining claims within park areas is concerned. As described in the "access" section, where access to a patented or unpatented mining claim is available under §§ 13.10–13.13, there would be no requirement for an access permit and, therefore, no requirement to submit the information required by 36 CFR 9.9 to gain access.

Where access is not available under §§ 13.10–13.13, the mining claimant would apply for an access permit under § 13.14(c) and provide the information specified in paragraph (c)(2) prior to conducting mineral operations. The Superintendent will review the proposed access and operations, and permit adequate and feasible access for economic purposes which minimizes damage to park resources. The access standard of § 13.14(c) would be controlling in Alaska park areas.

However, in order to minimize park resource damage, NPS desires to retain the 36 CFR 9.7 waiver of assessment work requirements on unpatented mining claims within a park area. In any case where an access permit is applied for under § 13.14(c) solely for the purpose of assessment work, the permit request would be denied pursuant to 36 CFR 9.7. The National Park Service believes that this policy does not deny adequate and feasible access for economic purposes, because the economic purpose of preserving the vailidity of a mining claim through assessment work is not prejudiced by denial of access (e.g. 36 CFR 9.7 waives the Secretary's right to contest a mining claim based on lack of assessment work created by access denial). However, mining claimants are reminded that maintenance of a claim requires compliance with annual filing requirements, as provided in 36 CFR 9.5(c).

Additionally, mining claimants within park areas are reminded that section 206 of the Alaska Lands Act closed all park areas to new mining locations and entries. NPS reserves the right to refuse access where it is found that a valid mining claim does not exist, pursuant to sections 206 and 1110(b) of the Alaska Lands Act.

Cabins and Other Structures: Section 13.16 provides proposed procedures and guidance for those occupying and using existing cabins and those wishing to construct new cabins within park areas in Alaska.

Over the years, cabins and other structures have been built on unpatented Federal lands. The builders or occupants of these cabins had no legal right to occupy the land on which the cabins were located. Extended long-term use is not in the best interest of the general public. However, the long, customary use of such property, the uncertain status of land during the late 1960's and early 1970's, and the substantial investment that many people have made in the structures suggested the need for an equitable and orderly termination of use.

Section 1303 of the Alaska Lands Act provides the National Park Service with the authority to permit the continued use of cabins in Alaska even though the occupants may not hold legal title to these cabins and the lands on which they are located. The intent of this legislation clearly is to allow temporary use.

The Service, in compliance with the Act, is proposing regulations which grant use and occupancy privileges to individuals occupying cabins or other structures pursuant to a permit. The degree of privilege afforded an occupant is determined by the status of the Federal land at the time or original occupancy by the individual. Land status is determined by the public land orders that were in effect at the time of occupancy.

The permit system recognizes two categories of occupants. The first category is comprised of those persons who built or occupied cabins or other structures on unpatented Federal lands prior to December 18, 1973. The occupants may apply for a five (5) year renewable permit pursuant to § 13.16(c)(1).

These permits shall be renewed every five (5) years until the death of the last immediate family member of the claimant residing in the cabin or structure under permit. Renewal will occur unless the Superintendent determines, after notice and hearing and on the basis of substantial evidence, that the use under the permit is causing or may cause significant detriment to the principal purposes for which the park area was established. The Superintendent's decision may be appealed to the Director of the National Park Service, and ultimately to the Director, Office of Hearings and Appeals in the Department of the Interior.

The second category consists of those persons who built or occupied cabins or other structures between December 18, 1973, and December 1, 1978. These occupants may apply for a nontransferable, nonrenewable permit. The permit would be issued for a maximum term of one year.

Permits issued under this provision may be extended by the Superintendent for a period not to exceed one year for reasonable cause where extraordinary circumstances prevent vacating the cabin or structure and removal of all personal property within he original term of the permit.

Section 13.16(d) authorizes the Superintendent to issue a permit for the construction, reconstruction, temporary use, occupancy, and maintenance of new cabins or other structures when it is determined that the use is necessary to reasonably accommodate subsistence uses, or is otherwise authorized by law. This determination will be based on factors such as other public uses, public health and safety, and environmental and resource protection. This provision would implement sections 1315(d) and 1316 of the Alaska Lands Act, as well as providing for the reconstruction of cabins permitted under section 1303 of the Act.

The final provision of this proposed regulation provides for the renewal or continuation of valid leases or permits in effect as of December 2, 1980, for cabins, homesites, or similar structures on federally owned lands. These permits or leases shall be renewed unless a direct threat or a significant impairment to park values will occur. Any such findings must be issued by the Superintendent, following notice and an opportunity for the leaseholder or permittee to respond.

Camping and Picnicking: Section 13.17 on camping is necessary to provide relief from the Service's general regulations which permit camping only in designated areas. Section 13.17 would supersede 36 CFR 2.5, except § 2.5 (d) and (e). Camping within park areas would be permitted except at those times or locations temporarily or permanently closed or otherwise restricted by the Superintendent. The National Park Service would close an area to camping when the Superintendent determines that use of the area has resulted in resource damage or that other management considerations require closure as set forth in § 13.30. The Service does not, at this time, anticipate closing any areas to camping.

Current Service regulations prohibit picnicking within National Park System areas in Alaska except in those areas designated by the posting of appropriate signs (36 CFR 2.18). This regulation was designed to protect the natural scenery and reduce damage in highly visited park areas with automobile access. The National Park Service has concluded that because of the type and pattern of visitation in the park areas in Alaska, existing restrictions on picnicking are unnecessary. Therefore, § 13.17 would allow picnicking in all park areas and would supersede 36 CFR 2.18 in Alaska. The Superintendent would retain the authority to close areas to picnicking for reasons of public health and safety or other management considerations.

Weapons, Traps and Nets: Existing regulations (36 CFR 2.11) prohibit the carrying of firearms within park areas, unless such firearms are unloaded and cased or otherwise deactivated. Section 13.18 would permit the carrying of firearms within park areas in Alaska (except Klondike Gold Rush National Historical Park and Sitka National Historical Park), except as restricted by the Superintendent pursuant to Section 13.30. The Superintendent would retain the authority to prohibit or restrict the carrying of firearms in those areas and at those times when the potential for injury or loss of life inflicted by dangerous animals is negligible or where necessary to insure public safety. For example, restrictions may prohibit the carrying of unloaded firearms in areas of concentrated public use.

The proposed regulations distinguish between the carrying of firearms for purposes of personal protection and the carrying of other weapons. Only firearms may be carried by recreational users in park areas. The carrying of nets, traps and other weapons such as spear guns, slingshots and other implements designed to discharge missiles would be prohibited. However, local rural residents authorized to engage in subsistence uses would be permitted to use, possess and carry weapons, traps and nets in accordance with applicable State and Federal law.

In order to provide transient relief for persons crossing park areas, the possession of weapons, traps and nets within or upon a device or animal used for transportation would be permitted provided such implements are unloaded and cased or otherwise packed in such a way as to prevent their ready use while in park areas.

Preservation of Natural Features: Existing regulations governing public use and recreation in units of the National Park System prohibit the cutting of standing dead trees and restrict the collection of rocks and minerals (36 CFR 2.20). The National Park Service has determined that the use of dead or downed wood in fires within park areas in Alaska would not result in significant adverse impact. The Service also believes that the surface collection, by hand, of rocks and minerals would not be damaging to park resources in Alaska. Accordingly, § 13.19 would amend 36 CFR 2.20 to authorize the taking by hand for personal use of certain renewable resources and certain rocks and minerals. It is not the intent of this provision to allow the collection of semi-precious minerals gathered for trade or personal possession, but rather to allow the collection of individual rocks of a non-gem nature that have some souvenir value.

Therefore, the Service would be providing relief from the general regulations governing the use of park resources and plant materials and issuing guidelines for the consumption and use of certain renewable resources.

The Superintendent retains the authority to close an area to gathering or collecting where it is found that significant adverse impact on park resources, wildlife populations, subsistence uses, or visitor enjoyment of resources will result. This will be done through public notice.

Taking of Fish and Wildlife: The desire to continue sport fishing and hunting on all public lands in Alaska has been a consistent and dominant theme of the public participation process during the development and final passage of the Alaska National Interest Lands Conservation Act.

This Act provides for the continuation of sport fishing on all public lands administered by the National Park Service and for the continuation of sport hunting within the National Preserves.

Consistent with the Act, proposed § 13.22 permits the taking of fish and wildlife in accordance with applicable State and Federal laws, including 36 CFR 2.13, 7.23, 7.44(c) and 7.46(a). (Additional provisions on subsistence hunting, trapping, and fishing are provided in §§ 13.47 and 13.48.) By assimilating State law the National Park Service applies the same approach towards enforcement of fish and game laws that it uses everywhere else in the National Park System where sport hunting is allowed.

Congress was specific in its concern that "The intent is to allow individual Alaskans to continue to operate their own traplines within the preserves * * * it is clearly not the intent of this Act that preserves would be a place where more extensive forms of commercial trapping would be allowed where, for example, the trapping itself becomes a business with employees paid to support the

trapping operation." 126 *Congressional Record* H10542 (November 12, 1980). This section would satisfy that intent by prohibiting trapping operations in which trappers are employees of a commercial trapping enterprise, while allowing individual Alaskans to continue to operate their traplines within National Preserves.

This regulation would also comply with Section 205 of the Alaska National Interest Lands Conservation Act which allows the continuation of valid commerial fishing rights and privileges within Cape Krusenstern National Monument, the Malaspina Glacier Forelands area of Wrangell-St. Elias National Preserve and the Dry Bay area of Glacier Bay National Preserve.

Unattended and abandoned property: The purpose of proposed § 13.21 is to modify 36 CFR 2.1 which prohibits leaving personal property unattended longer than 24 hours without the prior permission of the Superintendent. The National Park Service has determined that this regulation is too restrictive to accommodate adequately subsistence and recreational uses within park areas in Alaska. The proposed regulations will allow personal property to be left unattended up to 12 months before it would be deemed abandoned and subject to impoundment. In effect, this accords personal property within park areas a 12-month presumption that it is only temporarily unattended. Personal property may be left unattended for periods of time in excess of twelve months with the prior permission of the Superintendent.

The National Park Service is concerned that personal property not be located or maintained in such a manner as to constitute a threat to public safety or detract from the experience in the park area. In addition, this section is intended to allow the Superintendent to specify the conditions under which personal property is unattended to insure, for example, that food and equipment caches or other unattended personal property does not attract or is not accessible to animals.

The section provides that the Superintendent may establish limits on the amount and type of personal property that may be left unattended. In addition, the Superintendent is authorized to designate locations where personal property may be left unattended for periods of time to be designated by the posting of appropriate signs or by designating on a map which shall be available for public inspection at the office of the Superintendent.

Additionally, § 13.12 provides that aircraft downed after December 2, 1980, must be removed pursuant to the conditions of a permit issued by the Superintendent unless he/she specifically waives this requirement. This proposed regulation is necessary to provide relief from 36 CFR 2.1, which prohibits leaving any vehicle or other property unattended for longer than 24 hours, and to preserve the values and experience of the park areas.

The National Park Service intends that each instance of a downed aircraft be treated on a case-by-case basis. Where the removal operation would present a significant risk to human life, result in extensive resource damage, or is otherwise impractical or impossible (including any situation in which removal of the aircraft would cause such a severe and significant hardship to the owner as to be economically prohibitive), waiver of removal requirements is appropriate. Factors such as the condition and size of the downed aircraft as well as the relief, elevation and vegetation of the surrounding terrain will be controlling in this analysis. In determining the times and means of removal to be specified in a permit when removal is required, these factors will be equally controlling.

Finally, this section would prohibit any attempt to salvage, remove, or possess a downed aircraft without a permit from the Superintendent. The intent here is to protect the aircraft and, most importantly its valuable and easily removed component parts, from being appropriated without authorization by the owner.

Subsistence and land use decisions: Section 13.22 would apply to all discretionary determinations by the National Park Service concerning whether to lease or otherwise permit the use or occupancy of park area lands where authorized by law. Alaska Lands Act Section 810. For example, the Superintendent must comply with the procedures of this section in determining whether to open routes or areas to off-road vehicles use under the provisions of § 13.13 of these regulations. In any such determination, § 13.22 requires the Alaska Regional Director or his/her designee to evaluate the effect on subsistence uses and needs (see Subpart B regulations), the availability of other lands to achieve the desired purposes, and other alternatives which would reduce or eliminate the use or occupancy of park area lands needed for subsistence purposes. Prior to any lease, permit, use, or occupancy which would significantly restrict subsistence uses, the National Park Service official must give notice to the appropriate State agency and local committees and regional councils; give notice to local residents of the affected area and hold an informal public hearing in the area; and determine that such a significant restriction of subsistence uses is necessary and consistent with sound management principles for park areas, that the proposed activity will involve the minimal amount of park area lands necessary to accomplish the desired purposes, and that reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources. If the National Park Service is required to prepare an environmental impact statement (EIS) pursuant to the National Environmental Policy Act for the proposed use or occupancy, § 13.22 states that the required notice, hearing, and findings shall be provided in the EIS process.

Section 810 of the Alaska Lands Act makes clear that the above provisions are not to be construed as prohibiting or impairing the ability of the State or any Native Corporation to make land selections and receive land conveyances pursuant to the Alaska Statehood Act or the Alaska Native Claims Settlement Act.

It should be noted that the requirements of Section 810 of the Alaska Lands Act, and § 13.22 of the regulations implementing it, are procedural in nature. In other words, as explained in the section's legislative history:

> Until the requirements of the section have been satisfied the proposed action may not proceed, but once the requirements of the section are satisfied and incorporated into existing land use planning processes the proposed action may proceed even though its effect may be adverse to subsistence uses. S. Rep. No. 96-413, *supra*, 234.

Closure Procedures: Section 13.30 authorizes the Superintendent to close an area or restrict an activity on an emergency, temporary or permanent basis. A determination to close an area or restrict an activity will be based on factors such as public health and safety, resource protection, and subsistence uses.

No closures are provided for by this regulation. It provides for notice and hearing for temporary and permanent closure, and also includes a provision for notice and hearing prior to all closures for snowmobile, aircraft or motorboat use, consistent with section 1110(a) of the Act.

This proposed rulemaking establishes time limits for emergency closures (60 days) and temporary closures (12 months) which cannot be extended.

A final provision of this proposed regulation requires the Superintendent to provide public notice prior to determining whether to open an area to

a public use or activity. Upon request, a hearing in the affected vicinity will also be held.

Permits: Section 13.31 was developed to consolidate procedures regarding the issuance and denial of permits. The procedures specify to whom an application for a permit must be submitted. The Superintendent is directed to acknowledge the application promptly, and to approve the permit, deny the permit, or request additional information within a reasonable period of time. The proposed regulations further establish and set forth an administrative appeals system to the NPS Alaska Regional Director. The appeals system was established with a view toward minimizing the requirements imposed upon the applicant during the appeal process, yet establishing a procedure that would fairly meet the concerns of the applicant. Any person whose permit application has been denied by the Superintendent has a right to appeal that denial to the Regional Director. Whether the appeal will include an opportuntity for an oral hearing must be determined by the Regional Director. The Regional Director *shall* provide a hearing opportunity if it is clear that the applicant would present new relevant information at such a hearing; in addition, the Regional Director *may* provide a hearing opportunity if he or she determines, as a matter of discretion, that such a hearing would be useful.

Section-by-Section Analysis: Subpart B—Subsistence

Subpart B of these proposed regulations would implement the authorization for subsistence uses in specified park areas contained in Title II of the Alaska Lands Act and the policies and procedures governing subsistence uses Contained in Title VIII of the Act.

These proposed regulations for subsistence are necessary for several reasons. First, they would relieve restrictions in the otherwise applicable general park regulations for uses and activities integral to the subsistence lifestyle. In certain cases, the Alaska Lands Act does not specifically relieve these restrictions *(e.g.,* use of nets, seines, traps, and spears in subsistence fishing; cutting of live standing timber for firewood and house logs; carrying of firearms); in other cases, the Act allows the uses, but the Park Service's general regulations appear to prohibit them on pain of criminal penalty. Second, the proposed regulations would implement certain critical provisions of the Alaska Lands Act concerning subsistence *(e.g.,* the subsistence priority, the closure standards and procedures for subsistence uses of fish and wildlife, subsistence and land use decisions), and would extend the principle of certain of these provisions to subjects not specifically mentioned by the Act *(e.g.,* closure standards and procedures for subsistence use of plants). In several cases, these proposed regulations would set up the administrative mechanisms for implementing the statutory provisions *(e.g.,* notice provision for closures). Third, these proposed regulations are necessary in order to establish methods for identifying genuine subsistence users (known as "local rural residents" in the regulations) who are authorized to hunt and trap in specified national parks and monuments, and for separating them from sport users who are prohibited from hunting and trapping in all parks and monuments. The National Park Service Organic Act (16 U.S.C. 1 *et seq.*), as well as Section 816 of the Alaska Lands Act, prohibit the taking of wildlife in parks and monuments except as specifically authorized. In the Alaska Lands Act, the authorization is limited to local residents engaged in subsistence uses in certain park areas. The Act does not, by its terms, prescribe the methods that the Park Service is to use to distinguish subsistence from sport users, though the legislative history for Title II of the Act indicates Congress' intent that methods like those in today's proposed regulations be established. S. Rep. No. 96–413, *supra,* 168–171; 126 Cong. Rec. H10540–41 (daily ed. Nov. 12, 1980). As described in detail below, the National Park Service has proposed the following two methods suggested by Congress to ensure that only "local rural residents" engage in subsistence uses in parks and monuments: (1) a system of "resident zones" and "subsistence permits" to identify local rural residents, and (2) a general prohibition on aircraft use for subsistence hunting, trapping, and fishing to separate the sport user from the subsistence user.

For the most part, the Subpart B regulations proposed today were proposed for comment as regulations for the Alaska National Monuments. 44 FR 37,731 (June 28, 1979). The National Park Service received extensive comment and has accordingly revised the proposed monument regulations in several places; moreover, the Park Service welcomes additional comment on these proposed regulations in the next forty-five days. It should also be noted that today's proposed regulations differ from the proposed monument regulations in certain respects because of the now applicable mandates of the Alaska Lands Act.

The proposed regulations on subsistence are not comprehensive. They would not provide for implementing certain provisions of Title VIII of the Alaska Lands Act that, in the Park Service's judgment, do not lend themselves to expeditious promulgation since they have not previously been the subject of notice and comment. Notable among these statutory provisions are the State regulation opportunity of Section 805(d) and the Federal monitoring requirement of Section 806. It should be emphasized that all parties must comply with these statutory provisions as long as they remain in effect; however, the National Park Service will consider specific regulations and policies as appropriate for implementing these provisions in the future.

Purpose and Policy

Purpose: Section 13.40(a) would establish that, consistent with proper management of fish and wildlife and the purposes for which the park areas were established, the purpose of Subpart B of the regulations is to provide the opportunity for local rural residents engaged in a subsistence way of life to do so pursuant to applicable State and Federal law. Alaska Lands Act, Sections 101(c); 802(1). The proposed Subpart B regulations are designed to accommodate and protect the unique subsistence relationship of certain local rural people in Alaska with their natural environment. Alaska Native people have been living a subsistence way of life for thousands of years, and certain non-Native rural residents have developed a subsistence way of life in more recent times. Many of these local rural residents have customarily and traditionally taken the renewable resources which are now within the boundaries of park areas. The resources satisfy both the physical needs of these local rural residents for food, shelter, fuel, clothing, tools, and transportation and their societal needs for cultural identity through skills, lore, and traditions. In light of the cultural and societal importance of the subsistence lifestyle in rural Alaska and its dependence on the renewable resources, therefore, Subpart B would implement the Congressional directive to continue the opportunity for subsistence uses within all national preserves and certain national parks and monuments by local rural residents who have (or are a member of a family which has) an established or historical pattern of subsistence uses within such units. As noted in both the Senate and House of Representatives, "[L]ocal rural residents

who maintain their primary, permanent residence within such units should have the opportunity to decide for themselves the course, pace, and extent, if any, of their own lifestyle and community evolution." S. Rep. No. 96–413, 96th Congress, 1st Sess. 169 (1979); 126 Cong. Rec. H 10,541 (daily ed. November 12, 1980).

Least Adverse Impact Possible. Toward the end of fulfilling the aforementioned purpose of the subsistence regulations, proposed § 13.40(b)–(d) sets forth basic policies which the Alaska Lands Act adopted to guide the activities of the administering agencies. Alaska Lands Act, Sections 802 (1), (2); 804. First, consistent with sound management principles and the conservation of healthy populations of fish and wildlife, the utilization of park areas is to cause the least adverse impact possible on local rural residents who depend upon subsistence uses of the resources of the public lands in Alaska for their economic and physical well-being and cultural vitality. This statutory policy would be implemented throughout the proposed regulations, particularly in the procedures mandated by § 13.22, the subsistence priority established by § 13.40(c)–(d), and the limitations on closure of §§ 13.46, 13.49, and 13.50.

Subsistence Priority. The second policy, articulated in § 13.40(c), would establish nonwasteful subsistence uses of fish, wildlife, and other renewable resources by local rural residents as the priority consumptive uses over any other consumptive uses permitted within park areas. Alaska Lands Act, section 802(2). This statutory policy would be implemented primarily, with respect to fish and wildlife resources, through the subsistence priority of § 13.40(d). *Id.*, section 804. According to the subsistence priority, whenever a park area's fish and wildlife resources are not sufficiently plentiful for taking by all consumptive users, the resources must be allocated in accordance with the three criteria of the subsistence priority: customary and direct dependence upon the resource as the mainstay of one's livelihood, local residency, and availability of alternative resources. For example, if consumptive uses must be restricted to assure the continued viability of the resource populations (including the conservation of healthy populations in preserves, and healthy and natural populations in parks and monuments) or to assure local rural residents the continued opportunity to engage in subsistence uses, consumptive uses would first be restricted to local rural residents engaged in subsistence uses and then, if further restrictions were necessary, the resources would be allocated among the local rural residents. Ultimately, subsistence uses would have to be limited to local rural residents who have the most customary and direct dependence on the resources as the mainstay of their livelihoods and who have the least access to alternative resources.

For several reasons, today's proposed regulations merely repeat the three criteria of the subsistence priority set forth in section 804 of the Alaska Lands Act. The National Park Service deemed further interpretation of these three difficult and complex criteria inappropriate at this time without extensive prior notice, comment, and research. Furthermore, the National Park Service anticipates State regulation implementing the subsistence priority criteria and looks forward to local input on the criteria from the local advisory committees and regional advisory councils of section 805 of the Alaska Lands Act and the park and park monument commissions of section 808.

Limitations. In addition to establishing the purpose and policies of the Subpart B regulations, proposed § 13.40 also establishes the limitations of the purpose and policies. According to § 13.40(a), the subsistence opportunity may only be provided in a manner and degree consistent with the management of fish and wildlife in accordance with recognized scientific principles and with the purposes for which each park area was established, designated, or expanded by the Alaska Lands Act. According to § 13.40(b), the utilization of the public lands is to cause the least adverse impact possible on local rural residents, but this policy is limited by the requirement that it be consistent with sound management principles and the conservation of healthy populations of fish and wildlife. And § 13.40(c) establishes the basic limitation of all the provisions of the proposed Subpart B regulations: subsistence uses of fish and wildlife populations must be appropriately regulated so as to assure conservation of healthy populations within national preserves, and conservation of natural and healthy populations within national parks and monuments. Congress provided the following guidelines on the implementation of this concept:

> The Committee intends the phrase "the conservation of healthy populations of fish and wildlife" to mean the maintenance of fish and wildlife resources and their habitats in a condition which assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystems, including recognition that local rural residents engaged in subsistence uses may be a natural part of that ecosystem; minimizes the likelihood of irreversible or long-term adverse effects upon such populations and species; and ensures maximum practicable diversity of options for the future. The greater the ignorance of the resource parameters, particularly of the ability and capacity of a population or species to respond to changes in its ecosystem, the greater the safety factor must be. Thus, in order to insure that subsistence uses are compatible with the maintenance of healthy populations of fish and wildlife, it must be recognized that the likelihood of irreversible or long-term adverse effects to a population or species must be proportional to the magnitude of the risks caused by a proposed use of such population or species.
>
> The Committee recognizes that the management policies and legal authorities of the National Park System and the National Wildlife Refuge System may require different interpretations and application of the "healthy population" concept consistent with the management objectives of each system. Accordingly, the Committee recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management programs affecting ecological relationships, population dynamics, and the manipulation of the components of the ecosystem.
>
> * * * * *
>
> The reference to "natural and healthy populations" with respect to national parks and monuments recognizes that the management policies of those units may entail methods of resource and habitat protection different from methods appropriate for other types of conservation system units. S. Rep. No. 96–413, *supra*, 233, 235.
>
> * * * * *
>
> In authorizing subsistence uses within National Parks, Monuments, Preserves, and National Recreational Areas, it is the intent of the Committee that certain traditional National Park Service management values be maintained. It is contrary to the National Park Service concept to manipulate habitat or populations to achieve maximum utilization of natural resources. Rather, the National Park System concept requires implementation of management policies which strive to maintain the natural abundance, behavior, diversity, and ecological integrity of native animals as part of their ecosystem, and the Committee intends that that concept be maintained. The National Park Service recognizes, and the Committee agrees, that subsistence uses by local rural residents have been, and are now, a natural part of the ecosystem serving as a primary consumer in the natural food chain. The Committee expects the National Park Service to take appropriate steps when necessary to insure that consumptive uses of fish and wildlife populations within National Park Service units not be allowed to adversely disrupt the natural balance which has been maintained for thousands of years. Accordingly, the Committee does not expect the National Park Service to engage in habitat manipulation or control of other species for the purpose of

maintaining subsistence uses within National Park System units. *Id.* at 171.

Applicability

The Alaska Lands Act mandates that subsistence uses by local rural residents be allowed in all national preserves in Alaska and, where specifically permitted by the Alaska Lands Act, in national parks and monuments in Alaska. Alaska Lands Act, section 203. Accordingly, proposed § 13.41, the applicability section, states that local rural residents may engage in subsistence uses pursuant to the regulations in Subpart B(1) in national preserves (Alaska Lands Act, section 203); (2) throughout Cape Krusenstern National Monument and Kobuk Valley National Park (*Id.*, section 201 (3) and (6)), and (3) where such uses are traditional (as may be further designated for each park or monument in Subpart C) in Aniakchak National Monument, Gates of the Arctic National Park, Lake Clark National Park, Wrangell-St. Elias National Park, and the December 2, 1980, addition to the newly named Denali National Park (*id.*, sections 201 (1), (4), (7), (9); 202(3)).

With respect to the last category of park areas—Aniakchak, Gates of the Arctic, Lake Clark, Wrangell-St. Elias, and the Denali Addition—the statute offers no further specifics as to the geographical areas where subsistence uses are traditional. The legislative history offers some guidance. For Gates of the Arctic, for example, the Senate report states as follows:

> * * * [S]ubsistence uses of some areas of the park may be essential periodically or continuously for the continued survival of the local people. The Committee * * * feels * * * that the subsistence patterns of the park are well known and can be identified. The Committee noted that the following drainages within the park have apparently been used for subsistence hunting: Etivluk River, Outwash Creek, Kurupa River, Oolamnagavik River, Killik River (and all its tributaries), Okpikruat River, Alapah Creek, Kayak Creek, Erratic Creek, Nanushuk River, Kuhsuman Creek, Anaktuvuk River, Ernie Creek and the Itkillik River. It is not the intent of the committee that these drainages be considered the only places where subsistence can occur.
>
> But it is the Committee's intent to restrict subsistence hunting in the park to traditional use areas . . . S. Rep. No. 96–413, *supra*, 147; *see also*, 126 Cong. Rec. H10535 (daily ed. Nov. 12, 1980).

For the other specified areas, the legislative history indicates, at most, that subsistence uses may occur "where such uses have been traditional," "to the extent they [sic] now take place," "where they now occur," "at their present level." 126 Cong. Rec. H 10533, 10538, 10540. Since the legislative guidance on where subsistence uses are traditional in the five specified areas is incomplete, the National Park Service has decided not to propose traditional "subsistence hunting zones" for these five areas at this time. Rather, the Park Service looks forward to developing additional information and to receiving public comment on this issue through research, further rulemaking endeavors, and advice form the local committees and regional councils of Section 805 of the Alaska Lands Act and particularly from the park and monument commissions of Section 808. In the meantime, the National Park Service believes that local rural residents should comply with the Congressional intent of § 13.41(c) of the proposed regulations by not hunting in any areas of Aniakchak National Monument, Gates of the Arctic National Park, Lake Clark National Park, Wrangell-St. Elias National Park, or the Denali Park addition where subsistence hunting has not, in recent history, occurred.

Definitions

Local rural resident and resident zones. Throughout the proposed regulations, the National Park Service identifies those people who may engage in subsistence uses where authorized in park areas as "local rural residents." This term derives from the term "local residents" in Title II of the Alasks Lands Act and the term "rural Alaska residents" in the definition of "subsistence uses" in Title VIII. Title II authorize the opportunity for continued "subsistence uses by *local residents* * * * in national preserves and, where specifically permitted by this Act, in national monuments and parks." Alaska Lands Act, section 203 (emphasis added); *see, also*, sections201(1), (3), (4), (6), (7), (9); 202(3). The relationship between this language in Title II and Title VIII was described as follows in the Congressinal Record:

> Since the definition of "subsistence uses" in section 803 limits such uses to "rural Alaska residents," a reading of Title VIII and Title II * * * together make it clear that the policy throughout is that only local rural residents are by statute provided the opportunity to engage in subsistence uses in areas of the National Park System * * *. 126 Congressional Record S15129 (daily ed. December 1, 1980).

Section 13.42(a) would define "local rural residents" as persons who either live in designated "resident zones" *(see* § 13.43 and its explanation, below) or hold a "subsistence permit" *(see* § 13.44 and its explanation, below). In brief, "resident zones" would be designated, and "subsistence permits" would be issued, on the basis of customary and traditional utilization of park area lands for subsistence uses without use of aircraft as a means of access. In the case of "resident zones," the National Park Service would apply this criterion to "preponderant concentrations" of people based on available information and research; in the case of "subsistence permits" for people who live outside resident zones, the Superintendent would apply this criterion to individual applicants.

The proposed definition of "local rural resident" makes clear that, for a person to qualify by virtue of residence in a resident zone, that person must have his or her primary, permanent home within the resident zone, and whenever absent from this home, have the intention of returning to it. The National Park Service would examine factors such as tax returns, hunting, fishing, and driver's licenses, voter registration, and any other evidence appropriate to establish the location of a person's primary, permanent home. In practice, this residence concept would not exclude a person from qualifying as a local rural resident merely because of a temporary absence for military duty or limited-term employment, for example. This concept would not impose a duration residency requirement.

Subsistence uses. The proposed definition of "subsistence uses" tracks the language of section 803 of the Alaska Lands Act with one modification: as explained below, today's proposed definition offers some guidance on the meaning of the term "customary trade," which the statute leaves undefined.

The term "subsistence uses" means the customary and traditional uses by rural Alaska residents of fish, wildlife, and other wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles from the nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family comumption; and for customary trade. This proposed definition uses several terms which require further explanation.

To begin with, the finition uses the phrase "customary and traditional" to modify the term "uses" in order to emphasize that Native and non-Native subsistence uses

> have played a long established and important role in the economy and culture of the community and * * * [that] such uses incorporate beliefs and customs which have been handed down by word of mouth or example from generation to generation. S.

Rep. No. 96–413, *supra*, 269; H. Rep. No. 96–97, 96th Congress, 1st Session 280 (1979).

Next, the definition limits subsistence uses to uses "by rural Alaska residents." Clearly, this limitation excludes residents of Ketchikan, Juneau, Anchorage, and Fairbanks from engaging in authorized "subsistence uses." *See* S. Rep. No. 96–413, *supra*, 233. On the other hand, if they are included within a "resident zone" or obtain a "subsistence permit," residents of "rural" Alaska—including communities such as Dillingham, Bethel, Nome, Kotzebue, Barrow, and other villages throughout the State (as long as such communities remain "rural")—may engage in "subsistence uses." *Id.* It is important to emphasize that, in park areas, only "local rural residents" who permanently reside in a resident zone or have a subsistence permit may engage in subsistence uses. *See* 126 Congressional Record S 15129 (daily ed. December 1, 1980).

The term "family" is defined to include any person living within a local rural resident's household on a permanent basis as well as those persons living outside the household who are related by blood, marriage, or adoption (legal or equitable). The definition of "family" recognizes extended family patterns common in the subsistence culture of Alaska. This definition of "family" is to be distinguished from the more limited definition used in § 13.44 on subsistence permits.

The definition of "subsistence uses" includes the making and selling of handicraft articles from the nonedible byproducts only of fish and wildlife resources taken for personal or family consumption. Accordingly, the definition covers such commercial activities only if the edible portions of the resource have been used for personal or family consumption. The "subsistence uses" definition also includes "barter" for personal or family consumption in recognition that a genuine subsistence lifestyle includes certain foodstuffs and other items which may be available through a non-cash exchange. Thus, barter of subsistence resources of a limited and noncommercial nature falls within the meaning of "subsistence uses."

Finally, the definition of "customary trade" proposed today recognizes that a genuine subsistence lifestyle may also include limited involvement in the cash economy through the exchange of furs. Trapping furbearers is an integral and longstanding part of the subsistence lifestyle in many regions of Alaska. While some of the furs are utilized for personal or family use, it is recognized that a portion of the furs ultimately become items for sale on the commercial market. The cash remuneration, in turn, helps to provide the basic tools and supplies associated with trapping and the subsistence lifestyle of which trapping is a part. For example, local rural residents may engage in trapping to obtain the cash required for necessary store-bought supplies such as gasoline and ammunition. The allowance of cash interchange related to trapping is intended to provide continuity to the traditional and customary harvest of furbearers by those who are authorized to engage in subsistence uses within parks and monuments.

It should be recognized, however, that the definition of "customary trade" was intended by Congress to be narrow:

> The Committee does not intend that "customary trade" be construed to permit the establishment of significant commercial enterprises under the guise of "subsistence uses." The Committee expects the Secretary and the State to closely monitor the "customary trade" component of the definition and promulgate regulations consistent with the intent of the subsistence title. S. Rep. No. 96–413, *supra*, 234.

Accordingly, this provision is not intended to allow trapping within parks and monuments to be or become a solely or predominantly commercial enterprise beyond its traditional role as part of the subsistence regimen.

Today's proposed definition of "customary trade" is the same as the definition proposed by the National Park Service in the regulations for the Alaska National Monuments (44 FR 37731 (June 28, 1979)). Most commentors on the definition supported it since, as one commentor wrote, "Nowhere in the Alaska bush today does anyone live without some items purchased from the 'outside,' and trapping is often the only way to earn the necessary cash." The Alaska Federation of Natives (AFN) suggested that the definition be expanded to include, in addition to the exchange of furs for cash, the exchange of other fish, wildlife, and plant resources for cash as may be specifically permitted for particular park areas by Subpart C regulations. AFN did not, however, propose any specific additions to the customary trade definition for particular park areas. Today's proposed interim regulations do not adopt AFN's suggested expansion. Information currently available to the National Park Service reveals no basis or need for such expansion, and the Alaska Lands Act does not invite new commercial enterprises under the guise of "subsistence uses." In fact, it should be emphasized that customary trade may only derive from "customary and traditional" uses of resources under the definition of "subsistence uses." If new information is developed which shows that the definition of "customary trade" should be expanded through specific additions in Subpart C, however, the Service can undertake those additions at that time.

Determination of Resident Zones: By definition, the "resident zone" for each park area would encompass the area and communities within the park area boundaries as well as certain areas and communities just outside the boundaries where, in the judgment of the National Park Service, a genuine subsistence lifestyle predominates. Section 13.43(a). The areas and communities outside the boundaries for each new park area, proposed in Subpart C of the regulations, are as follows:

(a) Aniachak National Monument and Preserve: Chignik, Chignik Lagoon (Section 13.60(a)(1));

(b) Bering Land Bridge National Preserve: Buckland, Deering, Shishmaref, Wales (Section 13.61(a)(1));

(c) Cape Krusenstern National Monument: Kivalina, Kotzebue, Noatak (Section 13.62(a)(1));

(d) Denali National Park and Preserve: Cantwell, Minchumina, Telida (Section 13.63(a)(1));

(e) Gates of the Arctic National Park and Preserve: Alatna, Allakaket, Ambler, Anaktuvuk, Bettles, Kobuk, Shungnak (Section 13.64(a)(1));

(f) Glacier Bay National Park and Preseve: none (Section 13.65);

(g) Katmai National Park and Preserve: Egigik, Igiuigig, Kakhonak, Levelock (Section 13.66(a)(1));

(h) Kenai Fjords National Park: subsistence uses prohibited (section 13.67(a));

(i) Kobuk Valley National Park: Ambler, Kiana, Kobuk, Noorvik Shungnak (Section 13.68(a)(1));

(j) Lake Clark National Park and Preserve: Nondalton, Port Alsworth (Section 13.69(a)(1));

(k) Noatak National Preserve: Kivalina, Kotzebue, Noatak (Section 13.60(a)(1));

(l) Wrangell-St. Elias National Park and Preserve: Chistochina, Chitina, Copper Center, Gakona, Gulkana, McCarthy, Mentasta Lake, Nabesna, Slana, Yakutat (Section 13:61(a)(1));

(m) Yukon Charley National Preserve: Circle, Eagle, Eagle Village (Section 13.72(a)(1));

Under the proposed regulations, anyone who permanently resides within the park area boundaries or in one of the communities listed above may engage in subsistence uses in the appropriate park area. In other words, persons who live in the resident zone for Kobuk Valley National Park, for example, may engage in subsistence uses only in that park area (unless such person's community is

also listed in the resident zone for another park area—*e.g.*, Shungnak is listed for both Kobuk Valley National Park and Gates of the Artic National Park and Preserve).

In determing the proposed list of communities outside the boundaries for each park area, the National Park Service reviewed several documents, including the studies of subsistence communities prepared for the Park Service, the 1974 Environmental Impact Statement on the Alaska National Interest Lands, and the 1978 Environmental Supplement on Alternative Administrative Actions. The National Park Service also reviewed information from several of its employees who have studied the subsistence lifestyle throughout the State and, in some cases, have lived "in the bush" for years. The communities proposed in Subpart C derive primarily from the subsistence field research conducted by independent, qualified investigators on contract to the Park Service and from observations by NPS planning and field personnel. The resultant list is meant to include communities where most, and in some cases all, of the inhabitants qualify as local rural residents who, without using aircraft as a means of access for purposes of taking fish and wildlife for subsistence uses, have customarily and traditionally engaged in subsistence within the park area. It should be noted that a community or area may be added to a resident zone, or deleted from a resident zone, as circumstances change or information is developed that indicates that such community does or does not have the concentrations of local rural residents necessary for inclusion in the resident zone. Section 13.43(b).

The list of communities included in proposed Subpart C today is the same as the list proposed in the regulations for the Alaska National Monuments (44 FR 37731 (June 28, 1989)) with the addition of Cantwell to the resident zone for Denali National Park and Preserve. Although several commentors suggested additional communities, *e.g.*, Glenallen and King Salmon, the information available to the National Park Service at this time does not support the suggestion that these communities are predominantly composed of subsistence users who have hunted in the park areas without using an aircraft for access. The National Park Service thinks that it would be undesirable to add any other communities to the list at this time without further supporting information, but the Park Service recognizes that additional information may be developed through future research and through consultation with the State Department of Fish and Game Subsistence Division, local communities, regional councils, and park and monument commissions (Alaska Lands Act, Sections 805 and 808).

The National Park Service recognizes that certain communities outside the proposed resident zones contain persons who can qualify as local rural residents. Such communities include King Salmon, Naknek, and South Naknek for Katmai National Preserve; Glenallen for Wrangell-St. Elias National Park and Preserve; and Yakutat for Glacier Bay National Preserve (Yakutat is within the resident zone for Wrangell-St. Elias National Park and Preserve). For any communities or areas not included in a resident zone, the National Park Service encourages the residents who have customarily and traditionally used park area resources without using an aircraft for access to apply for a "subsistence permit."

Subsistence Permits and Application Procedures for Subsistence Permits: Under these proposed regulations, any person who permanently resides outside a resident zone must obtain a "subsistence permit" in order to engage in subsistence uses of park area resources. The availability of subsistence permits assures that subsistence users whose communities are not included in a resident zone for whatever reason may nevertheless have the opportunity to engage in subsistence uses in park areas. Section 13.44. The National Park Service has taken efforts to eliminate all unnecessary burdens from the application process while still providing procedural protections to assure fair and reasonable decisionmaking on the permit applications. Section 13.51.

Under the proposed regulations, the application process at the Superintendent's level is simple. The applicant must demonstrate to the Superintendent, preferably on a written form but otherwise by oral presentation, either of the following:

(1) he or she has (or is a member of a family which has) customarily and traditionally engaged in subsistence uses within a park area without using aircraft as a means of access for purposes of taking fish or wildlife (Section 13.44(a)(1)); or

(2) he or she qualifies as a "local rural resident" who may engage in subsistence uses in another park area, and his or her subsistence lifestyle—as supported by available research—involves a pattern of subsistence uses between the other park area and the park area for which the applicant now seeks a permit (Section 13.44(a)(2)).

Proposed Section 13.44(c) makes clear that, for purposes of § 13.44(a)(1), the term "family" is limited to persons whose primary, permanent residence is in rural Alaska near the park areas. Unlike the definition of "family" in § 13.42(c) ("subsistence uses" definition), family members who live in cities or far from the park area would not qualify for the benefits of § 13.44.

The National Park Service believes that the Superintendent will be able to issue subsistence permits quickly and routinely in cases of genuine subsistence users. Proposed § 13.51(a) requires the Superintendent to grant or deny the application in a timely manner not to exceed sixty days from receipt of the completed application unless, in extraordinary cases, the Superintendent can show good cause for failing to meet the time deadline. The Superintendent shall explain any denial in writing and promptly forward a copy to the applicant.

Should the Superintendent deny the permit, the applicant who wishes to have his or her application reconsidered must so inform the Alaska Regional Director by letter, telephone, or any other means of communication within 60 days (except for good cause shown) of the Superintendent's issuing the denial. The permit applicant shall present the Alaska Regional Director with (1) any additional information demonstrating that the applicant qualifies for a permit, (2) the basis for the applicant's disagreement with the Superintendent's decision, and (3) any request for an informal hearing accompanied by a description of the new information to be presented and a listing of any persons to be questioned at the hearing. The Alaska Regional Director shall grant a hearing if it is clear that the applicant would present relevent information which is substantially distinguishable from or supplementary to the information presented to the Superintendent.

To accommodate the permit applicants who would be inconvenienced by travelling to Anchorage for a hearing, the Alaska Regional Director will periodically "ride circuit," scheduling hearings throughout the State.

The Alaska Regional Director shall decide to affirm, reverse or modify the Superintendent's denial within a reasonable period of time, shall explain his decision in writing, and shall promptly forward a copy to the applicant. This decision shall constitute final action by the Department of the Interior. In accordance with applicable

law, the permit applicant may, of course, seek judicial review of a denial on reconsideration.

The proposed regulations published today recognize that it may take several months to initiate the subsistence permit system envisioned by §§ 13.44 and 13.51 of the regulations, and that subsistence users who do not live in resident zones but nevertheless depend on park area resources must be able to engage in subsistence uses in park areas in the meantime. Consequently, §13.44(b) would allow such persons who would otherwise qualify for a subsistence permit (*see* § 13.44(a)) to engage in subsistence uses in a park area without a permit until July 15, 1981. However, it should be emphasized that such persons should begin the application process for a subsistence permit as soon as possible after these proposed regulations are finalized since a subsistence permit will be required as of July 15, 1981.

Prohibition of Aircraft Use: Section 13.45 of the Subpart B regulations generally would prohibit the use of aircraft for access to or from lands and waters within a national park or monument for purposes of taking fish or wildlife for subsistence uses within the national park or monument.

The Subpart B regulations would not prohibit use of aircraft for subsistence uses in national preserves.

It is the National Park Service's determination, supported by numerous comments and by available research on the subsistence lifestyle, that local rural residents who have customarily and traditionally engaged in subsistence uses of park and monument resources do not, in the most cases, use aircraft for access for subsistence hunting, trapping, and fishing. What cash these local rural residents acquire is used to purchase necessities not otherwise supplied by subsistence uses. Certainly, as a general rule, the expense of aircraft use greatly exceeds the ability of the local rural resident to pay for it. On the other hand, aircraft is commonly used by sport hunters who are now prohibited from hunting in park and monument areas. In this respect, the prohibition of aircraft use for subsistence activities reinforces the ban on sport hunting in park and monument areas and assists the National Park Service in distinguishing sport from subsistence hunters.

The proposed Subpart C regulations for individual park areas, however, would afford the Park Service flexibility to make exceptions to the general prohibition. For any park or monument, the Park Service may designate "exempted communities" whose local rural residents may apply for a permit to use aircraft for subsistence hunting, trapping, and fishing (Section 13.45(b)). The Superintendent will grant the permit only in extraordinary cases where, in the Superintendent's determination, no reasonable alternative to aircraft use exists. At this time, the National Park Service is proposing to designate two communities as "exempted communities," *i.e.*, Anaktuvuk in Gates of the Arctic National Park and Yakutat in Wrangell-St. Elias National Park, whose local rural residents presently rely on aircraft for access to their customary and traditional areas of harvest in the park. The people of Anaktuvuk, isolated, remote, surrounded by difficult terrain, are far removed from the wildlife populations whose harvest sustains them; moreover, they do not have adequate and available alternative resources populations for sustenance. Similarly, residents of Yakutat have customarily used aircraft for access to the Malaspina Forelands in the Wrangell-St. Elias area for subsistence purposes, since traveling by boat, the only other possible means of transportation, can be extremely dangerous due to the violent storms that frequent the Gulf of Alaska, S. Rep. 96–413, *supra*, 169; 126 Cong. Rec. H10541 (daily ed. Nov. 12, 1980). As Congress noted:

> Although there may be similar situations in other areas of Alaska in which aircraft use for subsistence hunting may be appropriate and should be permitted to continue, the Committee believes that these types of situations are the exception rather than the rule and that only rarely should aircraft use for subsistence hunting purposes be permitted within national parks and monuments. It is not the intent of the Committee to invite additional aircraft use. S. Rep. No. 96–413, *supra*, 169; *see, also*, 126 Cong. Rec. H10541 ("It is not the intent to invite additional aircraft use, or new or expanded uses in parks and monuments where such uses have not traditionally and regularly occurred.")

In response to comments received on the proposed regulations for the Alaska National Monuments, moreover, the National Park Service has included in § 13.45(b)(2) of these proposed regulations the opportunity for any local rural resident aggrieved by the aircraft prohibition to seek an individual exception to the prohibition on aircraft pursuant to the procedures of § 13.51. It bears noting that this opportunity would be available only to local rural residents, *i.e.*, persons who live in a resident zone or have a subsistence permit. The Superintendent may grant the exception if he or she determines that the applicant has demonstrated an extraordinary situation where no reasonable alternative to aircraft use exists because of the location of the subsistence resources depended upon and the difficulty of surface transportation to these resources, or other emergency situation (*e.g.*, unusual and unforseeable acts of nature).

The permits issued pursuant to proposed § 13.45(b)(1) and (2) may contain terms and conditions which may limit the aircraft use as to area, time of operation, type of aircraft, duration of the permit, and any other factor necessary to restrict the permit to the limited and exceptional purposes it is meant to fulfull.

Section 13.45(c) would make clear that the prohibition on aircraft use is limited. It does not extend to any legal activity other than access for purposes of subsistence hunting, trapping, and fishing. Thus, a local rule resident may, for example, use aircraft in parks and monuments to carry supplies to a cabin, to visit another village, or even to gather berries. Although the National Park Service believes that such use of aircraft in the subsistence culture is rare for the reasons stated above, the Park Service does not have the same enforcement concerns for these activities as it does for the taking of fish and wildlife.

Use of Snowmobiles, Motorboats, and Other Means of Surface Transportation: In furtherance of Section 811 of the Alaska Lands Act, § 13.46 would provide local rural residents engaged in subsistence uses reasonable access to the subsistence resources on which they depend. This proposed regulation liberalizes the provisions of Subpart A on snowmobiles, motorboats, and certain off-road vehicles in the case of local rural residents who are engaged in subsistence hunting, fishing, and gathering activities within the park areas. All routes and areas are open to subsistence use of these vehicles except as specifically restricted or closed. The Superintendent will implement such closures or restrictions on the basis of criteria which are more limited than the criteria for closure to general recreational use. Basically, in order to impose a restriction, the Superintendent must determine that the use in question is causing or may cause an adverse impact on public health or safety, resource protection, protection of historic or scientific values, subsistence uses, conservation of endangered or threatened species, or the purposes and values for which the park area was established. The Superintendent will arrange notice and public participation concerning closure proposals in order to involve those affected to the fullest extent possible in the decisionmaking.

It should be noted that the types of access vehicles covered by proposed § 13.46 include "other means of surface

transportation traditionally employed by local rural residents engaged in subsistence uses." The limitations of this phrase, if any, will be addressed as appropriate in future rulemaking efforts.

Under proposed § 13.46, any person operating motorboats, snowmobiles, and other means of surface transportation must comply with applicable State and Federal laws governing such operation and must avoid causing waste or damage to fish, wildlife, terrain, or other values of the park area. In addition, consistent with State law, the vehicle operator may not use a motorized vehicle so as to herd, harass, haze, or drive wildlife for hunting or any other purpose.

At all times when not engaged in subsistence uses, local rural residents would be able to use snowmobiles, motorboats, and other means of surface transporation in accordance with the appropriate Subpart A regulations. For example, local rural residents engaged in recreational uses of snowmobiles, motorboats, and other means of surface transportation would comply with the provisions of §§ 13.10, 13.11, and 13.13, respectively, and local rural residents seeking otherwise-closed access to inholdings or temporary access would comply with the provisions of §§ 13.14 and 13.15, respectively.

Subsistence Fishing: Local rural residents may, of course, engage in fishing in park areas in compliance with applicable State and Federal law. In addition, in § 13.47 of the regulations, the National Park Service proposes to relax its general public regulations in the case of local rural residents in order to allow the customary and traditional use in park areas of nets, seines, traps, or spears where permitted by State law. Section 13.50, explained below, would govern closures to fishing for subsistence purposes.

Subsistence Hunting and Trapping: Although all national parks and monuments in Alaska are closed to sport hunting and to trapping, many are open, in whole or part, to hunting and trapping by local rural residents engaged in subsistence uses. Alaska Lands Act, sections 816; 201(1), (3), (4), (6), (7), (9); 202(3); *see also,* § 13.41 (Applicability). Therefore, only local rural residents may engage in hunting and trapping where authorized in national parks and monuments. Of course, national preserves are open to both sport and subsistence hunting as well as trapping, unless the Superintendent has closed a preserve area to sport taking pursuant to proposed § 13.30 of Subpart A or to subsistence taking pursuant to proposed § 13.50 of Subpart B. As with sport users, local rural residents engaged in subsistence hunting or trapping must comply with applicable State law governing hunting and trapping, *e.g.,* bag limits, safety requirements, seasons and hours (proposed § 13.48). With respect to trapline cabins, § 13.16(d) would provide for their construction, reconstruction, temporary use, occupancy, and maintenance pursuant to a permit. In addition, § 13.16(c) and (e) would provide for existing cabin use and occupancy by persons with a possessory interest or right of occupancy in the cabin.

Subsistence Use of Timber and Plant Material: Section 13.49(a) would relax the general public use regulations by allowing local rural residents to obtain a permit to cut standing live timber for subsistence needs such as shelter or fuel. Before issuing a permit, the Superintendent must determine that the proposed cutting is compatible with the purposes for which the park area was established. Furthermore, the Superintendent will include in the permit any stipulations deemed necessary to protect the resources of the park area.

Section 13.49(b) would make clear that local rural residents do not need a permit to gather plant materials for subsistence uses, or to gather dead or downed timber for firewood for personal, not commercial, use.

Proposed § 13.49(c) sets forth the standards and procedures for closing a park area to the subsistence uses of a particular plant population. Although not required by the Alaska Lands Act, the National Park Service is proposing to apply similar closure provisions for subsistence uses of plants as the Act requires for subsistence uses of fish and wildlife.

As discussed below in the latter context, the closure standards are strict, and the closure procedures involve significant public participation in order to protect the affected local rural residents who depend on the resources.

Closure to Subsistence Uses of Fish and Wildlife: According to Section 816 of the Alaska Lands Act and § 13.50 of the proposed Subpart B regulations, the Superintendent of each park area has the power to close or restrict any part or all of a park area to subsistence uses of a particular fish or wildlife population only temporarily and only if necessary "for reasons of public safety, administration, or to assure the continued viability of such population." To implement Congress' intent, proposed § 13.50 provides protective standards, time limitations, and notice requirements for closures to subsistence taking of fish and wildlife.

With respect to the standards for closure, the Act lists only three: public safety, administration, and for assurance of the continued viability of a fish or wildlife population. No closure for purposes of administration, moreover, may be made prior to notice and hearing in the vicinity of the closure. The public safety standard clearly allows the Superintentent to act in situations which threaten public health and welfare. For example, the Superintendent may prohibit subsistence hunting and trapping for reasons of public safety in specified areas surrounding a public campground, roadway, or hiking trail. The fish or wildlife viability standard allows the Superintendent to act for purposes of maintaining resource populations upon which local rural residents rely at levels adequately above the threatened level. As Congress stated, "it is not the intent * * * that actual depletion of a population or an emergency exist before a closure under this section may be justified." S. Rep. 96–413, *supra,* 278; H. Rep. No. 96–97, *supra,* 289. Moreover, as stated in Section 815 of the Alaska Lands Act and Section 13.40(e) of the proposed regulations and explained previously, the subsistence provisions are not to be construed as permitting a level of subsistence use of fish and wildlife within national preserves to be inconsistent with the conservation of healthy populations, and within national parks and monuments to be inconsistent with the conservation of natural and healthy populations, of fish and wildlife. The administration standard is potentially the broadest of the three closure standards, though "recognition of the importance of subsistence activities to most [local] rural residents requires that this authority be utilized narrowly and with consistent restraint." *Id.* Guided by this intent, the Superintendent can invoke the administration standard to protect the purposes and values of the park areas and otherwiae to manage the park areas prudently. The limitation of Section 815 of the Act and § 13.40(e) of the proposed regulations would also be relevant to this closure standard.

Closures shall last only so long as reasonably necessary to achieve the purposes of the closure. In the case of closing an area around a hiking trail for reasons of public safety, for example, the closure

should remain in effect only so long as reasonably necessary to provide for the public safety during normal periods of consistent public use, and only apply to the minimum portion of the public lands reasonably necessary to achieve this

purpose. S. Rep. No. 96–413, *supra*, 277–78; H. Rep. No. 96–97, *supra*, 289.

Thus, closures may be seasonal in nature, for example, if warranted by the situation.

In the normal case, a closure must be preceded by consultation with the State and adequate notice and informal public hearing in the vicinity of the closure. In an emergency situation, the Surperintendent may immediately close the area for a period not to exceed sixty days. The Superintendent may extend an emergency closure only if he or she establishes, after notice and informal public hearing in the vicinity, that the extension is justified under the applicable closure standards.

Finally, proposed § 13.50(c) provides thorough notice procedures designed to inform as many local rural residents as possible about any closures which may affect them.

Drafting Information

The primary authors of these proposed regulations are Michael V. Finley, Division of Legislation, and Maureen Finnerty, Division of Ranger Activities and Protection, National Park Service, Washington, D.C.; William F. Paleck, Alaska Regional Office, National Park Service, Anchorage, Alaska; and Molly N. Ross and Thomas R. Lundquist, Office of the Solicitor, Department of the Interior, Washington, D.C.

Impact Analysis

The Department of the Interior has made a determination that these proposed regulations are not significant, as that term is defined under Executive Order No. 12044 and 43 CFR Part 14, nor do they require the preparation of a regulatory analysis pursuant to the provisions of those authorities.

As required by the Regulatory Flexibility Act (Pub. L. 96–354), the National Park Service has made an initial determination that these proposed regulations will not have a significant economic effect on a substantial number of small businesses, small organizations, or small governmental jurisdictions. However, public comment is invited on whether the consequences of the rule will require this analysis.

A 28-volume environmental impact statement was prepared in 1974 concerning the establishment, management and public use of Alaska National Interest Lands conservation system units in Alaska, including the areas now designated as units of the National Park System in the Alaska Lands Act. The 1974 EIS was supplemented in November 1978 with an analysis of the impacts of alternative Executive Branch actions designed to conserve the Alaska National Interest Lands.

In addition to those environmental documents which received extensive public comment, and the numerous studies included within their bibliographies upon which they were based, a wealth of other materials and analyses have been generated on the management of the Alaska National Interest Lands as a result of congressional action on the so called "d–2" legislation. As of the date of this proposed rulemaking, four separate committee reports, a background committee report, and extensive legislative history printed in the *Congressional Record* have been published by the House of Representatives. In the Senate, two extensive committee reports, a two-volume report concerning the results of a committee workshop in Alaska and extensive legislative history printed in the *Congressional Record* have been published.

All of these reports and histories concern the establishment, management, and public use of the new conservation system units in Alaska. This is in addition to more than 45 days of formal congressional committee hearings held throughout the United States on this matter. The joint Federal-State Land Use Planning Commission for Alaska also conducted more than a dozen public hearings throughout the country in its investigations concerning the proposed public use and classifications of the proposed conservation system units.

Public Participation

These proposed regulations would give interim, management guidance on subsistence, access, cabins, and public recreational uses of the park areas in Alaska. Public comment on these proposals is actively solicited and desired during the 45-day public review period. Following the consideration of public comment and appropriate revision of the regulations, it is anticipated that final regulations will be issued in March of 1981 to give the public interim management guidance on the permissible uses of parks areas in Alaska. This expedited schedule is necessary so that regulations will be in effect in time for the peak public use seasons.

With the substantial prior public comment and the emergency need for public guidance in advance of the peak public use seasons, the National Park Service believes that a 45-day public comment period is the maximum that can be afforded on this limited agenda rulemaking. Any longer public comment period would place the effective date of these regulations beyond the Spring "break up" of deep winter conditions, and would create public confusion on allowable uses of park areas during peak public use (e.g., recreation, access, subsistence, mining) seasons. Thus, the National Park Service believes that a 45-day public comment period (which is longer than required under 5 U.S.C. 553) strikes an appropriate balance between desires for advance public review of proposed regulations and the need for interim management and public guidance.

In addition to comments on these proposed regulations, the National Park Service is also inviting comments on any other issues, including the need for special regulations for individual park areas, that should be considered in any future rulemaking.

(Section 3 of the Act of August 25, 1916 (39 Stat. 535, as amended; 16 U.S.C. 3); Sections 1, 1c, 9a, 432 and 462 of Title 16 of the United States Code, and Pub. L. 96–487 (December 2, 1980))

Robert Herbst,

Assistance Secretary for Fish and Wildlife and Parks.

In consideration of the foregoing, title 36 of the *Code of Federal Regulations* is proposed to be amended by the establishment of a new Part 13 as follows:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

Subpart A—Public Use and Recreation

Sec.

13.1 Definitions.
13.2 Applicability and scope.
13.3 Penalties.
13.10 Snowmobiles.
13.11 Motorboats.
13.12 Aircraft.
13.13 Off-road vehicles.
13.14 Access to inholdings.
13.15 Temporary access.
13.16 Cabins and other structures.
13.17 Camping and picnicking.
13.18 Weapons, traps and nets.
13.19 Preservation of natural features.
13.20 Taking of fish and wildlife.
13.21 Unattended or abandoned property.
13.22 Subsistence and land use decisions.
13.30 Closure procedures.
13.31 Permits.

Subpart B—Subsistence

13.40 Purpose and policy.
13.41 Applicability.
13.42 Definitions.
13.43 Determination of resident zones.
13.44 Subsistence permits for persons who permanently reside outside a resident zone.
13.45 Prohibition on aircraft use.
13.46 Use of snowmobiles, motorboats, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses.

Sec.

13.47 Subsistence fishing.
13.48 Subsistence hunting and trapping.
13.49 Subsistence use of timber and plant material.
13.50 Closure to subsistence uses.
13.51 Application procedures for subsistence permits and aircraft exceptions.

Subpart C—Special Regulations—Specific Park Areas in Alaska

13.60 Aniakchak National Monument and Preserve.
13.61 Bering Land Bridge National Preserve.
13.62 Cape Krusenstern National Monument.
13.63 Denali National Park and Preserve.
13.64 Gates of the Arctic National Park and Preserve.
13.65 Glacier Bay National Park and Preserve. [Reserved]
13.66 Katmai National Park and Preserve.
13.67 Kenai Fjords National Park.
13.68 Kobuk Valley National Park.
13.69 Lake Clark National Park and Preserve.
13.70 Noatak National Preserve.
13.71 Wrangell-St. Elias National Park and Preserve.
13.72 Yukon-Charley Nationa Preserve.

Authority: Section 3 of the Act of August 25, 1916 (39 Stat. 535, as amended; 16 U.S.C. 3); Sections 1, 1c, 9a, 432 and 462 of Title 16 of the United States Code, and Public Law 96-487 (December 2, 1980).

§ 13.1 Definitions.

The following definitions shall apply to all regulations contained in this part:

(a) The term "adequate and feasible access" means a method and route of access which is economically practicable for achieving the reasonable use or development desired by an applicant of the applicant's non-federal land or occupany interest, but does not necessarily mean the most economically feasible alternative.

(b) The term "aircraft" means a machine or device that is used or intended to be used to carry persons or objects in flight through the air, including, but not limited to airplanes, helicopters and gliders.

(c) The term "carry" means to wear, bear or carry on or about the person and additionally, in the case of firearms, within or upon a device or animal used for transportation.

(d) The term "downed aircraft" means an aircraft that as a result of mechanical failure or accident cannot take off.

(e) The term "firearm" means any loaded or unloaded pistol, revolver, rifle, shotgun or other weapon which will or is designed to or may readily be converted to expel a projectile by the action of expanded gases, except that it does not include a pistol or rifle powered by compressed gas.

(f) The term "fish and wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, produce, egg, or offspring thereof, or the dead body or part thereof.

(g) The term "fossil" means any remains, impression, or trace of any animal or plant of past geological ages that has been preserved, by natural processes, in the earth's crust.

(h) The term "gemstone" means a silica or igneous mineral including, but not limited to (1) geodes, (2) petrified wood, and (3) jade, agate, opal, garnet, or other mineral that when cut and polished is customarily used as jewelry or other ornament.

(i) The term "National Preserve" shall include the following areas of the National Park System:

Alagnak National Wild and Scenic River, Aniakchak National Preserve, Bering Land Bridge National Preserve, Denali National Preserve, Gates of the Arctic National Preserve, Glacier Bay National Preserve, Katmai National Preserve, Lake Clark National Preserve, Noatak National Preserve, Wrangell-St. Elias National Preserve, and Yukon-Charley National Preserve.

(j) The term "net" means a snare, wire, net, fish trap, or other implement designed to entrap fish, except a landing net.

(k) The term "off-road vehicle" means any motor vehicle designed for or capable of crosscountry travel on or immediately over land, water, sand, snow, ice, marsh, wetland or other natural terrain, except snowmobiles as defined in this chapter.

(l) The term "park areas" means lands and waters administered by the National Park Service within the State of Alaska.

(m) The term "person" means any individual, firm, corporation, society, association or partnership.

(n) The term "possession" means exercising dominion or control, with or without ownership, over weapons, traps, nets or other property.

(o) The term "public lands" means lands situated in Alaska which are federally owned lands, except—

(1) land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act (72 Stat. 339) and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;

(2) land selections of a Native Corporation made under the Alaska Native Claims Settlement Act (85 Stat. 688) which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(3) lands referred to in section 19(b) of the Alaska Native Claims Settlement Act.

(p) The term "snowmobile" means a self-propelled vehicle intended for off-road travel primarily on snow having a curb weight of not more than 1,000 pounds (450 kg), driven by a track or tracks in contact with the snow and steered by a ski or skis on contact with the snow.

(q) The term "superintendent" means any National Park Service official in charge of a park area, the Alaska Regional Director of the National Park Service, or an authorized representative of either.

(r) The term "take" or "taking" as used with respect to fish and wildlife, means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

(s) The term "temporary" means a continuous period of time not to exceed 12 months, except as specifically provided otherwise.

(t) The term "trap" means a snare, trap, mesh, or other implement designed to entrap animals other than fish.

(u) The term "unload" means there is no unexpended shell or cartridge in the chamber or magazine of a firearm; bows, crossbows and spearguns are unstrung; muzzle-loading weapons do not contain a powder charge; and any other implement capable of discharging a missile in the air or under the water does not contain a missile or similar device within the loading or discharging mechanism.

(v) The term "weapon" means a firearm, compressed gas or spring powered pistol or rifle, bow and arrow, crossbow, blow gun, speargun, hand thrown spear, slingshot, irritant gas device, explosive device, or any other implement designed to discharge missiles in the air or under the water.

§ 13.2 Applicability and scope.

(a) The regulations contained in Part 13 of this chapter are prescribed for the proper use and management of park areas in Alaska and supplement the general regulations of this chapter. The regulations contained in this chapter are applicable except as modified by Part 13.

(b) Subpart A of Part 13 contains regulations applicable to all park areas. Such regulations amend in part the general regulations contained in this chapter. The regulations in Subpart A govern use and management, including

subsistence activities, within the park areas, except as modified by Subparts B or C.

(c) Subpart B of Part 13 contains regulations applicable to subsistence activities. Such regulations apply to all park areas except Kenai Fjords National Park, Katmai National Park, Glacier Bay National Park, Klondike Gold Rush National Historical Park, Sitka National Historical Park, and parts of Denali National Park. The regulations in Subpart B amend in part the regulations contained in this chapter and Subpart A of Part 13.

(d) Subpart C of Part 13 contains special regulations for specific park areas. Such regulations amend in part the regulations contained in this chapter and Subparts A and B of Part 13.

(e) The regulations contained in Part 13 of this chapter are applicable only on federally owned lands within the boundaries of any park area. For purposes of this part, "federally owned lands" means land interests held or retained by the United States, but does not include those land interests: (1) tentatively approved, legislatively conveyed, or patented to the State of Alaska; or (2) interim conveyed or patented to a Native Corporation or person.

§ 13.3 Penalties.

Any person convicted of violating any provision of the regulations contained in Part 13, or as the same may be amended or supplemented, may be punished by a fine not exceeding $500 or by imprisonment not exceeding 6 months, or both, and shall be adjudged to pay all costs of the proceedings (16 U.S.C. 3).

§ 13.10 Snowmobiles.

The use of snowmobiles (during periods of adequate snow cover or frozen river conditions) is permitted within park areas, except where such use is prohibited or otherwise restricted by the Superintendent in accordance with the provisions of § 13.30, or as provided for in § 13.46.

§ 13.11 Motorboats.

Motorboats may be operated on all park area waters, except where such use is prohibited or otherwise restricted by the Superintendent in accordance with the provisions of § 13.30, or as provided for in § 13.46, or in 36 CFR 7.23(b)–(f).

§ 13.12 Aircraft.

(a) Aircraft may be landed and operated on lands and waters within park areas, except where such use is prohibited or otherwise restricted by the Superintendent in accordance with this section. The use of aircraft for access to or from lands and waters within a national park or monument for purposes of taking fish and wildlife for subsistence uses therein is prohibited as set forth in § 13.45.

(b) In imposing any prohibitions or restrictions on aircraft use the Superintendent shall: (1) comply with the procedures set forth in § 13.30; (2) publish notice of prohibitions or restrictions as "Notices to Airmen" issued by the Department of Transportation; and (3) publish permanent prohibitions or restrictions as a regulatory notice in the United States Government Flight Information Service "Supplement Alaska."

(c) Except as provided in paragraph (d) of this section, the owners of any aircraft downed after December 2, 1980, shall remove the aircraft and all component parts thereof in accordance with procedures established by the Superintendent. In establishing a removal procedure, the Superintendent is authorized to: (1) establish a reasonable date by which aircraft removal operations must be complete; and (2) determine times and means of access to and from the downed aircraft.

(d) The Superintendent may waive the requirements of § 13.12(c) when he/she determines that: (1) the removal of downed aircraft would constitute an unacceptable risk to human life; or (2) the removal of a downed aircraft would result in extensive resource damage; or (3) the removal of a downed aircraft is otherwise impracticable or impossible.

(e) Salvaging, removing, possessing, or attempting to salvage, remove or possess any downed aircraft or component parts thereof is prohibited, except in accordance with a removal procedure established under subsection (c); *provided, however,* that the owner or an authorized representative thereof may remove valuable component parts from a downed aircraft at the time of rescue without a permit.

§ 13.13 Off-road vehicles.

(a) The use of off-road vehicles in locations other than established roads and parking areas is prohibited, except on routes or in areas designated by the Superintendent or subject to a valid access permit as prescribed in §§ 13.14, 13.15, and 13.31. Such designations shall be made in accordance with procedures in this section.

(b)(1) In determining whether to designate a route or area for off-road travel, the Superintendent shall consider the criteria contained in Section 3 of Executive Order 11644, as amended (37 FR 2877), and such factors as other public uses, public health and safety, environmental and resource protection, research activities, protection of historic or scientific values, subsistence values, endangered or threatened species conservation and other management considerations necessary to ensure that off-road vehicle use is compatible with the purposes for which the park area was established.

(2) Route or area designations shall be published in the **Federal Register.**

(3) Notice of routes or areas on which off-road travel is permitted shall be in accordance with the provisions of § 13.30(f).

(4) The closure or restrictions on use of designated routes or areas to off-road vehicles use shall be in accordance with the provisions of § 13.30.

§ 13.14 Access to inholdings.

(a) *Purpose.* Where adequate and feasible access is otherwise restricted pursuant to the provisions of this part (e.g. §§ 13.10, 13.13, 13.30), it is the purpose of this section to ensure access across park areas for any person who has a valid property or occupancy interest in lands. These regulations are not intended to grant an interest in or otherwise alienate Federal property, but rather to provide specific relief from other regulatory provisions that may unreasonably restrict access to non-federal property.

(b) *Application and Administration.* (1) Applications for a permit designating methods and routes of access across park areas not affirmatively provided for in this part shall be submitted to the Superintendent having jurisdiction over the affected park area as specified under § 13.31.

(2) The access permit application shall contain the name and address of the applicant, documentation of the relevant property or occupancy interest held by the applicant, a map or physical description of the relevant property or occupancy interest, a map or physical description of the desired route of access, a description of the desired method of access, the purpose for which access is sought, and such other information deemed necessary by the Superintendent for consideration of the application.

(3) The Superintendent shall specify in a renewable permit, adequate and feasible routes and methods of access across park areas for any person who meets the criteria of paragraph (a) of this section. The Superintendent shall designate the routes and methods desired by the applicant unless it is determined that:

(i) The route or method of access would cause significant adverse impacts on natural or other values of the park

area, and adequate and feasible access otherwise exists; or

(ii) The route or method of access would jeopardize public health and safety, and adequate and feasible access otherwise exists.

(4) If the Superintendent makes one of the findings described in paragraph (b)(3) of this section, he/she shall specify such other alternate methods and routes of access as will provide adequate and feasible access to the applicant, while minimizing damage to natural and other values of the park area.

(5) Routes and methods of access permitted pursuant to this section shall be available for use by guests and invitees of the permittee.

(c) *Special Information Requirements for Access for Mineral Exploration or Development.*

(1) *Applicability.* This subsection is applicable only when a person requires a permit for access across (*e.g.* situations where §§ 13.10–13.13 do not already provide adequate and feasible access) a park area to non-federally owned lands or interests therein or valid unpatented mining claims located within the exterior boundaries of a park area, for mineral exploration or development purposes.

(2) *Access Permit Application.* Any person described in paragraph (c)(1) of this section shall apply to the Superintendent for an access permit and shall provide, in addition to the information specified in paragraph (b)(2), a description of the proposed mineral operations and all steps by the applicant necessary to comply with applicable Federal, State and local laws and regulations. The information requirements of 36 CFR 9.9 and 9.36 shall not be applicable.

(3) *Permit approval.* The Superintendent is directed to utilize the permit granting standards of paragraph (b) of this section to grant such adequate and feasible access for economic purposes, while minimizing damage to the natural and other values of the park area, in lieu of the access standards of 36 CFR Part 9.

(4) Whenever an unpatented mining claim is located within the exterior boundaries of a park area, the person shall also submit the Supplemental Claim Information Statement described in 36 CFR 9.9(a)(5) in an access permit application.

(d) The establishment or modification of a route or method of access which requires the construction of permanent improvements, including, but not limited to, the construction of concrete bridges or runways is prohibited unless authorized pursuant to the provisions of 36 CFR Part 14.

§ 13.15 Temporary access.

(a) *Applicability.* This section is applicable to State and private landowners who desire temporary access across a park area for the purposes of survey, geophysical, exploratory permits and other temporary uses of such nonfederal lands, and where such temporary access is not affirmatively provided for in §§ 13.10–13.14 of this part. State and private landowners meeting the criteria of § 13.14(a) are directed to utilize the procedures of § 13.14 to obtain temporary access.

(b) *Temporary Access for Mineral Exploration.* (1) *Application.* A landowner requiring temporary access across a park area for mineral survey, geophysical, exploratory or similar mineral activities shall apply to the Superintendent for an access permit and shall provide the relevant information contained in § 13.14(c)(2), concerning the planned access and mineral exploration activities.

(2) *Permit Standards, Stipulations and Conditions.* The Superintendent shall grant the desired temporary access whenever he/she determines that such access will not result in permanent harm to park area resources. The Superintendent shall include in any permit granted such stipulations and conditions on temporary access as are necessary to ensure that the access granted would not be inconsistent with the purposes for which the park area was reserved and to ensure that no permanent harm will result to park area resources.

(c) *Temporary Access for Other Purposes.* (1) *Application.* A landowner requiring access across a park area for survey, geophysical, exploratory or other temporary uses unrelated to mineral exploration shall apply to the Superintendent for an access permit. The applicant shall state the proposed method and route of access, and what temporary use the applicant proposes to undertake on his/her land.

(2) *Permit Standards, Stipulations and Conditions.* The permit granting standards, stipulations and conditions of subsection (b)(2) shall be applicable to permits granted under this subsection.

(d) *Definition.* For the purposes of this section, "temporary access" shall mean limited, short-term, non-successive access, which does not require permanent facilities for access, to undeveloped State or private lands.

§ 13.16 Cabins and other structures.

(a) *Purpose.* It is the purpose of this section to provide procedures and guidance for those occupying and using existing cabins and those wishing to construct new cabins within park areas.

(b) This section applies to all park areas in Alaska except Klondike Gold Rush National Historical Park and Sitka National Historical Park.

(c) *Existing Cabins or Other Structures.* (1) Cabins or other structures existing prior to December 18, 1973, may be occupied and used by the claimants to these structures pursuant to a nontransferable, renewable permit. This use and occupancy shall be for terms of five years; *provided, however,* that the claimant to the structure, by application:

(i) Reasonably demonstrates by affidavit, bill of sale or other documentation proof of possessory interest or right of occupancy in the cabin or structure;

(ii) Submits an acceptable photograph or sketch which accurately depicts the cabin or structure and a map showing its geographic location;

(iii) Agrees to vacate and remove all personal property from the cabin or structure upon expiration of the permit;

(iv) Acknowledges in the permit that he/she has no interest in the real property on which the cabin or structure is located; and

(v) Submits a listing of the names of all immediate family members residing in the cabin or structure.

Permits issued under the provisions of this paragraph shall be renewed every five years until the death of the last immediate family member of the claimant residing in the cabin or structure under permit. Renewal will occur unless the Superinendent determines after notice and hearing, and on the basis of substantial evidence in the administrative record as a whole, that the use under the permit is causing or may cause significant detriment to the principal purposes for which the park area was established. The Superintendent's decision may be appealed pursuant to the provisions of 43 CFR 4.700.

(2) Cabins or other structures, construction of which began between December 18, 1973, and December 1, 1978, may be used and occupied by the claimant to these structures pursuant to a nontransferable, nonrenewable permit. This use and occupancy shall be for a maximum term of 1 year; *provided, however,* that the claimant, by application, complies with § 13.16(c)(1)(i) through (iv) above. Permits issued under the provisions of this paragraph may be extended by the

Superintendent, subject to reasonable regulations, for a period not to exceed one year for good cause where extraordinary circumstances prevent vacating the cabin or structure and removing all personal property within the original term of the permit.

(3) Cabins or other structures, construction of which began after December 1, 1978, shall not be available for use and occupancy.

(4) Cabins or other structures, not under permit, shall be used only for official government business; *provided, however,* that during emergencies involving the safety of human life, or where designated for public use by the Superintendent through the posting of signs, these cabins may be used by the general public.

d. *New Cabins or Other Structures Necessary for Subsistence Uses or Otherwise Authorized by Law.* The Superintendent may issue a permit under such conditions as he/she may prescribe for the construction, reconstruction, temporary use, occupancy, and maintenance of new cabins or other structures when he/she determines that the use is necessary to accommodate reasonably subsistence uses or is otherwise authorized by law. In determining whether to permit the use, occupancy, construction, reconstruction or maintenance of cabins or other structures, the Superintendent shall be guided by factors such as other public uses, public health and safety, environmental and resource protection, research activities, protection of historic or scientific values, subsistence uses, endangered or threatened species conservation and other management considerations necessary to ensure that the activities authorized pursuant to this section are compatible with the purposes for which the park area was established.

(e) *Existing Cabin Leases or Permits.* Nothing in this section shall preclude the renewal or continuation of valid leases or permits in effect as of December 2, 1980, for cabins, homesites, or similar structures on federally owned lands. Unless the Superintendent issues specific findings, following notice and an opportunity for the leaseholder or permittee to respond, that renewal or continuation of such valid permit or lease constitutes a direct threat or a significant impairment to the values for which the park area was established, he/she shall renew such valid leases or permits upon their expiration in accordance with the provisions of the original lease or permit subject to such reasonable regulations as he/she prescribe in keeping with the management objectives of the park area. Subject to the provisions of the original lease or permit, nothing in this paragraph shall necessarily preclude the Superintendent from transferring such a lease or permit to another person at the election or death of the original permittee or leasee.

§ 13.17 Camping and picnicking.

(a) *Camping.* Camping is permitted in park areas except where such use is prohibited or otherwise restricted by the Superintendent in accordance with the provisions of § 13.30.

(b) *Picnicking.* Picnicking is permitted in park areas except where such activity is prohibited by the posting of appropriate signs.

§ 13.18 Weapons, traps and nets.

(a) This section applies to all park areas in Alaska except Klondike Gold Rush National Historical Park and Sitka National Historical Park.

(b) Firearms may be carried within park areas, except where such carrying is prohibited or otherwise restricted pursuant to § 13.30.

(c) Traps, bows and other implements authorized by State and Federal law for the taking of fish and wildlife may be carried within National Preserves only during those times when the taking of fish and wildlife is authorized by applicable law or regulation.

(d) In addition to the authorities provided in paragraphs (b) and (c) of this section, weapons (other than firearms) traps and nets may be possessed within park areas provided such weapons, traps or nets are within or upon a device or animal used for transportation and are unloaded and cased or otherwise packed in such a manner as to prevent their ready use while in a park area.

(e) Nothwithstanding the provisions of this section, local rural residents who are authorized to engage in subsistence uses, including the taking of wildlife pursuant to § 13.48 of this part, may use, possess, or carry traps, nets and other weapons in accordance with applicable State and Federal laws.

§ 13.19 Preservation of natural features.

(a) *Renewable Resources.* The gathering or collecting, by hand and for personal use only, of the following renewable resources is permitted:

(1) Natural plant food items, including fruits, berries and mushrooms, but not including threatened or endangered species;

(2) Driftwood and uninhabited seashells;

(3) Such plant materials and minerals as are essential to the conduct of traditional ceremonies by Native Americans; and

(4) Dead or downed wood for use in fires within park areas.

(b) *Rocks and Minerals.* Surface collection, by hand and for personal use only, of rocks and minerals is permitted; *provided, however,* that (1) collection of gold, silver, platinum, gemstones and fossils is prohibited, and (2) no collection method may result in disturbance of the ground surface.

(c) *Closure and Notice.* Under conditions where it is found that significant adverse impact on park resources, wildlife populations, subsistence uses, or visitor enjoyment of resources will result, the Superintendent shall prohibit the gathering or otherwise restrict the collecting of these items. Portions of a park area in which closures or restrictions apply shall be (1) published in at least one newspaper of general circulation in the State and designated on a map which shall be available for public inspection in the office of the Superintendent, or (2) designated by the posting of appropriate signs, or (3) both.

(d) *Subsistence.* Nothing in this section shall apply to the taking of renewable resources by subsistence users.

§ 13.20 Taking of fish and wildlife.

(a) *Subsistence.* Nothing in this section shall apply to the taking of fish and wildlife for subsistence uses.

(b) *Fishing.* Fishing is permitted in all park areas in accordance with applicable State and Federal law and such laws are hereby adopted and made a part of these regulations to the extent they are not inconsistent with § 2.13 of this chapter. With respect to the Cape Krusenstern National Monument, the Malaspina Glacier Forelands area of the Wrangell-St. Elias National Preserve, and the Dry Bay area of Glacier Bay National Preserve, the exercise of valid commercial fishing rights or privileges obtained pursuant to existing law—including any use of park area lands for campsites, cabins, motorized vehicles, and aircraft landings on existing airstrips which is directly incident to the exercise of such rights or privileges—may continue; *provided, however,* that the Superintendent may restrict the use of park area lands directly incident to the exercise of these rights or privileges if he/she determines, after conducting a public hearing in the affected locality, that such use of park area lands constitutes a significant expansion of the use of park area lands beyond the level of such use during 1979.

(c) *Hunting and Trapping.* Hunting and trapping are permitted in all

National Preserves in accordance with applicable State and Federal law, and such laws are hereby adopted and made a part of these regulations; *provided, however,* that engaging in trapping activities, as the employee or agent of another person is prohibited.

(d) *Closures and Restrictions.* The Superintendent may prohibit or restrict the taking of fish or wildlife in accordance with the provisions of § 13.30. Except in emergency conditions, such restrictions shall take effect only after consultation with the appropriate State agency having responsibility over fishing, hunting, or trapping and representatives of affected users.

§ 13.21 Unattended or abandoned property.

(a) This section applies to all park areas in Alaska except Klondike Gold Rush National Historical Park and Sitka National Historical Park.

(b) Leaving any snowmobile, vessel, off-road vehicle or other personal property unattended for longer than 12 months, without prior permission of the Superintendent is prohibited, and any property so left may be impounded by the Superintendent.

(c) The Superintendent may (1) designate areas where personal property may not be left unattended for any time period, (2) establish limits on the amount, and type of personal property that may be left unattended, (3) prescribe the manner in which personal property may be left unattended, or (4) establish limits on the length of time personal property may be left unattended. Such designations and restrictions shall be (1) published in at least one newspaper of general circulation within the State, posted at community post offices within the vicinity affected, made available for broadcast on local radio stations in a manner reasonably calculated to inform residents in the affected community and designated on a map which shall be available for public inspection at the office of the Superintendent, or (2) designated by the posting of appropriate signs or (3) both.

(d) In the event unattended property interferes with the safe and orderly management of a park area or is causing damage to the resources of the area, it may be impounded by the Superintendent at any time.

§ 13.22 Subsistence and land use decisions.

(a) In determining whether to lease or otherwise permit the use or occupancy of park area lands under any provision of the regulations of this part or other law authorizing such actions, the Alaska Regional Director or his/her designee shall evaluate the effect of such use or occupancy on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use or occupancy of park area lands needed for subsistence purposes. No such lease, permit, or other use or occupancy of such lands which would significantly restrict subsistence uses shall be effected until the Alaska Regional Director or his/her designee—

(1) Gives notice to the appropriate State agency and the appropriate local committees and regional councils established pursuant to section 805 of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487,

(2) Gives notice of, and holds, a hearing in the vicinity of the area involved, and

(3) Determines that (i) such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of park area lands, (ii) the proposed activity will involve the minimal amount of park area lands necessary to accomplish the purposes of such use or occupancy, and (iii) reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.

(b) If an environmental impact statement pursuant to section 102(2)(C) of the National Environmental Policy Act is required with respect to the proposed use or occupancy, the notice, hearing, and findings required by subsection (A) of this section shall be provided as part of such environmental impact statement process.

(c) After compliance with the procedural requirements of this section and other applicable law, the Alaska Regional Director or his/her designee may manage park area lands for any of those uses or purposes authorized by law.

§ 13.30 Closure procedures.

(a) *Authority.* The Superintendent may close an area or restrict an activity on an emergency, temporary, or permanent basis.

(b) *Criteria.* In determining whether to close an area or restrict an activity on an emergency basis, the Superintendent shall be guided by factors such as public health and safety, resource protection, protection of historic or scientific values, subsistence uses, endangered or threatened species conservation, and other management considerations necessary to ensure that the activity or area is being managed in a manner compatible with the purposes for which the park area was established.

(c) *Emergency Closures.* (1) Emergency closures or restrictions relating to the use of aircraft, snowmobiles or motorboats, shall be made after notice and hearing; (2) emergency closures or restrictions relating to the taking of fish and wildlife shall be accompanied by notice and hearing; (3) other emergency closures shall become effective upon notice as prescribed in § 13.30(f); and (4) no emergency closure or restriction shall extend for a period exceeding 60 days, nor may it be extended.

(d) *Temporary closures or restrictions.* (1) Temporary closures or restrictions relating to the use of aircraft, snowmobiles or motorboats, or to the taking of fish and wildlife, shall not be effective prior to notice and hearing in the vicinity of the area(s) directly affected by such closures or restrictions; (2) other temporary closures shall be effective upon notice as prescribed in § 13.30(f); (3) temporary closures or restrictions shall not extend for a period exceeding 12 months and may not be extended.

(e) *Permanent closures or restrictions.* Permanent closures or restrictions shall be published as rulemaking in the **Federal Register** with a minimum public comment period of 60 days.

(f) *Notice.* Emergency, temporary and permanent closures or restrictions shall be (1) published in at least one newspaper of general circulation in the State and in at least one local newspaper if appropriate, posted at community post offices within the vicinity affected, made available for broadcast on local radio stations in a manner reasonably calculated to inform residents in the affected vicinity, and designated on a map which shall be available for public inspection at the office of the Superintendent and other places convenient to the public; or (2) designated by the posting of appropriate signs; or (3) both.

(g) *Openings.* In determining whether to open an area to public use or activity otherwise prohibited, the Superintendent shall first provide notice as prescribed in paragraph (f) of this section, and shall, upon request, hold a hearing in the affected vicinity prior to making a final determination.

§ 13.31 Permits.

(a) *Application.* (1) Application for a permit required by any section of this part shall be submitted to the Superintendent having jurisdiction over the affected park area, or in the absence of the Superintendent, the Regional Director.

(2) The Superintendent shall promptly acknowledge, in writing, receipt of all requests for permits, access routes, or other requirements of this section.

(b) *Denial and appeal procedures.* (1) An applicant whose application for a permit, required pursuant to this part, has been denied by the Superintendent has the right to have the application reconsidered by the Regional Director by contacting him/her within sixty (60) days of the issuance of the denial. For purposes of reconsideration, the permit applicant shall present the following information:

(i) Any statement or documentation, in addition to that included in the initial application, which demonstrates that the applicant satisfies the criteria set forth in the section under which the permit application is made.

(ii) The basis for the permit applicant's disagreement with the Superintendent's findings and conclusions; and

(iii) Whether or not the permit applicant requests an informal hearing before the Regional Director, and if the permit applicant does request a hearing,

(A) A description of any information, in addition to that included in the initial application and any written materials presented to the Regional Director, which the permit applicant intends to present at the hearing;

(B) The name, addresses and brief description of the proposed presentation of any person which the applicant intends to present at the hearing on his behalf, and the name and addresses of any persons he/she would like to question at the hearing.

(2) If, after examining the information submitted by the applicant in support of a request for an oral hearing, it is clear that the applicant would present relevant information which is substantially distinguishable from or supplementary to the information presented to the Superintendent, the Regional Director shall grant the permit applicant's request for a hearing. After consideration of the written materials and oral hearing, if granted, and within a reasonable period of time, the Regional Director shall affirm, reverse, or modify the denial of the Superintendent and shall set forth in writing the basis for the decision. A copy of the decision shall be forwarded promptly to the applicant and shall constitute final agency action.

Subpart B—Subsistence

§ 13.40 Purpose and policy.

(a) Consistent with the management of fish and wildlife in accordance with recognized scientific principles and the purposes for which each park area was established, designated, or expanded by the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, the purpose of this subpart is to provide the opportunity for local rural residents engaged in a subsistence way of life to do so pursuant to applicable State and Federal law.

(b) Consistent with sound management principles, and the conservation of healthy populations of fish and wildlife, the utilization of park areas is to cause the least adverse impact possible on local rural residents who depend upon subsistence uses of the resources of the public lands in Alaska.

(c) Nonwasteful subsistence uses of fish, wildlife and other renewable resources by local rural residents shall be the priority consumptive uses of such resources over any other consumptive uses permitted within park areas pursuant to applicable State and Federal law.

(d) Whenever it is necessary to restrict taking of populations of fish and wildlife in order to assure the continued viability of such populations or the continuation of subsistence uses of such populations, after consultation with the State and notice of public hearing in the affected local vicinity, such populations shall be allocated in accordance with a subsistence priority system based on the following criteria:

(1) Customary and direct dependence upon the resource as the mainstay of one's livelihood;

(2) Local residency; and

(3) Availability of alternative resources.

(e) Nothing in this Subpart shall be construed as permitting a level of subsistence use of fish and wildlife within park areas to be inconsistent with the conservation of healthy populations, and within a national park or monument to be inconsistent with the conservation of natural and healthy populations, of fish and wildlife.

§ 13.41 Applicability.

Subsistence uses by local rural residents are allowed pursuant to the regulations of this Subpart in the following park areas:

(a) In national preserves;

(b) In Cape Krusenstern National Monument and Kobuk Valley National Park;

(c) Where such uses are traditional (as may be further designated for each park or monument in Subpart C of this part) in Aniakchak National Monument, Gates of the Arctic National Park, Lake Clark National Park, Wrangell-St. Elias National Park, and the Denali National Park addition.

§ 13.42 Definitions.

(a) *Local rural resident:* (1) As used in this part, the term "local rural resident" shall mean either of the following:

(i) Any person who has his/her primary, permanent home within the resident zone as defined by this section, and whenever absent from this primary, permanent home, has the intention of returning to it. Factors demonstrating the location of a person's primary, permanent home may include, but are not limited to, the permanent address indicated on licenses issued by the State of Alaska Department of Fish and Game, driver's license, and tax returns, and the location of registration to vote.

(ii) Any person authorized to engage in subsistence uses in a park area by a subsistence permit issued pursuant to §§ 13.44 and 13.51 of this part.

(b) *Resident zone:* As used in this part, the term "resident zone" shall mean the area within, and the communities and areas near, a park area in which persons who have customarily and traditionally engaged in subsistence uses within the park area permanently reside. The communities and areas near a park area included as part of its resident zone shall be determined pursuant to § 13.43 of this part and listed for each park area in Subpart C of this part.

(c) *Subsistence uses:* As used in this part, the term "subsistence uses" shall mean the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation; for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption; for barter or sharing for personal or family consumption; and for customary trade. For the purposes of this paragraph, the term—

(1) "Family" shall mean all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

(2) "Barter" shall mean the exchange of fish or wildlife or their parts taken for subsistence uses—

(i) for other fish or game or their parts; or

(ii) For other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature; and

(3) "Customary trade" shall be limited to the exchange of furs for cash.

§ 13.43 Determination of resident zones.

(a) As determined by available information and research on subsistence uses in the area, a resident zone shall include—

(1) The area within a park area, and

(2) The communities and areas near a park which contain preponderant concentrations of local rural residents who, without using aircraft as a means of access for purposes of taking fish or wildlife for subsistence uses (except in extraordinary cases where no resaonable alternative existed), have customarily and traditionally engaged in subsistence uses within a park area.

(b) After notice and comment, including public hearing in the affected local vicinity, a community or area near a park area may be—

(1) Added to a resident zone, or

(2) Deleted from a resident zone, when available information and research demonstrates that such community or area does or does not meet the criteria set forth in paragraph (a) of this section, as appropriate.

§ 13.44 Subsistence permits for persons whose primary, permanent home is outside a resident zone.

(a) Any rural resident whose primary, permanent home is outside the boundaries of a resident zone of a park area may apply to the appropriate Superintendent pursuant to the procedures set forth in § 13.51 for a subsistence permit authorizing the permit applicant to engage in subsistence uses within the park area. The Superintendent shall not grant the permit unless the permit applicant demonstrates that,

(1) Without using aircraft as a means of access for purposes of taking fish and wildlife for subsistence uses, the applicant has (or is a member of a family which has) customarily and traditionally engaged in subsistence uses within a park area; or

(2) The applicant is a local rural resident within a resident zone for another park area, or meets the requirements of paragraph (a)(1) of this section for another park area, and available research shows a pattern of subsistence uses (without use of an aircraft as a means of access for purposes of taking fish and wildlife for subsistence uses) between the park area previously utilized by the permit applicant and the park area for which the permit applicant seeks a subsistence permit.

(b) In order to provide for subsistence uses pending application for and receipt of a subsistence permit, until July 15, 1981, any rural resident whose primary permanent home is outside the boundaries of a resident zone of a park area and who meets the criteria for a subsistence permit set forth in paragraph (a) of this section may engage in subsistence uses in the park area without a permit in accordance with applicable State and Federal law. Effective July 15, 1981, however, such rural resident must have a subsistence permit as required by paragraph (a) of this section in order to engage in subsistence uses in the park area.

(c) For purposes of this section, the term "family" shall mean all local rural residents related by blood, marriage, or adoption, or any person living within a local rural resident's household on a permanent basis.

§ 13.45 Prohibition of aircraft use.

(a) Notwithstanding the provisions of § 13.12 of this part, the use of aircraft for access to or from lands and waters within a national park or monument for purposes of taking fish or wildlife for subsistence uses within the national park or monument is prohibited except as provided in this section.

(b) *Exceptions.* (1) In extraordinary cases where no reasonable alternative exists, the Superintendent shall allow, pursuant to the terms and conditions of a permit, a local rural resident who permanently resides in an "exempted community" to use aircraft for access to or from lands and water within a national park or monument for purposes of taking fish or wildlife for subsistence uses therein.

(i) A community shall qualify as an "exempted community" if, because of the location of the subsistence resources upon which it depends and the extraordinary difficulty of surface access to these subsistence resources, the local rural residents who permanently reside in the community have no reasonable alternative to aircraft use for access to the subsistence resources.

(ii) A community which is determined, after notice and comment (including public hearing in the affected local vicinity), to meet the description of an "exempted community" set forth in paragraph (b)(1) of this section shall be included in the appropriate special regulations for each park and monument set forth in Subpart C of this part.

(iii) A community included as an "exempted community" in Subpart C of this part may be deleted therefrom upon a determination, after notice and comment (including public hearing in the affected local vicinity) that it does not meet the description of an "exempted community" set forth in paragraph (b)(1) of this section.

(2) Any local rural resident aggrieved by the prohibition on aircraft use set forth in this section may apply for an exception to the prohibition pursuant to the procedures set forth in § 13.51. In extraordinary cases where no reasonable alternative exists, the Superintendent may grant the exception upon a determination that the location of the subsistence resources depended upon and the difficulty of surface access to these resources, or other emergency situation, requires such relief.

(c) Nothing in this section shall prohibit the use of aircraft for access to lands and waters within a national park or monument for purposes of engaging in any activity allowed by law other than the taking of fish and wildlife. Such activities include, but are not limited to, transporting supplies.

§ 13.46 Use of snowmobiles, motorboats, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses.

(a) Notwithstanding any other provision of this chapter, the use of snowmobiles, motorboats, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses is permitted within park areas except at those times and in those areas restricted or closed by the Superintendent.

(b) The Superintendent may restrict or close a route or area to use of snowmobiles, motorboats, or other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses if the Superintendent determines that such use is causing or may cause adverse impact on public health and safety, resource protection, protection of historic or scientific values, subsistence uses, conservation of endangered or threatened species, or the purposes and values for which the park area was established.

(c) No restrictions or closures shall be imposed without notice and a public hearing in the affected vicinity. In the case of emergency situations, restrictions or closures shall not exceed sixty (60) days and shall not be extended unless the Superintendent establishes, after notice and public hearing in the affected vicinity, that such extension is justified according to the factors set forth in paragraph (b) of this section. Notice of the proposed or emergency restrictions or closures and the reasons therefor shall be published in at least one newspaper of general circulation within the State and in at least one local newspaper if appropriate, and information about such proposed or emergency actions shall

also be made available for broadcast on local radio stations in a manner reasonably calculated to inform local rural residents in the affected vicinity. All restrictions and closures shall be designated on a map which shall be available for public inspection at the office of the Superintendent of the affected park area and the post office or postal authority of every affected community within or near the park area, or by the posting of signs in the vicinity of the restrictions or closures, or both.

(d) Motorboats, snowmobiles, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses shall be operated (1) in compliance with applicable State and Federal law, (2) in such a manner as to prevent waste or damage to the park areas, and (3) in such a manner as to prevent the herding, harrassment, hazing or driving of wildlife for hunting or other purposes.

(e) At all times when not engaged in subsistence uses, local rural residents may use snowmobiles, motorboats, and other means of surface transportation in accordance with §§ 13.10, 13.11 and 13.13 of this chapter, respectively.

§ 13.47 Subsistence fishing.

Fish may be taken by local rural residents for subsistence uses in compliance with applicable State and Federal law, including the provisions of §§ 2.13 and 13.22 of this chapter, provided, however, that local rural residents in park areas may fish with a net, seine, trap, or spear where permitted by State law. To the extent consistent with the provisions of this chapter, applicable State laws and regulations governing the taking of fish which are now or will hereafter be in effect are hereby incorporated by reference as a part of these regulations.

§ 13.48 Subsistence hunting and trapping.

Local rural residents may hunt and trap wildlife for subsistence uses in compliance with applicable State and Federal law. To the extent consistent with the provisions of this chapter, applicable State laws and regulations governing the taking of wildlife which are now or will hereafter be in effect are hereby incorporated by reference as a part of these regulations.

§ 13.49 Subsistence use of timber and plant material.

(a) Notwithstanding any other provision of this part, the noncommercial cutting of live standing timber by local rural residents for appropriate subsistence uses, such as firewood or house logs, may be permitted in accordance with the specifications of a permit issued by the Superintendent of the affected park area if such cutting is determined to be compatible with the purposes for which the park area was established.

(b) The noncommercial gathering by local rural residents of fruits, berries, mushrooms, and other plant materials for subsistence uses, and the noncommercial gathering of dead or downed timber for firewood, shall be allowed without a permit.

(c)(1) Notwithstanding any other provision of this part, the Superintendent, after notice and public hearing in the affected vicinity, may temporarily close all or any portion of a park area to subsistence uses of a particular plant population only if necessary for reasons of public safety, administration, or to assure the continued viability of such population. For the purposes of this section, the term "temporarily" shall mean only so long as reasonably necessary to achieve the purposes of the closure.

(2) If the Superintendent determines that an emergency situation exists and that extraordinary measures must be taken for public safety or to assure the continued viability of a particular plant population, the Superintendent may immediately close all or any portion of a park area to the subsistence uses of such population. Such emergency closure shall be effective when made, shall be for a period not to exceed sixty (60) days, and may not subsequently be extended unless the Superintendent establishes, after notice and public hearing in the affected vicinity, that such closure should be extended.

(3) Notice of administrative actions taken pursuant to this section, and the reasons justifying such actions, shall be published in at least one newspaper of general circulation within the State and at least one local newspaper if appropriate, and information about such actions and reasons also shall be made available for broadcast on local radio stations in a manner reasonably calculated to inform local rural residents in the affected vicinity. All closures shall be designated on a map which shall be available for public inspection at the office of the Superintendent of the affected park area and the post office or postal authority of every affected community within or near the park area, or by the posting of signs in the vicinity of the restrictions, or both.

§ 13.50 Closure to subsistence uses of fish and wildlife.

(a) Notwithstanding any other provision of this part, the Superintendent, after consultation with the State and adequate notice and public hearing in the affected vicinity, may temporarily close all or any portion of a park area to subsistence uses of a particular fish or wildlife population only if necessary for reasons of public safety, administration, or to assure the continued viability of such population. For purposes of this section, the term "temporarily" shall mean only so long as reasonably necessary to achieve the purposes of the closure.

(b) If the Superintendent determines that an emergency situation exists and that extraordinary measures must be taken for public safety or to assure the continued viability of a particular fish or wildlife population, the Superintendent may immediately close all or any portion of a park area to the subsistence uses of such population. Such emergency closure shall be effective when made, shall be for a period not to exceed sixty (60) days, and may not subsequently be extended unless the Superintendent establishes, after notice and public hearing in the affected vicinity, that such closure should be extended.

(c) Notice of administrative actions taken pursuant to this section, and the reasons justifying such actions, shall be published in at least one newspaper of general circulation within the State and in at least one local newspaper if appropriate, and information about such actions and reasons also shall be made available for broadcast on local radio stations in a manner reasonably calculated to inform local rural residents in the affected vicinity. All closures shall be designated on a map which shall be available for public inspection at the office of the Superintendent of the affected park area and the post office or postal authority of every affected community within or near the park area, or by the posting of signs in the vicinity of the restrictions, or both.

§ 13.51 Application procedures for subsistence permits and aircraft exceptions.

(a) Any person applying for the subsistence permit required by § 13.44(a) of this Subpart, or the exception to the prohibition on aircraft use provided by § 13.45(b)(2) of this Subpart, shall submit his/her application to the Superintendent of the appropriate park area. If the applicant is unable or does not wish to submit the application in written form, the Superintendent shall provide the applicant an opportunity to present the application orally and shall keep a record of such oral application. Each application must include (1) a statement which acknowledges that providing false information in support of the application is a violation of Section

1001 of Title 18 of the United States Code, and (2) additional statements or documentation which demonstrates that the applicant satisfies the criteria set forth in § 13.44(a) for a subsistence permit or § 13.345(b)(2) for the aircraft exception, as appropriate. Except in extraordinary cases for good cause shown, the Superintendent shall decide whether to grant or deny the application in a timely manner not to exceed sixty (60) days following the receipt of the completed application. Should the Superintendent deny the application, he/she shall include in the decision a statement of the reasons for the denial and shall promptly forward a copy to the applicant.

(b) An applicant whose application has been denied by the Superintendent has the right to have his/her application reconsidered by the Alaska Regional Director by contacting the Regional Director within sixty (60) days of the issuance of the denial. The Regional Director may extend the sixty (60) day time limit to initiate a reconsideration for good cause shown by the applicant. For purposes of reconsideration, the applicant shall present the following information:

(1) Any statement or documentation, in addition to that included in the initial application, which demonstrates that the applicant satisfies the criteria set forth in paragraph (a) of this section;

(2) The basis for the applicant's disagreement with the Superintendent's findings and conclusions; and

(3) Whether or not the applicant requests an informal hearing before the Regional Director, and if the applicant does request a hearing.

(i) A description of any information, in addition to that included in the initial application and any written materials presented to the Regional Director, which the applicant intends to present at the hearing;

(ii) The names, addresses, and brief description of the proposed presentation of any person which the applicant intends to present at the hearing on his/her behalf, and the names and addresses of any persons he/she would like to question at the hearing.

(c) If, after examining the information submitted by the applicant in support of a request for an oral hearing, it is clear that the applicant would present relevant information which is substantially distinguishable from or supplementary to the information presented to the Superintendent, the Regional Director shall grant the applicant's request for a hearing. After consideration of the written materials and oral hearing, if granted, and within a reasonable period of time, the Regional Director shall affirm, reverse, or modify the denial of the Superintendent and shall set forth in writing the basis for the decision. A copy of the decision shall be forwarded promptly to the applicant and shall constitute final agency action.

Subpart C—Special Regulations—Specific Park Areas in Alaska

§ 13.60 Aniakchak National Monument and Preserve.

(a) *Subsistence.* (1) *Resident Zone.* The following communities and areas are included within the resident zone for Aniakchak National Monument and Preserve:

Chignik.
Chignik Lagoon.

§ 13.61 Bering Land Bridge National Preserve.

(a) *Subsistence.*

(1) *Resident Zone.* The following communities and areas are included within the resident zone for Bering Land Bridge National Preserve:

Buckland
Deering
Shishmaref
Wales

(b) *Off-Road Vehicles.* The use of off-road vehicles for purposes of reindeer grazing may be permitted in accordance with a permit issued by the Superintendent.

§ 13.62 Cape Krusenstern National Monument.

(a) *Subsistence.* (1) *Resident Zone.* The following communities and areas are included within the resident zone for Cape Krusenstern National Monument:

Kivalina
Kotzebue
Noatak

§ 13.63 Denali National Park and Preserve.

(a) *Subsistence.* (1) *Resident Zone.* The following communities and areas are included within the resident zone for Denali National Park and Preserve:

Cantwell
Minchumina
Telida

§ 13.64 Gates of the Arctic National Park and Preserve.

(a) *Subsistence.* (1) *Resident Zone.* The following communities and areas are included within the resident zone for Gates of the Arctic National Park and Preserve:

Alatna
Allakaket
Ambler
Anaktuvuk
Bettles
Kobuk
Shungnak

(2) *Aircraft Use.* In extraordinary cases where no reasonable alternative exists, local rural residents who permanently reside in the following exempted community(ies) may use aircraft for access to lands and waters within the park for subsistence purposes in accordance with a permit issued by the Superintendent:

Anaktuvuk

§ 13.65 Glacier Bay National Park and Preserve. [Reserved]

§ 13.66 Katmai National Park and Preserve.

(a) *Subsistence.* (1) *Resident Zone.* The following communities and areas are included within the resident zone for Katmai National Park and Preserve:

Egigik
Igiugig
Kakhonak
Levelock

§ 13.67 Kenai Fjords National Park.

(a) *Subsistence.* Subsistence uses are prohibited in, and the provisions of Subpart B of this part shall not apply to, Kenai Fjords National Park.

§ 13.68 Kobuk Valley National Park.

(a) *Subsistence.* (1) *Resident Zone.* The following communities and areas are included within the resident zone for Kobuk Valley National Park:

Ambler
Kiana
Kobuk
Noorvik
Shungnak

§ 13.69 Lake Clark National Park and Preserve.

(a) *Subsistence.* (1) *Resdent Zone.* The following communities and areas are included within the resident zone for Lake Clark National Park and Preserve:

Nondalton
Port Alsworth

§ 13.70 Noatak National Preserve.

(a) *Subsistence.* (1) *Resident Zone.* The following communities and areas are included within the resident zone for Noatak National Preserve:

Kivalina
Kotzebue
Noatak

§ 13.71 Wrangell-St. Elias National Park and Preserve.

(a) *Subsistence.* (1) *Resident Zone.* The following communities and areas are included within the resident zone for Wrangell-St. Elias National Park and Preserve:

Chistochina
Chitina

Copper Center
Gakona
Gulkana
McCarthy
Mentasta Lake
Nabesna
Slana
Yakutat

(2) *Aircraft Use.* In extraordinary cases where no reasonale alternative exists local rural residents who permanently reside in the following exempted communities(ies) may use aircraft for access to lands and waters within the park for subsistence purposes in accordance with a permit issued by the Superintendent:

Yakutat

§ 13.72 Yukon Charley National Preserve.

(a) *Subsistence.* (1) *Resident Zone.* The following communities and areas are included within the resident zone for Yukon Charley National Preserve:

Circle
Eagle
Eagle Village

[FR Doc. 81-1925 Filed 1-16-81; 8:45 am]
BILLING CODE 4310-70-M

federal register

Monday
January 19, 1981

Part XXVI

Department of the Interior

Fish and Wildlife Service

Alaska National Wildlife Refuges

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 36

Alaska National Wildlife Refuges

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: On December 2, 1980, President Carter signed into law the Alaska National Interest Lands Conservation Act (hereafter referred to as the "Alaska Lands Act"). The Alaska Lands Act contains a significant number of new and complex standards for management of the National Wildlife Refuge System in Alaska. Enactment of the Alaska Lands Act also resulted in the automatic application of the general National Wildlife Refuge System regulations to the 57 million acres of refuges designated in the Act.

These proposed regulations, when finalized, will perform two functions. Most importantly, they will relieve those restrictions imposed by the general National Wildlife Refuge System regulations that are inappropriate in Alaska, such as those placing restrictions on the carrying of firearms. The regulations will also implement and clarify on an interim basis a number of provisions of the Act that are of immediate importance to Alaskans, such as those relating to subsistence and cabins. The Fish and Wildlife Service deems these proposed regulations as the minimal necessary to provide proper management for Alaska National Wildlife Refuges. These proposed regulations are not intended, however, to result in final comprehensive regulations for these areas. The Service will undertake additional rulemaking as appropriate for issues not addressed in this proposal. Public comments on these proposed rules are solicited for 45 days.

DATES: Written comments should be submitted on or before March 5, 1981.

ADDRESS: Comments should be directed to: Alaska Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99507

FOR FURTHER INFORMATION CONTACT: Keith Schreiner, Alaska Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99507 (907–276–3800) or William C. Reffalt, Chief, Division of Refuge Management, U.S. Fish and Wildlife Service, Room 2349, U.S. Department of the Interior, Washington, D.C. 20240 (202–343–4791).

SUPPLEMENTARY INFORMATION:

Background

The Alaska Lands Act established, redesignated, or expanded sixteen National Wildlife Refuges in Alaska: Alaska Maritime, Alaska Peninsula, Arctic, Becharof, Innoko, Izembek, Kanuti, Kenai, Kodiak, Koyukuk, Nowitna, Selawik, Tetlin, Togiak, Yukon Delta, and Yukon Flats (see the Addendum at the end of this publication). Each of these areas is to be managed pursuant to applicable National Wildlife Refuge law, most notably the Refuge Administration Act, 16 U.S.C. 668dd *et seq.*, and the provisions of the Alaska Lands Act. Until these rules are finalized, the existing general National Wildlife Refuge System rules found at 50 CFR Chapter I, Subchapter C apply except as modified by the provisions of the Alaska Lands Act.

The vast majority of the areas encompassed by the sixteen Alaska National Wildlife Refuges were previously administered by the Fish and Wildlife Service under various legal authorities. The Becharof and Yukon Flats National Wildlife Monuments, established by the President on December 1, 1978, were generally managed under authority of the Antiquities Act, 16 U.S.C. 431 *et seq.*, and emergency interim regulations, 43 FR 60255 (Dec. 26, 1978). Twelve other areas, Alaska Marine Resources, Arctic, Innoko, Kanuti, Kenai, Koyukuk, Nowitna, Selawik, Tetlin, Togiak, Yukon Delta, and Yukon Flats, were withdrawn and established as wildlife refuges by the Secretary of the Interior on February 11, 1980, and were generally managed under authority of the Refuge Administration Act and emergency interim regulations, 45 FR 14192 (March 4, 1980). The withdrawals and reservations establishing these areas as monuments and refuges were rescinded by operation of law as of December 2, 1980, pursuant to section 1322(b) of the Alaska Lands Act when the State of Alaska recently relinquished their land selections made on November 14, 1978, within the boundaries of conservation system units, national conservation areas, national recreation areas, and forest additions. Accordingly, the emergency interim regulations for both the National Wildlife Monuments and the National Wildlife Refuges established February 11, 1980, are revoked by operation of law.

The Need For Expeditions Rulemaking

These proposed rules would provide relief from existing general National Wildlife Refuge System regulations found in 50 CFR Chapter I, Subchapter C. They would also establish administrative procedures necessary to implement and clarify several provisions of the Alaska Lands Act. For these reasons and as further developed below, the Fish and Wildlife Service has determined that there is a need for expeditious rulemaking. Accordingly, the Service has adopted a 45 day comment period (which is longer than that required under 5 U.S.C. 553) for these proposed rules and plans to issue final regulations in March 1981. The basis for this approach are summarized below:

First, many sections of the final regulations will relieve restrictions on public uses of refuge areas in Alaska that would otherwise be applicable under 50 CFR Chapter I, Subchapter C. Activities such as snowmobile use or the possession of firearms for hunting (which are generally considered recreational and nonessential in the lower 48 states) are vital to the maintenance of the present lifestyle of rural inhabitants of the communities in or near Alaska National Wildlife Refuges. Similarly, in most regions of Alaska the airplane is the only convenient or available means of transportation. To the extent that the current refuge system regulations generally prohibit the possession of firearms and the use of snowmobiles or airplanes within National Wildlife Refuges, literally thousands of otherwise law abiding citizens in rural Alaska have been placed in jeopardy of criminal prosecution as a result of the automatic application of the general refuge management regulations to the new conservation system units. These three examples are merely representative of the hardships created in Alaska by the automatic application of the general refuge system regulations. The Fish and Wildlife Service does not believe that Congress intended to create these hardships through the designation of the new Alaska National Wildlife Refuges and, therefore, feels that it is imperative that various public use restrictions be modified as quickly as possible. The Service believes it is contrary to the public interest to force inholders and users of the new refuges in Alaska to be in apparent contravention of certain provisions of the general refuge management regulations and therefore intends to promulgate in the near future final regulations to correct this conflict.

Second, there is a need to establish administrative procedures for implementing the new directives of the Alaska Lands Act. The Act's provisions on subsistence, access, and cabins

require administrative mechanisms for providing public guidance. Final regulations are needed to establish the administrative channels for implementing these provisions.

Third, with the new directives in the Alaska Lands Act, there is considerable confusion concerning public use of refuge areas in Alaska. For instance, the nonwasteful subsistence use of fish, wildlife and other renewable resources by local rural residents is formally recognized for the first time within Alaska National Wildlife Refuge areas. In order to harmonize the statutory directives with existing regulations and to alleviate public concern over potential criminal prosecution, the Fish and Wildlife Service believes that expeditious public guidance is necessary. The delay caused by a long rulemaking process would exacerbate confusion and uncertainty concerning which activities could be conducted in refuge areas without the threat of criminal prosecution.

Fourth, the Service believes expeditious rulemaking is warranted since the Service has already received extensive public comment concerning the management of fish and wildlife conservation areas in Alaska during earlier regulatory efforts and since these proposed regulations also provide a public comment period. To the greatest extent possible consistent with the Alaska Lands Act, these proposed regulations follow the public desires on open access, carrying of firearms, subsistence, and other issues that were articulated during earlier public involvement proceedings.

In February of 1979 the Fish and Wildlife Service published a "Notice of Intent to Publish Rules" for National Wildlife Monuments in Alaska. 44 FR 11247 (Feb. 28, 1979). The Notice of Intent solicited public comment on the same management issues addressed in these proposed regulations.

Furthermore, when it proposed permanent general management regulations for national wildlife monuments in June of 1979, 44 FR 37754 (June 28, 1979), the Fish and Wildlife Service received over 200 written public comments from private individuals, private or public interest groups, governmental agencies, and private business corporations or companies. In addition, formal public hearings on the proposed regulations were conducted in Anchorage and Fairbanks and written and oral testimony were received. Comments were received on such topics as general refuge purposes; inholdings; Native allotments; public access, including the use of aircraft, motorboats, snowmobiles and off-road vehicles; subsistence; commercial activities; recreational use; cabins; explosives and firearms; unattended or abandoned property; animal management and control; sport hunting and fishing; and commercial fishing.

Beginning in early April 1979, an intense program of public consultation was again initiated regarding potential Secretarial refuge withdrawals under section 204(c) of the Federal Land Policy and Management Act. This consultation process included press conferences, information packets, distribution of maps, and press releases explaining the proposed withdrawals and probable management controls on public activities. Public hearings regarding the proposed 204(c) withdrawals were conducted in six rural Alaska communities of key geographical location and in the urban centers of Anchorage and Fairbanks. Public hearings were also held in San Francisco, CA, Denver, CO, and Washington, D.C.

In addition to the formal hearings on the matter, numerous meetings were held in Alaska communities to explain section 204(c) proposals to local residents as well as leaders of local government, Native groups, and others. Special efforts were also made to explain the proposed withdrawals to individual local residents.

The regulations proposed here constitute the bare minimum required for interim management of the Alaska National Wildlife Refuges and implementation of the Alaska Lands Act. As noted above, the proposed regulations would either relieve regulatory restrictions which are inappropriate in the Alaska setting (*e.g.*, carrying of firearms and unattended property), or implement crucial provisions of the Alaska Lands Act (*e.g.*, subsistence, access, cabins, taking of fish and wildlife). The limited agenda of these proposed regulations covers only those topics areas which had been subject to prior public notice and comment in previous Fish and Wildlife rulemakings relating to Alaska.

Additional topic areas not addressed in this proposed rulemaking will be the subject of future regulatory exercises. The Fish and Wildlife Service will strive for substantial public comment periods in any future rulemakings proposed by the Service or other parties.

Description of the Proposed Rules

The following is a brief summary of the various regulatory provisions contained in these proposed rules.

Subpart A—Introduction and General Provisions

Section 36.1 This proposed section sets out the applicability and scope of these rules. Alaska National Wildlife Refuges are subject to all of the general National Wildlife Refuge System regulations (*see*, 50 CFR, Chapter I, Subchapter C), as supplemented and modified by these rules when finalized. Existing special regulations now in force and effect will also apply to applicable refuge lands in Alaska National Wildlife Refuges, except as inconsistent with the rules as finally promulgated.

Sections 103(c) and 906(o) of the Alaska Lands Act generally restrict the applicability of Fish and Wildlife Service regulations to federally owned lands within the boundaries of Alaska National Wildlife Refuges. Consistent with the statute and the explanatory legislative history [126 Cong. Rec. H11115 (daily ed. Nov. 21, 1980) and 126 Cong. Rec. S15150–31 (daily ed. Dec. 1, 1980)], § 36.1(b) restricts the applicability of these regulations to "federally owned" lands, which is defined to include all interest held by the Federal government. With the legislative conveyance of 98 million acres of State selections in section 906 of the Act, no unconveyed State selections remain within Alaska refuges. Therefore, no State selected and conveyed lands within the boundaries of the Alaska National Wildlife Refuges will be subject to the provisions of these regulations. Similiarly, land interests interimly conveyed or patented to Native corporations, where such interests are located within the boundaries of areas initially added to the National Wildlife Refuge System by the Alaska Lands Act, would not be affected by these regulations. Other private, patented inholdings within the Alaska National Wildlife Refuge would also not be subject to these regulations.

Section 36.2 This section sets out the definitions of key terms used in these emergency interim rules. The definitions generally follow the language of the Alaska Lands Act where available or adopt generally accepted definitions used in prior regulations promulgated by the Fish and Wildlife Service for fish and wildlife conservation areas. The term "fish and wildlife," for instance, tracks the language of the statute, although the Fish and Wildlife Service recognizes the clearly expressed Congressional intent that this term does not include those animals the Service determines to be exotic or domestic [126 Cong. Rec. H10543 (daily ed. Nov. 12, 1980)]. Other definitions, such as those for "adequate and feasible access" and

"subsistence uses," are discussed in connection with the substantive access and subsistence provisions and are not repeated here.

Subpart B—Subsistence Uses

Subpart B of these proposed regulations would implement the policies and procedures governing subsistence uses contained in Title VIII of the Alaska Lands Act.

The proposed regulations for subsistence are necessary for several reasons. First, they would relieve restrictions in the otherwise applicable general National Wildlife Refuge System regulations for uses and activities integral to the subsistence lifestyle. In certain cases, the Alaska Lands Act does not specifically relieve these restrictions; in other cases, the Act allows the uses, but the general refuge regulations appear to prohibit them under threat of criminal penalty. Second, proposed regulations would implement certain critical provisions of the Alaska Lands Act concerning subsistence (*e.g.*, the subsistence priority, the closure standards and procedures for subsistence uses of fish and wildlife, and subsistence and land use decisions), and would extend the approach of certain of these provisions to subjects not specifically mentioned by the Act (*e.g.*, closure standards and procedures for subsistence use of plants).

For the most part, the Subpart B regulations proposed today were proposed for comment as regulations for the Alaska National Monuments. 44 FR 37,754 (June 28, 1979). The Fish and Wildlife Service received extensive comment on those proposed regulations and has accordingly revised the proposed monument regulations in several places. Moreover, the Service welcomes additional comments on these proposed regulations in the next forty-five days. Today's proposed regulations differ from the proposed monument regulations in certain respects because of the now applicable mandates of the Alaska Lands Act.

The proposed regulations on subsistence are not comprehensive. They would not provide for implementing certain provisions of Title VIII of the Alaska Lands Act that, in the Service's judgment, do not limit themselves to expeditious promulgation since they have not previously been the subject of notice and comment. Notable among these statutory provisions are the State regulation opportunity of Section 805(d) and the Federal monitoring requirement of Section 806. It should be emphasized that all parties must comply with these statutory provisions as long as they remain in effect; however, the Fish and Wildlife Service will consider specific regulations and policies as appropriate for implementing these provisions in the future.

Section 36.11 Section 36.11(a) would establish that, consistent with proper management of fish and wildlife and the purposes for which the Alaska National Wildlife Refuges were established, the purpose of Subpart B of the regulations is to provide the opportunity for local rural residents engaged in a subsistence way of life to do so pursuant to applicable State law and Federal law Alaska Lands Act, sections 101(c) and 802(1). The proposed Subpart B regulations are designed to accommodate and protect the unique subsistence relationship of certain local rural people in Alaska with their natural environment. Alaska Native people have been living a subsistence way of life for thousands of years, and certain non-Native rural residents have developed a subsistence way of life in more recent times. Many of these local rural residents have customarily and traditionally taken the renewable resources which are now within the boundaries of refuges areas. The resources satisfy both the physical needs of these local rural residents for food, shelter, fuel, clothing, tools, and transportation and their societal needs for cultural identity through skills, lore, and traditions. In light of the cultural and societal importance of the subsistence lifestyle in rural Alaska and its dependence on the renewable resources, therefore, Subpart B would implement the Congressional directive to continue the opportunity for subsistence uses within Alaska National Wildlife Refuges by local rural residents.

Least Adverse Impact Possible. In fulfilling the aforementioned goal of the subsistence regulations, proposed § 36.11(b)–(c) sets forth basic policies which the Alaska Lands Act adopted to guide the activities of the administering agencies. Alaska Lands Act, sections 802 (1), (2) and 804. First, consistent with sound resource management principles and the conservation of healthy populations of fish and wildlife, the utilization of refuge areas is to cause the least adverse impact possible on local rural residents who depend upon subsistence uses of the resources of the public lands in Alaska for their economic and physical well-being and cultural vitality. This statutory policy is implemented throughout the proposed regulations, particularly in the procedures mandated by § 36.37, the subsistence priority established by § 36.11(c), and the limitations on closure, §§ 36.12, 36.15, and 36.16.

Subsistence Priority. The second policy, articulated in § 36.11(c), would establish nonwasteful subsistence uses of fish, wildlife, and other renewable resources by local rural residents as the priority consumptive use over any other consumptive uses permitted within refuge areas. The Fish and Wildlife Service anticipates State regulations implementing the subsistence priority.

Limitations. In addition to establishing the purpose and policies of the Subpart B regulations, proposed § 36.11 also establishes the limitations of the purpose and policies. According to § 36.11(a), the subsistence opportunity may only be provided in a manner and degree consistent with the management of fish and wildlife in accordance with recognized scientific principles and with the purposes for which each refuge area was established, designated, or expanded by the Alaska Lands Act. According to proposed § 36.11(b), the utilization of the public lands is to cause the least adverse impact possible on local rural residents, but this policy is limited by the requirement that it be consistent with sound management principles and the conservation of healthy populations of fish and wildlife. Furthermore, proposed § 36.11(c) establishes the basic limitations of all the provisions of the proposed Subpart B regulations: subsistence uses of fish and wildlife populations must be appropriately regulated so as to assure conservation of healthy populations within Alaska National Wildlife Refuges. Congress provided the following guidelines on the implementation of this concept:

The Committee intends the phrase "the conservation of healthy populations of fish and wildlife" to mean the maintenance of fish and wildlife resources and their habitats in a condition which assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystems, including recognition that local rural residents engaged in subsistence uses may be a natural part of that ecosystem; minimizes the likelihood of irreversible or long-term adverse effects upon such populations and species; and ensures maximum practicable diversity of options for the future. The greater the ignorance of the resource parameters, particularly of the ability and capacity of a population or species to respond to changes in its ecosystem, the greater the safety factor must be. Thus, in order to insure that subsistence uses are compatible with the maintenance of

healthy populations of fish and wildlife, it must be recognized that the likelihood of irreversible or long-term adverse effects to a population or species must be proportional to the magnitude of the risks caused by a proposed use of such population or species.

The Committee recognizes that the management policies and legal authorities of the National Park System and the National Wildlife Refuge System may require different interpretations and application of the "healthy population" concept consistent with the management objectives of each system. Accordingly, the Committee recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management programs affecting ecological relationships, population dynamics, and the manipulation of the components of the ecosystem. S. Rep. No. 96–413, *supra*, 233.

Local Rural Resident. Throughout the proposed regulations, the Fish and Wildlife Service categorizes those people who may engage in subsistence uses as "local rural residents." This term derives from the term "local residents" in Title III of the Alaska Lands Act and the term "rural Alaska residents" in the definition of "subsistence uses" in Title VIII. Title III authorizes the opportunity for continued subsistence uses by *local residents.* Alaska Lands Act, section 302 and 303. The definition of "subsistence uses" refers to "rural Alaska residents" Alaska Lands Act, Section 803. The relationship between this language in Title III and Title VIII was described as follows in the Congressional Record:

> Since the definition of "subsistence uses" in § 803 limit such uses to "rural Alaska residents," a reading of Title VIII and Title III * * * together make it clear that the policy throughout is that only local rural residents are by statute provided the opportunity to engage in subsistence uses in areas of the * * * National Wildlife Refuge System. 126 Cong. Rec. S15129 (daily ed. Dec. 1, 1980).

Subsistence Uses. The proposed definition of "subsistence uses" tracks the language of section 803 of the Alaska Lands Act with one modification: as explained below, today's proposed definition offers some guidance on the meaning of the term "customary trade," which the statute leaves undefined.

The term "subsistence uses" means the customary and traditional uses by rural Alaska residents of fish, wildlife, and other wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles from the nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade. This proposed definition uses several terms which require further explanation.

To begin with, the definition uses the phrase "customary and traditional" to modify the term"uses" in order to emphasize that Native and non-Native subsistence uses "have played a long established and important role in the economy and culture of the community and * * * [that] such uses incorporate beliefs and customs which have been handed down by word of mouth or example from generation to generation." S. Rep. No. 96–413, *supra*, 269; H. Rep. No. 96–97, 96th Congress, 1st Session 280 (1979).

Next, the definition limits subsistence uses to those "by rural Alaska residents." Clearly, this limitation excludes residents of Ketchikan, Juneau, Anchorage, and Fairbanks from engaging in authorized "subsistence uses." *See,* S. Rep. No. 96–413, *supra*, 233. Residents of "rural" Alaska—including communities such as Dillingham, Bethel, Nome, Kotzebue, Barrow, and other villages throughout the State (as long as such communities remain rural) may engage in "subsistence uses." It is important to emphasize, however, that in refuge areas, only *local* "rural residents" are accorded the subsistence priority. Thus, while the statutory definition of "subsistence uses" focuses more broadly on"*rural* Alaska residents" wherever they may live, the legislative history of Title III and VIII clearly shows that it is only for that category of rural resident who is also *local* to the vicinity of a particular wildlife refuge, that the subsistence priority is intended to apply. See 126 Con. Rec. S15129 (daily ed., Dec. 1, 1980).

The term "family" is defined to include any person living within a local rural resident's household on a permanent basis as well as those persons living outside the household who are related by blood, marriage, or adoption (legal or equitable). The definition of "family" recognizes extended family patterns common in the subsistence culture of Alaska.

The definition of "subsistence uses" includes the making and selling of handicraft articles from the nonedible byproducts only of fish and wildlife resources taken for personal or family consumption. Accordingly, the definition covers such commercial activities only if the edible portions of the resource have been used for personal or family consumption. The "subsistence uses" definition also includes "barter" for personal or family consumption in recognition that a genuine subsistence lifestyle includes certain foodstuffs and other items which may be available through a non-cash exchange. Thus, barter of subsistence resources of a limited and noncommercial nature falls within the meaning of "subsistence uses."

Finally, the definition of "customary trade" proposed today recognizes that a subsistence lifestyle may also include limited involvement in the cash economy through the exchange of furs. Trapping of furbearers is an integral and longstanding part of the subsistence lifestyle in many regions in Alaska. While some of the furs are utilized for personal or family use, it is recognized that a portion of the furs ultimately become items for sale on the commercial market. The cash remuneration, in turn, helps to provide the basic tools and supplies associated with trapping and the subsistence lifestyle of which trapping is a part. For example, local rural residents may engage in trapping to obtain the cash required for necessary store-bought supplies such as gasoline and ammunition. The allowance of cash interchange related to trapping is intended to provide continuity to the traditional and customary harvest of furbearers by those who engage in subsistence uses within refuge areas.

It should be recognized, however, that the definition of "customary trade" was intended by Congress to be narrow:

> The Committee does not intend that "customary trade" be construed to permit the establishment of significant commercial enterprises under the guise of "subsistence uses." The Committee expects the Secretary and the State to closely monitor the "customary trade" component of the definition and promulgate regulations consistent with the intent of the subsistence title. S. Rep. No. 96–413, *supra*, 234.

Accordingly, this provision is not intended to allow trapping within refuge areas to be or become a solely or predominantly commercial enterprise beyond its traditional role as part of the subsistence regulations.

Today's proposed definition of "customary trade" is the same as the definition proposed by the Fish and Wildlife Service in the regulations for the Alaska National Wildlife Monuments [44 FR 37,786 (June 29, 1979)]. Most commenters on the definition supported it since, as one commenter wrote, "Nowhere in the Alaska bush today does anyone live without some items purchased from the 'outside,' and trapping is often the only way to earn the necessary cash." The Alaska Federation of Natives (FAN)

suggested in its comments on the proposed monument regulations that the definition be expanded to include, in addition to the exchange of furs for cash, the exchange of other fish, wildlife, and plant resources for cash as may be specifically permitted for particular park areas by Subpart C regulations. AFN did not, however, propose any specific additions to the customary trade definition for particular refuge areas. Today's proposed interim regulations do not adopt AFN's earlier suggested expansion. Information currently available to the Department reveals no basis or need for such expansion, and the Alaska Lands Act does not invite new commercial enterprises under the guise of "subsistence uses." In fact, it should be emphasized that customary trade may only derive from "customary and traditional" uses of resources under the definition of "subsistence uses." If new information is developed which shows the definition of "customary trade" should be expanded, the Service will address the need through special regulations for the refuge in question.

Section 36.12 In furtherance of Section 811 of the Alaska Lands Act, this section would provide local rural residents engaged in subsistence uses reasonable access to the subsistence resources on which they depend. This proposed section liberalizes the provisions of subpart C on snowmobiles, motorboats, and certain off-road vehicles in the case of local rural residents who are engaged in subsistence hunting, fishing, and gathering activities within the refuge areas. All routes and areas are open to subsistence use of these vehicles except as specifically restricted or closed. The Refuge Manager will implement such closures or restrictions on the basis of criteria which are more limited than the criteria for closure to general recreation use. Basically, in order to impose a restriction, the Refuge Manager must determine that the use in question is causing or may cause an adverse impact on public health and safety, resource protection, protection of historic or scientific values, subsistence uses, conservation of endangered or threatened species, and other management considerations necessary to ensure that the use of snowmobiles, motorboats, as other purposes or values for which the refuge area was established. The Refuge Manager will arrange notice and public participation concerning closure proposals in order to involve those affected to the fullest extent possible in the decisionmaking.

It should be noted that the types of access vehicles covered by proposed § 36.12 include "other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses." The limitations of this phrase, if any, will be addressed as appropriate in future rulemaking efforts.

Under the proposed regulations, any person operating motorboats, snowmobiles, and other means of surface transportation must comply with applicable State and Federal laws governing such operation and must avoid causing waste or damage to fish, wildlife, terrain, or other values of the refuge area. In addition, consistent with State law, the vehicle operator may not use a motorized vehicle so as to herd, harass, haze, or drive wildlife for hunting or any other purpose.

At all times when not engaged in subsistence uses, local rural residents would be able to use snowmobiles, motorboats, and other means of surface transportation in accordance with the appropriate subpart C regulations. For example, local rural residents engaged in recreational uses of snowmobiles, motorboats, and other means of surface transportation would comply with the provisions of §§ 36.21 and 36.22 and local rural residents seeking otherwise closed access to inholdings or temporary access would comply with the provisions of §§ 36.23 and 36.24 respectively.

Section 36.13 This section would authorize local rural residents to engage in fishing in Alaska National Wildlife Refuges in compliance with applicable State and Federal law. Section 36.16, explained below, would govern closures to fishing for subsistence purposes.

Section 36.14 This section would authorize local rural residents to hunt or trap wildlife for subsistence uses in compliance with applicable State and Federal law. Closure of areas to subsistence hunting and trapping is treated in § 36.16.

Section 36.15—This section addresses subsistence uses of timber and plant material. Section 36.15(a) authorizes the noncommercial cutting of live standing timber and the noncommercial gathering of fruits, berries, mushrooms, and other plant material by local rural residents for subsistence uses. Permits would not be required for such activities or for gathering dead or downed timber for firewood for personal, not commercial, use.

Section 36.15(b) sets forth the proposed standards and procedures for closing a refuge area to the subsistence uses of a particular plant population. Although not expressly required by the Alaska Lands Act, the Fish and Wildlife Service proposes to apply similar closure provisions for subsistence uses of plants as the Act requires for subsistence uses of fish and wildlife. As discussed below in the latter context, the closure standards are narrow, and the closure procedures involve significant public participation, in order to protect the affected local rural residents who depend on the resources.

Section 36.16 Pursuant to Section 816 of the Alaska Lands Act and this proposed section, the Refuge Manager has the authority to close or restrict any part or all of an Alaska National Wildlife Refuge to subsistence uses of a particular fish or wildlife population only temporarily and only if necessary "for reasons of public safety, administration, or to assure the continued viability of such population." To implement Congress' intent, proposed § 36.16 provides protection standards, time limitations, and notice requirements for closures to subsistence taking of fish and wildlife.

With respect to the standards for closure, the Act lists only three: public safety, administration, and for assurance of the continued viability of a fish or wildlife population. No closure for purposes of administration, moreover, may be made prior to notice and hearing in the vicinity of the closure. The public safety standard clearly allows the Refuge Manager to act in situations which threaten public health and welfare. For example, the Refuge Manager may prohibit subsistence hunting and trapping for reasons of public safety in specified areas surrounding a public campground, roadway, or hiking trail. The "fish or wildlife viability" standard allows the Refuge Manager to act for purposes of maintaining resource populations upon which local rural residents rely at levels adequately above the threatened level. As Congress stated, "it is not the intent that actual depletion of a population or an emergency exist before a closure under this section may be justified." S. Rep. No. 96–413, *supra*, 278; H. Rep. No. 96–97, *supra*, 289.

Moreover, as stated in Section 815 of the Alaska Lands Act and § 36.11(d) of these proposed regulations, and explained previously, the subsistence provisions are not to be construed as permitting a level of subsistence use of fish and wildlife within Alaska National Wildlife Refuges determined to be inconsistent with the conservation of healthy populations of fish and wildlife. The "administration" standard is potentially the broadest of the three closure standards, though "recognition of the importance of subsistence

activities to most [local] rural residents requires that this authority be utilized narrowly and with consistent restraint." S. Rep. No. 96–413, *supra*, 278; H. Rep. No. 96–97, *supra*, 289. Guided by this intent, the Refuge Manager can invoke the administration standard to protect the purposes and values of the refuge areas and to otherwise manage the refuge prudently. The limitation of Section 815 of the Act and § 36.11(d) of the proposed regulations would also be relevant to this closure standard.

Closures shall last only so long as reasonably necessary to achieve the purposes of the closure. In the case of closing an area around a hiking trail for reasons of public safety, for example, the closure "should remain in effect only so long as reasonably necessary to provide for the public safety during normal periods of consistent public use, and only apply to the minimum portion of the public lands reasonably necessary to achieve this purpose." S. Rep. No. 96–413, *supra*, 277–78; H. Rep. No. 96–97, *supra*, 289. Thus, closures may be seasonal in nature, for example, if warranted by the situation.

In the normal case, a closure would be preceded by consultation with the State and adequate notice and informal public hearing in the vicinity of the closure. In an emergency situation, the Refuge Manager would immediately close the area for a period not to exceed sixty days. As proposed, the Refuge Manager may extend an emergency closure only if he establishes, after notice and formal public hearing in the vicinity, that the extension is justified under the applicable closure standards.

Finally, § 36.16(c) proposes thorough notice procedures designed to inform as many local rural residents as possible about any closures which may affect them.

Subpart C—Use of Motorized Vehicles and Access

Proposed § 36.21–36.24 of these regulations implement sections 1110 and 1111 of the Alaska Lands Act concerning access by the public across Alaska National Wildlife Refuges for nonsubsistence purposes. These proposed regulations generally relax restrictions on access that are applicable to National Wildlife Refuge units outside of Alaska, consistent with the requirements of the Alaska Lands Act. These sections are designed to and are presented in an order which will funnel the vast majority of access needs away from a system of individual access permits. Section 36.21 initially opens all refuges to access by snowmobile, aircraft, and motorboat for any purpose. (Additional access for subsistence uses is set forth in § 36.12). Section 36.22 provides a mechanism for establishing common corridors and areas for off-road vehicle use. In the less common situation where §§ 36.11 and 36.22 do not accommodate a refuge "inholder's" need for access, § 36.23 provides for individual permits that insure adequate and feasible access while minimizing damage to refuge resources. Finally, where §§ 36.21–36.23 do not otherwise provide temporary access, § 36.24 creates another means for obtaining desired access.

Section 36.21 This section initially opens all Alaska National Wildlife Refuges to access by snowmobile (on areas with adequate snow cover or frozen areas), motorboat, and aircraft without the need for individual access permits. Access by these methods of transportation is authorized for any purpose (*e.g.*, travel between villages, to a homesite, for mineral development on valid existing claims or patented lands, for recreation, or for traditional activities), except as is specifically provided for subsistence uses in § 36.12.

Section 36.21 implements section 1110(a) of the Alaska Lands Act, which permits access for "traditional activities and for travel to and from villages and homesites." This approach extends the statutory concept to access for all purposes, except for subsistence uses which is addressed in independent statutory and regulatory sections. Consistent with section 1110(a) of the Act, section 13.42 authorizes the closure of refuges to snowmobile, motorboat, and aircraft access only after notice and hearing. Even after closure, emergency landing of aircraft (*e.g.*, because of severe weather or vehicle failure) will not be prosecuted. This general authorization of access by snowmobile, motorboat, and aircraft should greatly reduce the need to obtain specific access permits under §§ 36.23 and 36.24, since in most cases reasonable access will be granted under § 36.21.

This section also sets out procedures for removal of aircraft downed after December 2, 1980, on Alaska National Wildlife Refuges. The regulations would require that downed aircraft must be removed pursuant to the terms of a special use permit unless the Refuge Manager determines, on a case-by-case basis, that the removal of the aircraft would constitute an unacceptable risk to human life, would result in extensive resource damage, or would otherwise be impracticable or impossible. In evaluating this final criterion, the Service would not require removal of a downed aircraft in any situation when the removal of the aircraft would cause such a severe and significant hardship to the owner as to be economically prohibitive.

Section 36.22 This section provides a procedure for supplementary access needs without requiring individual access permits. While all Alaska refuges are initially closed to off-road vehicle use because of the heightened potential for habitat degradation arising from this uncontrolled use, § 36.22 authorizes the Refuge Manager to designate off-road vehicle routes and areas. The Service anticipates that this procedure will be used most often to designate common corridors for off-road vehicle travel between villages, and similar situations when a single route can satisfy the access needs of a group of individuals. Section 36.22 implements the directive of section 1110(b) of the Alaska Lands Act to provide "adequate and feasible" access and does so through a methodology that will reduce the need for individual access permits. Furthermore, as in any situtation involving rule-making, persons may petition the Refuge Manager under the procedures of 43 CFR 14.6 to have a route or area designated as open for off-road vehicle use, should the Service fail to identify or propose that area as open.

Section 36.23 If § 36.21 and 36.22 have not already provided "adequate and feasible" access for persons with valid property or occupancy interests which are surrounded or effectively surrounded by refuge lands, proposed § 36.23 creates a procedure for obtaining such access as required by section 1110(b) of the Alaska Lands Act. As proposed, "adequate and feasible access" is defined in § 36.2 in terms of an economically practicable method and route of access (but not necessarily the most economically feasible alternative), consistent with the legislative history appearing in S. Rep. No. 96–413, 69th Cong., 2nd., sess., 248–49 (Nov. 14, 1979). Section 36.23 would apply only when an area has been closed to snowmobile, aircraft, or motorboat use, or when no designated off-road vehicle route or areas exists. In such cases, the landowner would apply to the appropriate Refuge Manager for an access permit, stating the desired method and route of access, and whether this desired form of access has been traditionally used by the landowner in the past. (Additional information would be required for mineral exploration, assessment or development activities, as discussed below).

Under this section as proposed, the Refuge Manager is required to issue an access permit for the routes and

methods desired by the applicant unless he determines that such access would cause significant damage to refuge resources or would jeopardize public health and safety (including concerns for subsistence uses and adjacent landowners), and in either case, that adequate and feasible access otherwise exists (*e.g.*, a different route exists which would minimize refuge damage, snowmobile or aircraft access already provides "adequate and feasible access", etc.).

If the Refuge Manager makes one of these determinations, this section requires that he specify in a permit such other alternate methods and routes of access as will provide adequate and feasible access to the applicant, while minimizing damage to refuge resources. Of course, the access routes and methods finally authorized may be used by guests and invitees of the permittee.

Thus, proposed § 36.23 implements section 1110(b) of the Alaska Lands Act by insuring adequate and feasible access to refuge "inholders" through an individual permit process, which would be utilized only when the non-permit provisions of §§ 36.21 and 36.22 do not provide reasonable access.

Subsection 36.23(c) would provide special information requirements for access inside refuge areas for mineral exploration or development. These special information requirements are not applicable when the inholder does not require access across refuge lands (*e.g.*, aircraft landings on nonfederally owned lands) or when access is to be accomplished through the use of aircraft, motorboats or snowmobiles which has already been provided for pursuant to §§ 36.21 and 36.22 of these regulations. Thus, these proposed rules would establish no requirement to provide information when access across refuge areas for mineral exploration or development is available by snowmobile, aircraft, motorboat or designated off-road vehicle route under §§ 36.21 and 36.22.

This approach would limit the special mining information requirements to situations where the potential for damage to refuge resources is the greatest (*e.g.*, bulldozer and production equipment access). In situations where proposed § 36.23(c) is applicable, prospective mineral developers would be required to apply for an access permit and include the information called for by this section. This information, which is the same as that previously required in other Fish and Wildlife Service, regulations applicable to Alaska areas, has not proven to be burdensome in the past.

Mining claimants are also reminded that maintenance of a claim requires compliance with the annual filing and other requirements of section 314 of the Federal Land Policy and Management Act, 43 U.S.C. 1744. Furthermore, mining claimants within Alaska National Wildlife Refuges are reminded that section 304 of the Alaska Lands Act closed all refuges to new mining locations and entries. The Fish and Wildlife Service reserves the rights to refuse access when it is found that a valid mining claim does not exist, pursuant to sections 304 and 1110(b) of the Alaska Lands Act.

Section 36.24 This proposed section implements section 1111 of the Alaska Lands Act by establishing a permit mechanism for obtaining temporary access across an Alaska National Wildlife Refuge for purposes of survey, geophysical, exploratory, or other temporary uses of non-federal lands located outside refuge boundaries. Section 36.24 requires an access permit only where §§ 36.21 and 36.22 do not provide the desired access, and where § 36.23 is not applicable (*e.g.*, if a refuge "inholder" or a person effectively surrounded by Federal lands requires temporary access across a refuge, section 1110(b) of the Alaska Lands Act and § 36.23 of these regulations grant greater access privileges). Where temporary access is otherwise unavailable, the applicant would apply to the Refuge Manager for an access permit. The permit applicant must indicate the proposed route and method of access, the temporary use the applicant proposes to undertake, and, in the case of mineral survey or exploration, the same information on the planned mineral operations required in § 36.23. The Refuge Manager would be required to grant the desired temporary access if no permanent harm to refuge resources will result. The Refuge Manager is directed by this section to include such stipulations and conditions (*e.g.*, alternate methods and routes of access) on temporary access as will ensure consistency with refuge purposes and no permanent harm to refuge resources.

Subpart D—Other Refuge Uses

Section 36.31 This section authorizes public recreational activities such as boating, camping, hiking, and picnicking, within an Alaska National Wildlife Refuge as long as these activities are conducted in a manner compatible with the purposes of the particular refuge. After reviewing the various types of such activities which are ongoing within the Alaska National Wildlife Refuges, the Service presently believes that all such activities are practicable and compatible with the purposes for which the refuges where established, designated, or expanded. Recreational activities would be prohibited or restricted only in compliance with the public participation provisions of § 36.42.

Section 36.32 This section authorizes the taking of fish and wildlife on Alaska National Wildlife Refuges in accordance with applicable State and Federal law. (Additional provisions on subsistence hunting, trapping, and fishing are provided in §§ 36.13 and 36.14). As proposed, a permit for these activities need not be obtained from the Refuge Manager, except that the presently existing requirement to obtain a permit before trapping on the Kenai, Izaembek and Kodiak Refuges and the Aleutian Islands unit of Alaska Maritime Refuge is retained. The taking of fish and wildlife may be prohibited or restricted only in conjunction with notice and hearing pursuant to the requirements of § 36.42.

Section 36.33 This section implements section 1303 of the Alaska Lands Act by providing procedures and guidance for those occupying and using existing cabins and those desiring to construct new cabins within Alaska National Wildlife Refuges. It addresses construction of new cabins, use of existing cabins by occupants who may not have a legal interest in them, and use of existing cabins by those with valid existing rights in cabins as of December 2, 1980.

Under the Alaska Lands Act, new cabins are authorized in Alaska National Wildlife Refuges only pursuant to a non-transferable, five-year special use permit issued by the Refuge Manager. Section 36.33, tracking the language of the statute, authorizes issuance of such a permit only upon a determination that (1) the proposed use, construction, and maintenance of a cabin is compatible with the purposes for which the refuge was established and (2) that the use of the cabin is either directly related to the administration of the refuge or is necessary to provide for a continuation of an ongoing activity or use otherwise allowed within the refuge where the permit applicant has no reasonable alternative site for constructing a cabin outside the refuge. As prescribed by the Act, no special use permit may be issued to authorize the construction of a cabin for private recreational use.

Subsection (b)(1) addresses the use of existing cabins by occupants who may not have a legal right to the cabin. The traditional and customary use of these existing cabins within an Alaska

National Wildlife Refuge is authorized in accordance with a five-year, special use permit issued upon a determination by the Refuge Manager that the traditional and customary uses are compatible with the purposes of the refuge. As with new cabins, special use permits may not be issued to authorize the use of an existing cabin for private recreational uses.

Subsection (b)(2) addresses use of existing cabins by occupants who have a valid permit or lease in effect on December 2, 1980 for those structures. Such an occupant is entitled, as a matter of right, to continuation of such permit or lease unless the Refuge Manager determines, following notice and an opportunity for response, that such a continuation would directly threaten or significantly impair the purposes for which the refuge was established.

All permits authorized under this section must be renewed every five years until the death of the last immediate member of the claimant residing in the cabin. Permits need not be renewed, however, if the Refuge Manager determines, after a formal adjudicatory hearing, that the use of the cabin under the permit is causing or may cause significant detriment to the principal purposes for which the refuge was established.

Section 36.34 This section authorizes, in accordance with State and Federal law, the possession, use and transporting of firearms on Alaska National Wildlife Refuges for purposes of hunting or personal protection. Such uses may be prohibited or restricted only in accordance with the public participation provision of § 36.42.

Section 36.35 The general National Wildlife Refuge System regulations authorize the leaving of unattended personal property on a refuge for only short periods of time. Recognizing unique Alaska circumstances, such as the need to allow for trapping caches, this section generally extends the period to 12 months, except that no time limit applies to leaving personal property in a cache or cabin. The Service would retain the authority to impound unattended property that interfaces with the safe and orderly management of the refuge in case of damage to refuge resources.

Section 36.36 As proposed, this section relaxes the general trespass provisions of the general National Wildlife Refuge System regulations (50 CFR 26.11) for household pets and sled or pack dogs under the control of their owners or handlers.

Section 36.37 This proposed section applies to all discretionary determinations by the Fish and Wildlife Service concerning whether to lease or otherwise permit the use or occupancy of refuge lands where authorized by law. Alaska Lands Act, Section 810. For example, the Refuge Manager must comply with the procedures of this section in determining whether to open routes or areas to offroad vehicle use under the provisions of § 36.22 of these regulations. In any such determination, § 36.37 requires the Refuge Manager to evaluate the effect on subsistence uses and needs, the availability of other lands to achieve the desired purposes, and other alternatives which would reduce or eliminate the use or occupancy of refuge lands needed for subsistence purposes. Prior to any lease, permit, use, or occupancy which would significantly restrict subsistence uses, under Section 810 of the Act, the Fish and Wildlife Service official must give notice to the appropriate State agency and local committees and regional councils; give notice to local residents of the affected area and hold an informal public hearing in the area; determine that such a significant restriction of subsistence uses is necessary and consistent with sound management principles for refuge areas; that the proposed actions will involve the minimal amount of refuge lands necessary to accomplish the desired purpose; and that reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources. If the Fish and Wildlife Service is required to prepare an environmental impact statement (EIS) pursuant to the National Environmental Policy Act for the proposed use or occupancy, § 36.37 states that the required notice, hearing and findings would be provided in the EIS process.

Section 810 of the Alaska Lands Act makes clear that the above provisions are not to be construed as prohibiting or impairing the ability of the State or any Native Corporation to make land selections and receive land conveyances pursuant to the Alaska Statehood Act or the Alaska Native Claims Settlement Act. It should be noted that the requirements of section 810 of the Alaska Lands Act, and § 36.37, are procedural in nature. In other words, as explained in the section's legislative history, "until the requirements of the section have been satisfied the proposed action may not proceed, but once the requirements of the section are satisfied and incorporated into existing land use planning processes the proposed action may proceed even though its effect may be adverse to subsistence uses." S. Rep. No. 96–413, *Supra*, 234.

Subpart E—Permits and Public Participation

Section 36.41 This section would consolidate procedures regarding the issuance and denial of permits required by the general National Wildlife Refuge System regulations and these regulations. The procedures specify to whom an application for a permit must be submitted, and direct the Refuge Manager to promptly acknowledge in writing the receipt of all requests for permits, access routes, or other requirements of this section. This section also proposes an appeal procedure for applicants aggrieved by a decision of the Refuge Manager.

The appeals systems was established with a view toward minimizing the requirements imposed upon the applicant during the appeal process, yet establishing a procedure that would fairly meet the concerns of the applicant. Any person whose permit application has been denied by the Refuge Manager has a right to appeal that denial to the Regional Director. Whether the appeal will include an opportunity for an oral hearing must be determined by the Regional Director. The Regional Director *shall* provide an oral hearing if it is determined that the applicant would present new relevant information at such a hearing. In addition, the Regional Director *may* provide a hearing opportunity if he determines, as a matter of discretion, that such a hearing would be useful.

Section 36.42 As proposed, this section authorizes the Refuge Manager to close a refuge area or restrict an activity thereon either on an emergency or permanent basis. Emergency closures or restrictions may not exceed 60 days unless extended, after notice and hearing, for as long a period of time as necessary to respond to the circumstances or conditions originally justifying an emergency closure. Under this section, permanent closures or restrictions are effective for as long as necessary to achieve their intended purposes.

All closures or restrictions must be accompanied by extensive public notice. Under this section the Service would: publish such notices in at least one newspaper of general circulation in the State and in at least one local newspaper if appropriate, post the notice at community post offices within the vicinity affected, make the notice available for broadcast on local radio studios, and designate the affected area on a map at the office of the Refuge Manager or other places convenient to the public. Notice of the closures or

restrictions also could be carried out by the posting of appropriate signs.

In addition to these extensive notification procedures, section 36.42 requires public hearings in the affected vicinity in certain cases. For instance, as proposed, emergency or permanent closures or restrictions relating to the use of aircraft, snowmobile or motorboats requires *prior* notice and hearing. Furthermore, emergency closures or restrictions relating to the taking of fish and wildlife would be accompanied by simultaneous publication of a public notice with a subsequent public hearing, while a permanent closure involving the taking of fish and wildlife would require prior notice and public hearing.

Drafting Information

The primary authors of these proposed rules are William C. Reffalt and Ronald Fowler, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, D.C.

Impact Analysis

The Department of the Interior has made a determination that these proposed regulations are not significant, as that term is defined under Executive Order No. 12044 and 43 CFR Part 14, nor do they require the preparation of a regulatory analysis pursuant to the provisions of those authorities.

As required by the Regulatory Flexibility Act (Pub. L. 96–354), the Fish and Wildlife Service has made an initial determination that these interim regulations will not have a significant economic effect on a substantial number of small business, small organizations, or small governmental jurisdictions. However, public comment is invited on whether the consequences or the rule will require this analysis.

A 28–volume environmental impact statement was prepared in 1974 concerning the establishment, management, and public use of Alaska National Interest Lands conservation system units in Alaska, including the areas now designated as units of the National Wildlife Refuge System in the Alaska Lands Act. The 1974 EIS was supplemented in November, 1978 with an analysis of the impacts of alternative Executive Branch actions designed to conserve the Alaska National Interest Lands.

In addition to those environmental documents which received extensive public comment, and the numerous studies included within their bibliographies upon which they were based, a wealth of other materials and analyses have been generated on the management of the Alaska National Interest Lands as a result of congressional action on the so called "d–2" legislation. As of the date of this emergency rulemaking, four separate committee reports, a background committee report, and extensive legislative history printed in the *Congressional Record* have been published by the House of Representatives. In the Senate, two extensive committee reports, a two-volume report concerning the results of a committee workshop in Alaska and an extensive legislative history printed in the *Congressional Record* have been published.

All of these reports and histories concern the establishment, management, and public use of the new conservation system units in Alaska. This is in addition to more than 45 days of formal congressional committee hearings held throughout the United States on this matter. The joint Federal-State Land Use Planning Commission for Alaska also conducted more than a dozen public hearings throughout the country in its investigations concerning the proposed public use and classifications of the proposed conservation system units.

Public Participation

These proposed regulations would give interim management guidance on subsistance, access, cabins, and public recreational use of the refuge areas in Alaska. Public comment on these proposed rules is actively solicited and desired during the 45-day public review period. Following the consideration of public comment and appropriate changes, it is anticipated that final regulations will be issued in March of 1981 to give the public interim management guidance on the permissable uses of Alaska National Wildlife Refuges. This expedited schedule is so that regulations will be in effect in times for the peak public use season.

With the substantial prior public comment and the emergency need for public guidance in advance of the peak public use seasons, the Fish and Wildlife Service believes that a 45-day public comment period is the maximum that can be afforded on this limited agenda rulemaking. Any longer public comment period would place the effective data of these regulations beyond the spring "break up" of deep winter conditions, and would create public confusion on allowable uses of refuge areas during peak public use (*e.g.*, recreation, access, subsistence, mining) seasons. Thus, the Fish and Wildlife Service believes that a 45-day public comment period (which is longer than required under 5 U.S.C. 553) strikes an appropriate balance between desires for advance public review of proposed regulations and the needs for interim management and public guidance.

In addition to comments on these proposed regulations the Fish and Wildlife Service is also inviting comment on any other issues that should be considered in any future rulemaking.

Bob Herbst,

Assistant Secretary for Fish and Wildlife and Parks.

January 14, 1981.

In consideration of the foregoing, Title 50 of the Code of Federal Regulations is proposed to be amended by establishment of a new Part 36 in Chapter I, Subchapter C, as follows:

PART 36—ALASKA NATIONAL WILDLIFE REFUGES

Subpart A—Introduction and General Provisions

Sec.
36.1 Applicability and scope.
36.2 Definitions.

Subpart B—Subsistence Uses

36.11 Purpose and policy.
36.12 Use of snowmobiles, motorboats, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses.
36.13 Subsistence fishing.
36.14 Subsistence hunting and trapping.
36.15 Subsistence uses of timber and plant material.
36.16 Closure to subsistence uses of fish and wildlife.

Subpart C—Use of Motorized Vehicles and Access

36.21 Use of snowmobiles, motorboats, and aircraft.
36.22 Use of off-road vehicles.
36.23 Access to inholdings.
36.24 Temporary access.

Subpart D—Other Refuge Uses

36.31 Recreational activities.
36.32 Taking of fish and wildlife.
36.33 Cabins and other structures.
36.34 Firearms.
36.35 Unattended property.
36.36 Sled dogs and household pets.
36.37 Subsistence and land use decisions.

Subpart E—Permits and Public Participation

36.41 Permits.
36.42 Public participation.

Table I—Summary Listing of the National Wildlife Refuges in Alaska as Established by the Alaska Lands Act

Authority: The Alaska National Interest Lands Conservation Act, Pub. L. No. 96–487 (December 2, 1980); the National Wildlife Refuge System Administration Act, as amended, 16 U.S.C. 668dd *et seq.*, Fish and Wildlife Act of 1956, 16 U.S.C. 742(a) *et seq.*; Refuge Recreation Act, 16 U.S.C. 460k *et seq.*

Subpart A—Introduction and General Provisions

§ 36.1 Applicability and scope.

(a) The regulations contained in this part are prescribed for the proper use and management of all Alaska National Wildlife Refuges and supplement the general National Wildlife Refuge System regulations found in Title 50, Code of Federal Regulations, Chapter I, Subchapter C. The general National Wildlife Refuge System regulations are automatically applicable in their entirety to the Alaska National Wildlife Refuges except as supplemented or modified by these regulations.

(b) The regulations contained in this part are applicable only on Federally owned lands within the boundaries of any Alaska National Wildlife Refuge. For purpose of this part "Federally owned lands" means land interests held or retained by the United States, but does not include those land interests: (1) tentatively approved, legislatively conveyed, or patented to the State of Alaska, or (2) interim conveyed or patented to a Native Corporation or person.

§ 36.2 Definitions.

The following definitions shall apply to the regulations contained in this part.

(a) "Adequate and feasible access" means a method and route of access which is economically practicable for achieving the reasonable use or development desired by the applicant of the applicant's nonfederal land or occupancy interest, but does not necessarily mean the most economically feasible alternative.

(b) The term "aircraft" means a machine or device that is used or intended to be used to carry persons or objects in flight through the air, including, but not limited to, airplanes, helicopters and gliders.

(c) "Alaska National Wildlife Refuges" means all lands, waters and interests therein administered by the United States Fish and Wildlife Service within the following National Wildlife Refuges in Alaska: Alaska Maritime, Arctic, Alaska Peninsula, Becharof, Innoko, Kanuti, Kenai, Kodiak, Koyukuk, Nowitna, Selawik, Tetlin, Izembek, Togiak, Yukon Delta and Yukon Flats.

(d) "Downed aircraft" means an aircraft that as a result of mechanical failure or accident cannot take off.

(e) "Fish and wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, non-migratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or dead body or part thereof.

(f) "Off-road vehicle" means any motor vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, wetland, or other natural terrain, except snowmobiles as defined in this section.

(g) "Person" means any individual, firm, corporation, society, association or partnership.

(h) "Public lands" means lands situated in Alaska which are federally owned lands, except:

(1) land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act (72 Stat. 339) and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;

(2) land selections of a Native Corporation made under the Alaska Native Claims Settlement Act (85 Stat. 688) which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(3) lands referred to in section 19(b) of the Alaska Native Claims Settlement Act.

(i) "Refuge Manager" means any Fish and Wildlife Service official in charge of an Alaska National Wildlife Refuge, the Alaska Regional Director of the Fish and Wildlife Service, or an authorized representative of either.

(j) "Snowmobile" means a self-propelled vehicle intended for off-road travel primarily on snow having a curb weight of not more than 1,000 pounds (450 kg), driven by track or tracks in contact with the snow and steered by a ski or skis in contact with the snow.

(k) "Subsistence uses" means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter or sharing for personal or family consumption; and, for customary trade. For purposes of this paragraph, the term—

(1) "Family" means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

(2) "Barter" means the exchange of fish or wildlife or their parts taken for subsistence uses—

(i) For other fish or game or their parts; or

(ii) For other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature; and

(3) "Customary trade" shall be limited to the exchange of furs for cash.

(l) "Take" or "taking", as used with respect to fish and wildlife, means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm or attempt to engage in any such conduct.

Subpart B—Subsistence Uses

§ 36.11 Purpose and policy.

(a) Consistent with the management of fish and wildlife in accordance with recognized scientific principles and the purposes for which each Alaska National Wildlife Refuge was established, designated, or expanded, the purpose of this subpart is to provide the opportunity for local rural residents engaged in a subsistence way of life to do so pursuant to applicable State and Federal law.

(b) Consistent with sound management principles and the conservation of healthy populations of fish and wildlife, the utilization of Alaska National Wildlife Refuge areas is to cause the least adverse impact possible on local rural residents who depend upon subsistence uses of the resources on the public lands in Alaska.

(c) Nonwasteful subsistence uses of fish, wildlife and other renewable resources by local rural residents shall be the priority consumptive uses of such resources over any other consumptive uses permitted within Alaska National Wildlife Refuge areas. Such nonwasteful subsistence uses shall be in accordance with applicable State and Federal law.

(d) Nothing in this subpart shall be construed as permitting a level of subsistence uses of fish and wildlife within Alaska National Wildlife Refuges which is inconsistent with the conservation of healthy populations of fish and wildlife.

§ 36.12 Use of snowmobiles, motorboats and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses.

(a) Notwithstanding any other provision of Subchapter C of Title 50, Code of Federal Regulations, the use of snowmobiles, motorboats and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses is permitted within Alaska National Wildlife Refuges except at those times and in those areas restricted or closed by the Refuge Manager.

(b) The Refuge Manager may restrict or close a route or area to the use of snowmobiles, motorboats, or other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses if the Refuge Manager determines that such use is causing or may cause adverse impact on public health and safety, resource protection, protection of historic or scientific values, subsistence uses, protection of endangered or threatened species, or other purposes and values for which the refuge was established.

(c) No restrictions or closures shall be imposed without notice and a public hearing in the affected vicinity. In the case of emergency situations, restrictions or closures shall be for a period not to exceed sixty (60) days and shall not be extended unless the Refuge Manager establishes, after notice and public hearing in the affected vicinity, that such extension is justified according to the factors set forth in paragraph (b) of this section. Notice of the proposed or emergency restrictions or closures and the reasons therefor shall be published in at least one newspaper of general circulation within the State and in at least one local newspaper if appropriate, and information about such proposed or emergency actions shall also be made available for broadcast on local radio stations in a manner reasonably calculated to inform local rural residents in the affected vicinity. All restrictions and closures shall be designated on a map which shall be available for public inspection at the office of the Refuge Manager of the affected refuge and the post office or postal authority of every affected community within or near the refuge area, or by the posting of signs in the vicinity of the restrictions or closures, or both.

(d) Snowmobiles, motorboats and other mean of surface transportation traditionally employed by local rural residents engaged in subsistence uses shall be operated (1) in compliance with applicable State and Federal law, (2) in such a manner as to prevent waste or damage to the refuge or any parts or values thereof, and (3) in such a manner as to prevent the herding, harassment, hazing or driving of wildlife for hunting or other purposes.

(e) At all times when not engaged in subsistence uses, local rural residents may use snowmobiles, motorboats and other means of surface transportation in accordance with Subpart C of this part.

§ 36.13 Subsistence fishing.

Fish may be taken by local rural residents for subsistence uses in compliance with applicable State and Federal law. To the extent consistent with the provisions of this part and other Federal law, applicable State laws and regulations governing the taking of fish which are now or will hereafter be in effect are hereby incorporated by reference as a part of these regulations.

§ 36.14 Subsistence hunting and trapping.

Local rural residents may hunt and trap wildlife for subsistence uses in compliance with applicable State and Federal law. To the extent consistent with the provisions of this part and other Federal law, applicable State laws and regulations governing the taking of wildlife which are now or will hereafter be in effect are hereby incorporated by reference as a part of these regulations.

§ 36.15 Subsistence uses of timber and plant material.

(a) Notwithstanding any other provisions of this part or Subchapter C, the noncommercial cutting of live standing timber and the noncommercial gathering of fruits, berries, mushrooms and other plant material by local rural residents for subsistence uses shall be permitted in compliance with applicable Federal law.

(b)(1) Notwithstanding any other provision of this part, the Refuge Manager, after notice and public hearing in the affected vicinity, may temporarily close all or any portion of an Alaska National Wildlife Refuge to subsistence uses of a particular plant population only if necessary for reasons of public safety, administration, or to assure the continued viability of such population. For purposes of this section, the term "temporary" shall means only as long as reasonably necessary to achieve the purpose of the closure.

(2) If the Refuge Manager determines that an emergency situation exists and that extraordinary measures must be taken for public safety or to assure the continued viability of a particular plant population, the Refuge Manager may immediately close all or any portion of an Alaska National Wildlife Refuge to the subsistence uses of such population. Such emergency closure shall be effectve when made, shall be for a period not to exced sixty (60) days, and may not subsequently be extended unless the Refuge Manager establishes, after notice and public hearing in the affected vicinity, that such closure should be extended.

(3) Notice of administrative actions taken pursuant to this section, and the reasons justifying such actions, shall be published in at least one newspaper of general circulation within the State, and in at least one local newspaper if appropriate, and information about such actions and reasons therefor also shall be made available for broadcast on local radio stations in a manner reasonably calculated to inform local rural residents in the affected vicinity. All closures shall be designated on a map which shall be available for public inspection at the office of the Refuge Manager of the affected refuge and the post office or postal authority of every affected community within or near the refuge, or by the posting of signs in the vicinity of the restrictions, or both.

§ 36.16 Closure to subsistence uses of fish and wildlife.

(a) Notwithstanding any other provision of this part, the Refuge Manager, after consultation with the State and adequate notice and public hearing in the affected vicinity, may temporarily close all or a portion of an Alaska National Wildlife Refuge to subsistence uses of a particular fish or wildlife population only if necessary for reasons of public safety, administration, or to assure the continued viability of such population. For the purposes of this section, the term "temporarily" shall mean only so long as reasonably necessary to achieve the purpose of the closure.

(b) If the Refuge Manager determines that an emergency situation exists and that extraordinary measures must be taken for public safety or to assure the continued viability of a particular fish or wildlife population, he may immediately close all or any portion of a refuge to the subsistence uses of such population. Such emergency closure shall be effective when made, shall be for a period not to exceed sixty (60) days, and may not subsequently be extended unless the Refuge Manager establishes, after notice and public hearing in the affected vicinity, that such closure should be extended.

(c) Notice of administrative actions taken pursuant to this section and the reasons justifying such actions shall be published in at least one newspaper of general circulation within the State, and in at least one local newspaper if appropriate, and information about such actions and justifying reasons shall be made available for broadcast on local radio stations in a manner reasonably calculated to inform local rural residents in the affected vicinity. All closures shall be designated on a map which shall be available for public inspection at the office of the Refuge Manager of the affected refuge area and the post office or postal authority of every affected community within or near the refuge area, or by the posting of signs in the vicinity of the closures, or both.

Subpart C—Use of Motorized Vehicles and Access

§ 36.21 Use of snowmobiles, motorboats, and aircraft.

(a) The use of snowmobiles (during periods of adequate snowcover or frozen river conditions), motorboats and aircraft is permitted on Alaska National Wildlife Refuges, except where such use is prohibited or otherwise restricted by the Refuge Manager in accordance with the provisions of § 13.42, or as provided for in § 36.12.

(b) In imposing any prohibitions or restrictions on aircraft use, the Refuge Manager shall: (1) comply with the procedures set forth in § 36.42; (2) publish notice of prohibitions or restrictions as "Notices to Airmen" issued by the Department of Transportation; and (3) publish permanent prohibitions or restrictions as a regulatory notice in the United States Government Flight Information Service "Supplement Alaska".

(c) The operation of aircraft, at altitudes and in flight paths resulting in the herding, harassment, hazing, or driving of wildlife is prohibited.

(d) Except as provided in paragraph (f) of this section, the owners of any aircraft, downed after December 2, 1980, shall remove the aircraft and all component parts thereof in accordance with procedures established by the Refuge Manager. In establishing a removal procedure, the Refuge Manager is authorized to: (1) establish a reasonable date by which aircraft removal operations must be completed; and (2) determine times and means of access to and from the downed aircraft.

(e) The Refuge M nager may waive the requirements of § 36.21(d) when it is determined that: (1) the removal of downed aircraft would constitute an unacceptable risk to human life; or (2) the removal of a downed aircraft would result in extensive resource damage; or (3) the removal of a downed aircraft is otherwise impracticable or is impossible.

(f) Salvaging, removing, possessing or attempting to salvage, remove or possess any downed aircraft or component parts thereof is prohibited, except in accordance with a permit issued by the Refuge Manager, *provided, however,* that the owner or an authorized representative thereof may remove valuable component parts from a downed aircraft at the time of rescue wihout a permit.

§ 36.22 Use of off-road vehicles.

(a) The use of off-road vehicles on Alaska National Wildlife Refuges in locations other than established roads and parking areas is prohibited, except on routes or in areas designated by the Refuge Manager or subject to a valid access permit as prescribed in §§ 36.23, 36.24 and 36.41. Such designations shall be made in accordance with procedures in this section.

(b)(1) In determining whether to designate a route or area for off-road travel, the Refuge Manager shall consider the criteria contained in Section 3 of Executive Order 11644, as amended (37 FR 2877), and such factors as other public uses, public health and safety, environmental and resource protection, research activities, protection of historic or scientific values, subsistence uses, conservation of endangered or threatened species and other management considerations necessary to ensure that off-road vehicle use is compatible with the purposes for which the refuge was established.

(2) Route or area designations shall be designated on a map which shall be available for public inspection at the office of the Refuge Manager of the affected refuge and the post office or postal authority of every affected community within or near the refuge area, or by the posting of signs in the vicinity of the designated route or area, or both.

(3) Notice of routes or areas on which off-road travel is permitted shall be in accordance with the provisions of section 36.42(d).

(4) The closure or restrictions on use of designated routes or areas to off-road vehicles use shall be in accordance with the provisions of § 36.42.

§ 36.23 Access to inholdings.

(a) *Purpose.* Where adequate and feasible access is otherwise restricted pursuant to the provisions of this part (*e.g.* §§ 36.22 and 36.42), it is the purpose of this section to ensure access across Alaska National Wildlife Refuges for any person who has a valid property or occupancy interest in lands or structure which are located within a refuge area or are effectively surrounded by federally owned lands. These regulation are not intended to grant an interest in or otherwise alienate Federal property, but rather to provide specific relief from other regulatory provisions that may unreasonably restrict access to non-federal property.

(b) *Application and administration.*

(1) Applications for a permit designating methods and routes of access across any Alaska National Wildlife Refuge not affirmatively provided for in this part shall be submitted to the Refuge Manager as specified under § 36.41.

(2) The access permit application shall contain the name and address of the applicant, documentation of the relevant property or occupancy interest held by the applicant, a map or physical description of the relevant property or occupancy interest, a map or physical description of the desired route of access, a description of the desired method of access, and the purpose for which access is sought, and such other information deemed necessary by the Refuge Manager for consideration of the application.

(3) The Refuge Manager shall specify in a renewable permit, adequate and feasible routes and methods of access across refuge lands for any person who meets the criteria of paragraph (a) of this section. The Refuge Manager shall designate the routes and methods desired by the applicant unless it is determined that:

(i) The route or method of access would cause significant adverse impacts on natural or other values of the refuge, and adequate and feasible access otherwise exists; or

(ii) The method or route of access would jeopardize public health and safety, and adequate and feasible access otherwise exists; or

(4) If the Refuge Manager makes one of the findings described in paragraph (b)(3) of this section, he shall specify such other alternate methods and routes of access as will provide adequate and feasible access to the applicant, while minimizing damage to natural and other values of the refuge.

(5) Routes and methods of access permitted pursuant to this section shall be available for use by guests and invitees of the permittees.

(c) *Special Information Requirements for Access for Mineral Exploration, Assessment or Development.*

(1) Applicability. This subsection is applicable only when a person requires a permit for access (*e.g.* situations where § 36.21 does not already provide adequate and feasible access) across a refuge area to non-federally owned lands or interests therein or valid unpatented mining claims located within the exterior boundaries of a refuge, for mineral exploration, assessment or development purposes.

(2) Access Permit Application. Any person described in paragraph (c)(1) of this section shall apply to the Refuge Manager for an access permit and shall provide the following information:

(i) The name, mailing address and phone number of the permit applicant;

(ii) The claim(s) name; a description of type of claim(s) (*e.g.*, patented claim, mill site, unpatented claim, etc.); and a description of the kind of mine and

minerals produced (*e.g.*, placer, lode, copper, gold);

(iii) A map, preferably a topographic map with a scale of not less than one inch to a mile (1:63,360), or a sketch, showing the survey or projection grids on which there will be depicted the location of the claim(s). Contiguous claims and groups of claims in the same general area may be depicted on a single map so long as the individual claims are clearly identified;

(iv) The date(s) of location along with a copy of location notice(s); and the date and place of recordation and book and page number of recordation;

(v) A description of the proposed mining operations, the proposed routes and methods of access, period of intended occupancy and operation at the claim site; and major equipment to be used in the operations;

(vi) A brief environmental summary which: (A) discusses the anticipated environmental impacts of the proposed mining operations and routes and methods of access; and (B) describes those measures which will be incorporated into the proposed mining operations and the construction and use of access routes to minimize the anticipated adverse impacts upon the refuge and its related values.

(3) Whenever an unpatented mining claim is located within the exterior boundaries of a refuge area, the person shall also submit the following information:

(i) The last year in which there was production from this claim or claim group and the amount of production (*e.g.* pounds, tons, market value, etc.);

(ii) The person or company to whom the ore or concentrates were shipped;

(iii) The quantity of known reserves on the claim remaining to be mined (*e.g.* cubic yards, tons, etc.) plus a description of the tests conducted and documents which support this estimation of quantity; and

(iv) The grade or quality of the known reserves on the claim remaining to be mined (e.g. ounces per cubic yard, assay, etc.) plus a description of the tests conducted and documents which support this estimation of grade or quality.

(4) Permit Approval. The Refuge Manager shall utilize the permit granting standards of paragraph (b) of this section to grant such adequate and feasible access for economic purposes to nonfederally owned lands or interests therein or valid unpatented mining claims within the boundaries of a refuge, while minimizing damage to the natural and other values of the refuge area.

(d) *Construction of Permanent Improvements.* The establishment or modification of a route or method of access which requires the construction of permanent improvements, including, but not limited to, the construction of concrete bridges or runways is prohibited unless authorized pursuant to the provisions of 50 Code of Federal Regulations, Chapter 1, Subchapter C, Part 29, Subpart B.

§ 36.24 Temporary access.

(a) *Applicability.* This section is applicable to State and private landowners who desire temporary access across an Alaska National Wildlife Refuge for the purposes of survey, geophysical, exploratory and other temporary uses of such non-federal lands, and where such temporary access is not affirmatively provided for in §§ 36.22 or 36.23 of this part. State and private landowners meeting the criteria of § 36.23(a) are directed to utilize the procedures of § 36.23 to obtain temporary access.

(b) *Temporary Access for Mineral Exploration.*

(1) Application. A landowner requiring temporary access across a refuge area for mineral survey, geophysical, exploratory or similar mineral activities shall apply to the Refuge Manager for an access permit and shall provide the relevant information contained in § 36.23(c)(2) concerning the planned access and mineral exploration activities.

(2) Permit Standards, Stipulations and Conditions. The Refuge Manager shall grant the desired temporary access whenever he determines that such access will not result in permanent harm to refuge area resources. The Refuge Manager shall include in any permit granted such stipulations and conditions on temporary access as are necessary to ensure that the access granted would not be inconsistent with the purpose for which the refuge was established and to ensure that no permanent harm will result in refuge resources.

(c) *Temporary Access for Other Purposes.*

(1) Application. A landowner requiring access across a refuge area for survey, geophysical, exploratory or other temporary uses unrelated to mineral exploration shall apply to the Refuge Manager for an access permit. The applicant shall state the proposed method and route of access, and the temporary use the applicant proposes to undertake on his land.

(2) Permit Standards, Stipulations and Conditions. The permit granting standards, stipulations and conditions of paragraph (b)(2) of this section shall be applicable here.

(d) *Definition.* For the purposes of this section, "temporary access" shall mean limited, short-term, non-successive access, which does not require permanent facilities for access, to undeveloped State or private lands.

Subpart D—Other Refuge Uses

§ 36.31 Recreational activities.

(a) Public recreational activities within the Alaska National Wildlife Refuges are authorized as long as such activities are conducted in a manner compatible with the purposes for which the areas were established. Such recreational activities include, but are not limited to, sightseeing, nature observation and photography, sport hunting, sport fishing, boating, camping, hiking, picnicking and other related activities. Any existing special regulations now in force and effect shall continue to apply to the applicable refuge lands in Alaska National Wildlife Refuges.

(b) Recreational activities may be prohibited or otherwise restricted in accordance with the provisions of § 36.42.

§ 36.32 Taking of fish and wildlife.

(a) The taking of fish and wildlife for sport hunting, trapping and sport fishing is authorized in accordance with applicable State and Federal law and such laws are hereby adopted and made a part of these regulations; *provided however,* that for trapping, sport hunting and sport fishing the Refuge Manager, pursuant to § 36.42, may designate areas where, and establish periods when, no taking of a particular population of fish or wildlife shall be permitted.

(b) The exercise of valid commercial fishing rights or privileges obtained pursuant to existing law, including any use of refuge areas for campsites, cabins, motorized vehicles and aircraft landing directly incident to the exercise of such rights or privileges, is authorized; *provided, however,* that the Refuge Manager may restrict or prohibit the exercise of these rights or privileges or uses of federally owned lands directly incident to such exercise if he determines, after conducting a public hearing in the affected locality, that they are inconsistent with the purposes of the refuge and that they constitute a significant expansion of commercial fishing activities within such refuge beyond the level of such activities in 1979.

(c) The following provisions shall apply to any person while engaged in the taking of fish and wildlife within an Alaska National Wildlife Refuge:

(1) Trapping and Sport Hunting

(i) Each person shall secure and possess all required State licenses and shall comply with the applicable provisions of State law unless further restricted by Federal law;

(ii) Each person shall comply with the applicable provisions of Federal law;

(iii) In addition to the requirements of paragraphs (a) and (b) of this section, each person shall continue to secure a trapping permit from the appropriate Refuge Manager prior to trapping on the Kenai, Izembek and Kodiak Refuges and the Aleutian Islands Unit of the Alaska Maritime Rufuge.

(2) Sport and Commercial Fishing

(i) Each person shall secure and possess all reguired State licenses and shall comply with the applicable provisions of State law unless further restricted by Federal law;

(ii) Each person shall comply with the applicable provisions of Federal law.

(d) Nothing in these rules shall be interpreted as waiving the requirements of other fish and wildlife conservation statutess such as the Airborne Hunting Act or those provisions of Subchapter C of Title 50, Code of Federal Regulations, regarding the taking of depredating wildlife. Animal control programs shall only be conducted in accordance with a special use permit issued by the Refuge Manager.

§ 36.33 Cabins and other structures.

(a) *New Cabins.*

(1) The construction of new cabins on federally owned lands within an Alaska National Wildlife Refuge is prohibited except as may be authorized pursuant to a nontransferable, five-year special use permit issued by the Refuge Manager.

(2) Such special use permit shall only be issued upon a determination that the proposed use, construction, and maintenance of a cabin is compatible with the purposes for which the refuge was established and that the use of the cabin -is either directly related to the administration of the refuge or is necessary to provide for a continuation of an ongoing activity or use otherwise allowed within the refuge where the permit applicant has no reasonable alternative site for constructing a cabin outside of the Refuge. In determining whether to permit the use, occupancy, construction, reconstruction or maintenance of cabins or other structures, the Refuge Manager shall be guided by factors such as other public uses, public health and safety, environmental and resource protection, research activities, protection of historic or scientific values, subsistence uses, endangered or threatened species conservation and other management considerations necessary to ensure that the activities authorized pursuant to this section are compatible with the purpose for which the refuge was established. No special use permit shall be issued to authorize the construction of a cabin for private recreational use.

(b) *Existing Cabins.*

(1) Traditional and customary uses of existing cabins and related structures on federally owned lands within a refuge may be allowed to continue in accordance with a nontransferable, renewable five-year special use permit issued by the Refuge Manager. Such special use permit shall be issued only upon a determination that the traditional and customary uses are compatible with the purposes for which the refuge was established. No special use permits shall be issued to authorize the use of an existing cabin for private recreational use.

(2) Where a valid permit or lease was in effect on December 2, 1980, for cabins, homesites or similar structures on federally owned lands within a refuge, the Refuge Manager shall provide for the continuation of the permit or lease, unless a finding is made, following notice and an opportunity for the leaseholder or permittee to respond, that the continuation of the lease or permit will directly threaten of significantly impair the purposes for which the refuge was established.

(c) No special use permit shall be issued under paragraphs (a) or (b)(1) of this section unless the permit applicant:

(1) In the case of existing cabins or structures, reasonably demonstrates by affidavit, bill of sale or other documentation, proof of possessory interests or right of occupancy in the cabin or structure;

(2) Submits an accurate sketch or photograph of the existing or proposed cabin or structure and a map showing its geographic location;

(3) Agrees to vacate the cabin or structure and remove all personal property from it upon nonrenewal or revocation of the permit;

(4) Acknowledges in the permit application that the applicant has no interest in the real property on which the cabin or structure is located or will be constructed; and

(5) Submits a list of the names of all immediate family members residing in the cabin or structure.

(d) Permits authorized under the provisions of this section shall be renewed every five years until the death of the last immediate family member of the claimant residing in the cabin or structure under permit. Renewal will occur unless the Refuge Manager determines after notice of hearing, on the basis of substantial evidence in the administrative record as a whole, that the use under the permit has caused or may cause significant detriment to the principal purposes for which the refuge area was established. The Refuge Manager's decision may be appealed pursuant to the provisions of 43 CFR 4.700.

§ 36.34 Firearms.

The possession, use and transporting of firearms is authorized for hunting and personal protection in accordance with State and Federal laws unless prohibited or otherwise restricted by the Refuge Manager in accordance with the provisions of § 36.42.

§ 36.35 Unattended property.

(a) Leaving any snowmobile, vessel, off-road vehicle or other personal property unattended for longer than 12 months without the prior permission of the Refuge Manager is prohibited, and any property so left may be impounded by the Refuge Manager. This prohibition does not apply to personal property left unattended in a cache or cabin when used in conjunction with an authorized activity.

(b) In the event unattended property interferes with the safe and orderly management of part of the refuge or causes damage to refuge resources, it may be impounded by the Refuge Manager.

§ 36.36 Sled dogs and household pets.

The general trespass provisions of 50 CFR 26.21 shall not apply to household pets and sled or pack dogs under the control of their owners or handlers, but such activities may be prohibited or otherwise restricted pursuant to the provisions of § 36.42.

§ 36.37 Subsistence and land use decisions.

(a) In determining whether to lease or otherwise permit the use or occupancy of refuge lands under any provision of the regulations of this part or other law authorizing such actions, the Refuge Manager shall evaluate the effect of such use or occupancy on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which reduce or eliminate the use or occupancy of refuge lands needed for subsistence purposes. No such lease, permit or other use or occupancy of such lands which would significantly restrict subsistence uses shall be effected until the Refuge Manager:

(1) Gives notice to the appropriate State agency and the appropriate local committees and regional councils established pursuant to Section 805 of

the Alaska National Interest Lands Conservation Act, Pub. L. 96–487 (December 2, 1980);

(2) Gives notice of and holds a hearing in the vicinity of the area involved; and

(3) Determines that (i) such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the refuge lands, (ii) the proposed activity will involve the minimal amount of refuge lands necessary to accomplish the purposes of such use or occupancy, and (iii) reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.

(b) If an environmental impact statement pursuant to section 102(2)(C) of the National Environmental Policy Act is required with respect to the proposed use or occupancy, the notice, hearing and findings required by paragraph (a) of this section shall be provided as part of such environmental impact statement process.

(c) After compliance with the procedural requirements of this section and other applicable laws, the Refuge Manager may manage refuge lands for any of those uses or purposes authorized by law.

Subpart E—Permits and Public Participation

§ 36.41 Permits.

(a) *Application.*

(1) Regulations generally applicable to the National Wildlife Refuge System and these regulations provide in several sections that permits may be obtained from the Refuge Manager. For activities on the Arctic and Yukon Flats Refuges, such permits are to be obtained from the Refuge Manager in Fairbanks, Alaska. For activities on the Becharof, Kodiak, Kenai, Izembek and Yukon Delta Refuges and for the Aleutian Islands Unit of the Alaska Maritime Refuge, such permits are to be obtained from the Refuge Manager, headquartered, respectively, in King Salmon, Kodiak, Soldotna, Cold Bay, Bethel and Adak, Alaska. For activities on all other Alaska Refuges, permits are to be obtained from the designated Refuge Manager in Anchorage, Alaska.

(2) The Refuge Manager shall promptly acknowledge in writing the receipt of all requests for permits, access routes, or other requirements of this section.

(b) *Denial and Appeal Procedures.* A person who has been denied a permit has the right to have the application reconsidered by the Regional Director by contacting him within sixty (60) days of the issuance of the denial. For purposes of reconsideration, the permit applicant shall present the following information:

(1) Any statement or documentation, in addition to that included in the initial application, which demonstrates that the applicant satisfies the criteria set forth in the section under which the permit application is made;

(2) The basis for the permit applicant's disagreement with the prior findings and conclusions; and

(3) Whether or not the permit applicant requests an informal hearing before the Regional Director, and if the permit applicant does request a hearing, the applicant shall provide also:

(i) A description of any information, in addition to that included in the initial application and any written materials presented to the Regional Director, which the permit applicant intends to present at the hearing;

(ii) The name, address and brief description of the proposed presentation of any person which the applicant intends to present at the hearing on his/her behalf, and the name and addresses of any person the applicant would like to question at the hearing;

(iii) If, after examining the information submitted by the applicant in support of a request for an oral hearing, it is clear that the applicant would present relevant information which is substantially distinguishable from or supplementary to the information presented to the Refuge Manager, the Regional Director shall grant the permit applicant's request for a hearing. After consideration of the written materials and oral hearings, if granted, the Regional Director shall affirm, reverse or modify the denial of the Refuge Manager and shall set forth in writing the basis for the decision. A copy of the decision shall be forwarded promptly to the applicant and shall constitute final agency action.

§ 36.42 Public participation.

(a) *Criteria.* In determining whether to close an area or restrict an activity otherwise allowed, the Refuge Manager shall be guided by factors such as public health and safety, resource protection, protection of historic or scientific values, subsistence uses, endangered or threatened species conservation, and other management considerations necessary to ensure that the activity or area is being managed in a manner compatible with the purposes for which the Alaska National Wildlife Refuge area was established.

(b) *Emergency closures or restrictions.* (1) Emergency closures or restrictions relating to the use of aircraft, snowmobiles or motorboats shall be made after notice and hearing; (2) emergency closures or restrictions relating to the taking of fish and wildlife shall be accompanied by notice with a subsequent hearing; (3) other emergency closures or restrictions shall become effective upon notice as prescribed in § 36.42(d); and (4) no emergency closure or restriction shall be for a period exceeding 60 days, unless, after notice and public hearing in the affected vicinity, such closure or restriction is extended by the Refuge Manager, upon a determination that such extension is justified according to the factors set forth in paragraph (a) of this section.

(c) *Permanent closures or restrictions.* (1) Permanent closures or restrictions relating to the use of aircraft, snowmobiles or motorboats, or the taking of fish or wildlife, shall not be effective prior to notice and hearing in the vicinity of the areas directly affected by such closures and restrictions; (2) other permanent closures or restrictions shall become effective upon notice as prescribed in § 36.42(d).

(d) *Notice.* Emergency or permanent closures or restrictions shall be (1) published in at least one newspaper of general circulation in the State and in at least one local newspaper if appropriate, posted at community post offices within the vicinity affected, made available for broadcast on local radio stations in a manner reasonably calculated to inform residents in the affected vicinity, and designated on a map which shall be available for public inspection at the office of the Refuge Manager and other places convenient to the public; or (2) designated by the posting of appropriate signs; or (3) both.

(e) *Openings.* In determining whether to open an area to a public use or activity otherwise prohibited, the Refuge Manager shall first provide notice as prescribed in paragraph (d) of this section, and shall, upon request, hold a hearing in the affected vicinity prior to making a final determination.

Table I—Summary Listing of The National Wildlife Refuges in Alaska as Established by The Alaska Lands Act

(Pub.L.96–487,December2,1980)

1. Alaska Maritime, including: Aleutian Islands,* Bering Sea,* Bogoslof,* Chamisso,* Forrester Island,* Hazy Islands,* Pribilof,* Saint Lazaria,* Semidi,* Simeonof,* Tuxedni.*
2. Alaska Peninsula.
3. Arctic, including: William O. Douglas.*

*These indicated units were previously existing refuges before the Alaska Lands Act of December 2, 1980, and are now part of the 16 National Wildlife Refuges established by the Alaska Lands Act.

4. Becharof.**
5. Innoko.
6. Izembek.
7. Kanuti.
8. Kenai.
9. Kodiak.
10. Koyukuk.
11. Nowitna.
12. Selawik.
13. Tetlin.
14. Togiak, including: Cape Newenham.*
15. Yukon Delta, including: Clarence Rhode,* Hazen Bay,* Nunivak.*
16. Yukon Flats.**

[FR Doc. 81-1926 Filed 1-16-81; 8:45 am]
BILLING CODE 4310-55-M

**Units proclaimed National Monuments on December 1, 1978, were redesignated as National Wildlife Refuges by the Alaska Lands Act.

federal register

Monday
January 19, 1981

Part XXVII

Environmental Protection Agency

Intent To Issue Revised Minority Business Enterprise Policy for the Construction Grants Program, Technical Amendments to Women's Business Enterprise Policy for the Construction Grants Program, and Procedures for Implementation of Minority Business Enterprise and Women's Business Enterprise Policies

ENVIRONMENTAL PROTECTION AGENCY

[AS-FRL 1683-3]

Intent To Issue Revised Minority Business Enterprise Policy for the Construction Grants Program, Technical Amendments to the Women's Business Enterprise Policy for the Construction Grants Program, and Procedures for the Implementation of the Minority Business Enterprise and Women's Business Enterprise Policies

AGENCY: The Environmental Protection Agency.

ACTION: Proposed Policy Revisions and Proposed Program Requirements Memorandum.

SUMMARY: This Notice proposes revisions to the Policy for Increased use of Minority Counsultants and Construction Contractors, 43 FR 60220 (December 26, 1978), technical amendments to the Women's Business Enterprise Policy, 45 FR 51490 (August 1, 1980), and proposes procedures for implementing both policies. EPA invites interested persons to review and comment on the policy revisions and procedures proposed below.

DATE: Comments must be submitted on or before March 20, 1981.

ADDRESSES: Comments (in duplicate, if possible) may be mailed to: Central Docket Section (A-130), ATTN: Docket No. G-80-5, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460

FOR FURTHER INFORMATION CONTACT: Robert J. Knox, (Director, Office of Small and Disadvantaged Business Utilization), (202) 755-1127, Sylvia Horwitz (Office of General Counsel), (202) 426-4690, 401 M. Street, S.W. Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION:

Background

The purpose of this Notice is to propose revisions to EPA's Policy for Increased Use of Minority Consultants and Contractors (MBE policy), to propose technical amendments to the Women's Business Enterprise Policy (WBE policy), and to propose uniform procedures for the implementation of both policies.

EPA published the MBE policy on December 26, 1978, and it became effective on February 1, 1979. The MBE policy established a goal-oriented system to encourage increased MBE participation in EPA's sewage treatment works construction grants program, and required grantees, consultants, and prime construction contractors to make good faith positive efforts to utilize MBEs in EPA funded projects. This policy provided guidance for meeting the "positive efforts" requirement of Office of Management and Budget (OMB) Circular A-102, Attachment O, Section 3(c)(3), which was incorporated into EPA's construction grants regulations at 40 CFR 35.936-7. Each EPA Region was given the responsibility to set goals as targets for MBE participation, representing a percentage of the total dollar amount of contracts approved, and to develop procedures to implement the policy. The WBE policy was published on August 1, 1980, and will apply to projects funded after January 31, 1981.

EPA is proposing these revisions and procedures for two reasons. First, OMB revised Attachment O, requiring grantees and their contractors to take five "affirmative steps" to contract with MBEs. 44 FR 47874 (August 15, 1979). The policy revisions and new implementing procedures bring EPA's MBE policy into conformity with revised Attachment O. The second reason for revision is to make needed adjustments in the administration of the MBE policy, in both EPA headquarters and the Regions. These adjustments and uniform procedures are necessary for the efficient administration of both the MBE and WBE policies.

The MBE policy has now been in effect for nearly two years. During the past year, public meetings were held in each Region and in most States to review the Regional goals and to receive public comment on the MBE program. The public meetings were most useful in helping EPA assess the impact of the MBE program and in illuminating the specific aspects of the policy requiring revision.

The primary difficulty is the lack of uniform procedures for regional administration of the MBE policy. Because each Region was responsible for developing a program of policy implementation, a variety of procedures evolved. The development of the WBE policy reinforces the need for uniform procedures, because lack of national guidance will result in diverse regional WBE policy implementation as well. To insure consistent application of the policies, the Agency is proposing uniform procedural guidance to be followed in every Region in administering both the MBE and the WBE policies.

MBE Policy Revisions

The revisions of the MBE policy are primarily clarifications of the existing policy. It remains EPA's policy to encourage increased participation of businesses owned and controlled by minority architects, engineers, consultants, and contractors in work performed with EPA construction grant funds. The policy continues to focus on the efforts of grantees, and bidders and offerors seeking prime consultant and construction contracts with grantees, to utilize MBEs. Goals for MBE participation will also continue to be established by the Regions to serve as benchmarks for measuring MBE participation resulting from the affirmative efforts to contract with MBEs. Goals are not quotas and need not be met in order for contract award of grant funding, nor do they represent a percentage of the work that must be set aside for MBEs.

Thresholds are proposed for the applicability of the MBE policy. EPA proposes that contracts for architectural and engineering services in excess of $25,000 and prime construction contracts in excess of $250,000 be subject to the policy.

Definitions of "Minority Business Enterprise" and "Minority Group Member" have been modified to clarify existing definitions. Some additional definitions, as well as references to definitions in EPA's construction grants regulations are also included for clarification of the policy.

The responsibilities of EPA, grantees, contractors, consultants, and MBEs are abbreviated in the proposed policy. The proposed uniform procedures spell out the steps to be taken by each to implement the policy.

Proposed Procedures

The proposed procedures incorporate many of the existing methods of MBE policy implementation. Day-to-day management of EPA's responsibilities will remain in the Regions, and grantees continue to be responsible for implementing the MBE (and WBE) program through their procurement activities. The procedures will give guidance for carrying out these responsibilities in a number of areas previously unaddressed on a national level.

Because the program focuses on the procurement process, EPA proposes explicit requirements for contacting and negotiating with MBE/WBEs. The procedures state what steps must be taken, when those activities must occur, and how the fulfillment of those requirement must be demonstrated. The procedures address procurement through negotiation and through the competitive bidding process.

Procedures for certifying MBEs and WBEs and for challenging the

qualifications of businesses as MBEs and WBEs are included. In addition, the procedures provide for the development of source lists and require the collection of specific data in order to compile and update these lists.

Data collection is also essential for monitoring compliance with the policy requirements and success of the MBE and WBE programs. Related to that end, procedures for calculating MBE and WBE participation are also proposed.

The calculation procedures include a section concerning suppliers of materials and equipment. A definition of supplier is proposed to address the problem of fronts established as "suppliers" for the purpose of meeting the MBE policy requirements. Emphasis is placed on counting distributorships only when their participation is part of the custom and practice of the industry manufacturing the material or equipment supplied. Suppliers of products that are not generally distributed through suppliers will not be counted in calculating MBE participation. We understand, for example, that the manufacture of concrete pipe is such an industry. In addition, any supplier counted in MBE or WBE participation calculations must serve a useful business function.

This discussion highlights the major areas of change and clarification. EPA solicits the comments of interested persons on these areas, and on any other aspects of the proposed documents. Since EPA is not required by 5 U.S.C. § 553 or any other law to publish the proposed MBE policy revisions, technical amendments to the WBE policy, or procedures as a general notice of proposed rulemaking, no regulatory flexibility analysis is required to be provided under 5 U.S.C. §§ 603 or 604. Because a substantial number of small businesses in the construction industry may be significantly affected by the proposals, EPA invites small business owners to comment on the economic effect these proposals may have on their businesses and whether such economic effects are expected to be significant.

Dated: January 13, 1981.

Douglas M. Costle,

Administrator.

Minority Business Enterprise Policy

Introduction

The Environmental Protection Agency (EPA) published the Policy for Increased Use of Minority Consultants and Construction Contractors on December 26, 1978 at 43 Fed. Reg. 60220. (MBE policy). The following policy statement and implementing procedures (PRM#), supersedes the December 26, 1978 policy. The new policy does not impose any additional requirements. It is a clarification of existing policy and a consolidation of EPA Regional interpretation.

I. Authority

The December 26, 1978 policy was authorized by Attachment O to Office of Management and Budget Circular A–102, Section 3(c)(3), 42 Fed. Reg. 45890 (September 12, 1977). EPA implemented section 3(c)(3) of Attachment O, by promulgating in its construction grants regulations a provision identical in language to that in section 3(c)(3):

> Postive efforts shall be made by grantees to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources to maximum feasible opportunity to compete for subagreements and contracts to be performed using Federal grant funds. 40 C.F.R. § 35.936–7.

The MBE policy provided guidance to EPA Regions, grantees, consultants and contractors with respect to "positive efforts" to be made in the Construction Grants Program.

On August 15, 1979, OMB promulgated a revised Attachment O, expanding the requirements for MBE participation, 44 FR 47874. Section 9(a) of Attachment O provides:

> a. It is national policy to award a fair share of contracts to small and minority business firms. Accordingly, affirmative steps must be taken to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:
>
> 1. Including qualified small and minority businesses on solicitation lists.
>
> 2. Assuring that small and minority businesses are solicited whenever they are potential sources.
>
> 3. When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.
>
> 4. Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority business.
>
> 5. Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration as required.
>
> 6. If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps in 1 through 5 above.

EPA's revised MBE policy implements the affirmative steps required by section 9 of Attachment O and provides guidance for compliance with the EPA grant regulation at 40 CFR 35.936–7.

II. Policy

The policy of EPA is to encourage increased MBE participation in prime contracts and subcontracts in projects for construction of publicly-owned treatment works funded under Title II of the Clean Water Act. EPA encourages opportunities for immediate participation of MBEs of all sizes and promotes development of new minority-owned businesses. EPA's objective is to provide the opportunity for MBEs to compete in a free and open marketplace.

This policy conforms to Presidential direction as stated in President Carter's message to Congress on National Urban Policy dated March 27, 1978 and furthers the objectives of Title VI of the Civil Rights Act of 1964.

EPA will require, as a grant condition, that grantees carry out this policy. Grantees have the reponsibility to take affirmative steps to assure that MBEs have opportunities to compete for prime contracts under Step 1, Step 2, Step 3 and Step 2 + 3 grants and that all prime contractors make good faith positive efforts to utilize MBEs. This policy and implementing procedures describe the affirmative steps and good faith positive efforts to be taken. The policy should not be misconstrued as a mandatory set-aside policy or one that requires a particular quota to be met.

III. Applicability

This policy applies to all prime contracts over $25,000 for architectural and engineering services and all prime contracts over $250,000 for construction. This policy applies separately to Step 1, Step 2, Step 3, and Step 2 + 3, and Step 3 segments. These steps include the following activities: Preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, fiscal or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures or other necessary actions, or erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or inspection or supervision of any of the foregoing items.

IV. Definitions

(Unless specified below, the definitions provided in 40 CFR 30.135, 35.905 and 35.936–1 shall apply to this policy.)

A. *Minority Business Enterprise (MBE)*—An MBE is an independent business concern which is at least 51% owned and controlled by minority group members; is or has the potential to be an independent and continuing enterprise; and meets the following requirements:

1. The minority ownership's interest in the firm must be real, substantial and continuing. Such interest is characterized by:

a. risk of loss/share of profit commensurate with the proportional ownership; and

b. receipt of the customary incidents of ownership, such as salary and/or intangible benefits.

2. A minority owner must have and exercise the authority to independently control the business decisions of an MBE. The minority owner need not be continually present to be deemed in control. Characteristics of control include, but are not limited to:

a. authority to sign bids and contracts;

b. decisions in price negotiations;

c. incurring liabilities for the firm;

d. final staffing decisions;

e. policy-making; and

f. general company management decisions.

3. Only those firms performing a useful business function according to custom and practice in the industry are qualified as MBEs. Acting merely as a passive conduit of funds to some other, non-minority firm where such activity is unnecessary to accomplish the project does not constitute a "useful business function according to custom and practice in the industry".

4. Joint ventures of MBE firms with non MBE firms shall be credited towards the grantee's percentage of MBE participation by crediting the proportion of the dollar amount of the joint venture's subcontract equal to the proportion of the MBE's share in the profit. Share of profit should reflect the MBE's proportion of risk of loss and control/management responsibilities in the joint venture. Percentage of the joint venture's contract credited as MBE participation may be adjusted to reflect risk of loss and/or control and management where the MBE's share of profit is not commensurate with its overall contribition to performance of the joint venture's contract.

B. *Minority Group Member*—An individual who is a citizen or permanent resident alien (as defined by the Immigration and Naturalization Service) of the United States, and is at least one of the following:

1. *American Indian or Alaskan Native:* A person having origins in any of the original groups of North America including the Aleutian Islands, or who maintains cultural identification through tribal affiliation or community recognition, or who demonstrates at least one quarter descent from such groups;

2. *Asian or Pacific Islander:* A person having origins in any of the original groups of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. For example, this area includes China, India, Japan, Korea, the Phillippine Islands and American Samoa;

3. *Black:* A person having origins in any of the black groups of Africa; or

4. *Hispanic:* A person of Spanish culture with origins from Mexico, Puerto Rico, Cuba, Central America, South America or Spain.

C. *Project*—The scope of work from which a grant or grant amendment is awared under Section 201(g) of the Clean Water Act. The scope of work is defined as Step 1, Step 2, or Step 3 or Step 2 + 3 of treatment works construction or segments (see definition of "treatment works segment" in 40 CFR 35.905 and 40 CFR 35.930–4).

D. *Contractor*—A party who enters into a written agreement with an EPA grantee for the furnishing of services, supplies, or equipment necessary to complete the project for which a grant under Section 201(g) of the Clean Water Act was awarded, including contracts for personal and professional services, agreements with consultants and purchase orders, but excluding employment agreements subject to state or local personnel systems.

E. *Subcontractor*—A party who enters into a written agreement with a contractor or subcontractor of an EPA grantee for the furnishing of services, supplies, or equipment necessary to complete the project funded under Section 201(g) of the Clean Water Act including contracts for personal and professional services, agreements with consultants and purchase orders, but excluding employment agreements.

F. *Affirmative Steps*—Affirmative steps as used in this policy and implementing procedures refer to those activities to be taken by the grantee to assure MBE participation in the EPA construction grants program.

G. *Good Faith Positive Efforts*—Good faith positive efforts as used in this policy and implementing procedures refer to those activities to be taken by bidders/offerors and contractors during bid and proposed preparation to assure MBE participation in the EPA construction grants program.

H. *Bidder*—A party seeking to obtain a contract with a grantee through a competitive advertised sealed bid process.

I. *Offeror*—A party seeking to obtain a contract with a grantee through a negotiated procurement process.

V. Goals for MBE Participation

A. The Administrator has delegated to each Regional Administrator the responsibility for establishing an appropriate Regional goal for MBE participation in that Region. Goals will not serve as quotas to be met by grantees or prime contractors, but will provide an estimate of the level of MBE participation that should result from good faith efforts to utilize MBEs.

B. Regional goals for MBE participation in EPA funded projects will be established to reflect both current MBE availability and market conditions, as well as anticipated growth in the number of new MBE firms and capacity of existing firms.

C. Each grantee shall establish a project goal for MBE participation in consultation with the EPA Regional Office.

D. Characteristics of individual projects will be taken into consideration in determining appropriate project goals.

VI. Responsibilities

A. *EPA Responsibilities*—1. Headquarters is responsible for providing uniform interpretation of this policy and basic implementing procedures, to oversee implementation, and to give guidance to the Regions.

2. Regions are responsible for carrying out the national policy in accordance with the implementing procedures.

3. Regions are responsible for setting Regional goals, approving project goals proposed by grantees, and insuring that grantees implement the policy.

4. Regions will review annually and revise when appropriate their MBE goals in accordance with 40 CFR Part 25. Public participation includes notice and opportunity for interested and affected persons and organizations to express their views. Public meetings or hearings are not required however; informed means of public consultation, in accordance with 40 CFR 25.4(d) may be appropriate.

5. Functions under the policy and implementing procedures may be delegated by the Regions to appropriate agencies. This includes, delegation pursuant to section 205(g) of the Clean Water Act. EPA has final responsibility which is nondelegable.

B. *Applicant/Grantee Responsibilities*—1. The applicant/grantee is responsible for proposing a project goal to the Regional Office for review and approval by the Regional Administrator. This responsibility extends to actions taken during the grant application process.

2. The grantee accepts, as a condition of its grant, responsibility to implement the policy.

3. The grantee shall take affirmative steps to insure adequate opportunity for MBE participation, as prime and sub-

contractors, in all procurement actions of each construction project, including engineering and consultant services in Step 1, Step 2, Step 3, and Step 2+3.

4. The grantee shall insert copies of this policy and procedural guidance in all solicitation documents, and review procurement documents to insure that no other provisions conflict or are inconsistent with this policy and implementing procedures.

C. *Bidders/Offerors/Contractor Responsibilities*—Bidders, offerors, and contractors under EPA grants are each responsible to the grantee to make positive efforts towards fulfillment of MBE requirements.

D. *MBE Responsibilities*—MBEs are encouraged to seek opportunities to participate in EPA funded projects, initiate contacts, and submit self-certification information to grantees and EPA Regional Office for review.

VII. Enforcement

A. EPA requires grantees and invites interested parties to bring to the attention of the EPA Regional Administrator any perceived non-complaince by a grantee, bidder/offeror, contractor, or MBE, or EPA with the requirements of the policy or implementing procedures.

B. A bidder/offeror or MBE with an adversely affected direct financial interest may file a bid protest with the grantee pursuant to 40 C.F.R. § 35.939. Bid protest procedures are not available to challenge the certification of an MBE.

C. Any interested person or organization may challenge the certification of a firm claiming MBE status by bringing a challenge before the grantee in the case of self-certification, through procedures established by a recognized certifying agency, or through EPA Regional procedures as appropriate and provided for in the EPA implementing procedures.

D. Upon a finding by EPA that any party has not complied with the requirements of this policy, including misrepresenting a firm as an MBE, EPA may:

1. Declare the grantee non-responsible under 40 CFR 30.340 *et seq.*

2. Declare the bidder/offeror non-responsible and therefore ineligible for contract award.

3. Declare grantee or contractor non-responsible for future grants under 40 CFR 35.965(e).

4. Disallow any grant or contract costs associated with the non-compliance.

5. Invoke any and all sanctions and remedies specified in EPA regulations, including terminating the grant and/or withholding funds under 40 CFR 30.900 *et seq.*

6. Refer any matter which may be fraudulent to the Inspector General.

7. Refer any matter which may lead to criminal prosecution or a claim for funds to the Department of Justice.

VIII. State and Local Law

Nothing in this policy prevents a grantee from imposing more stringent MBE requirements in work procured under EPA grants or procurement obligations which pertain to bid responsiveness or percentage of MBE participation, where provided for by State or local law or ordinances.

Women's Business Enterprise Policy: Technical Amendments

The following technical amendments to the Women's Business Enterprise Policy for the construction Grants Program (WBE policy) are proposed:

1. Section B.4. is amended by striking all of section B.4 and inserting in lieu thereof "Certification. Certification as WBE under this policy shall be accomplished in accordance with EPA's implementing procedures.".

2. Section C.4. is amended by striking "of $500,000 or more and all prime contracts for architectural engineering, and related services of $10,000 or more" and inserting in lieu thereof "over $250,000 and all prime contracts for architectual, engineering and related services over $250,000.".

3. Section H is amended by striking all of section H and inserting in lieu thereof the following:

"H. *Enforcement*—1. EPA requires grantees and invites interested parties to bring to the attention of the EPA Regional Administrator any perceived noncompliance by a grantee, bidder/offeror, contractor, or WBE, or EPA with the requirements of the policy or implementing procedures.

2. A bidder/offeror or WBE with an adversely affected direct financial interest may file a bid protest with the grantee pursuant to 40 CFR 35.939. Bid protest procedures are not available to challenge the certification of a WBE.

3. Any interested person or organization may challenge the certification of a firm claimining WBE status by bringing a challenge before the grantee in the case of self-certification, through procedures established by a recognized certifying agency, or through EPA Regional procedures as appropriate and provided for in the EPA implementing procedures.

4. Upon a finding by EPA that any party has not complied with the requirements of this policy, including misrepresenting a firm as a WBE, EPA may:

a. Declare the grantee non-responsible under 40 CFR 30.340 *et seq.*

b. Declare the bidder/offeror non-responsible and therefore ineligible for contract award.

c. Declare grantee or contractor non-responsible for future grants under 40 CFR 35.965(e).

d. Disallow any grant or contract costs associated with the non-compliance.

e. Invoke any and all sanctions and remedies specified in EPA regulations, including terminating the grant and/or withholding funds under 40 CFR 30.900 *et seq.*

f. Refer any matter which may be fraudulent to the Inspector General.

g. Refer any matter which may lead to criminal prosecution or a claim for funds to the Department of Justice.

4. Section J. is amended by striking all of section J. and inserting in lieu thereof the following.

"J. *State and Local Law*—Nothing in this policy prevents a grantee from imposing more stringent WBE requirements in work procured under EPA grants or procurement obligations which pertain to bid responsiveness or percentage of WBE participation, where provided for by State or local law or ordinances."

5. Section K.2. is amended by striking "October 1, 1983" and inserting in lieu thereof "October 1, 1984."

Construction Grants Program Requirements

[Memorandum PRM No. 81-3]

Effective Date:

To: Regional Administrators, Regions I-X. Attn: Water Division Directors, Office of Civil Rights Directors.

From: Barbara Blum, Deputy Administrator (A-100); Eckardt C. Beck, Assistant Administrator for Water and Waste Management (WH-556).

Subject: Procedures for the Implementation of the Minority Business Enterprise and Women's Business Enterprise Policies.

This proposed PRM sets forth the procedures to be followed in all projects to which the Minority Business Enterprise (MBE) and Women's Business Enterprise (WBE) policies apply. These procedures replace the procedures developed in each Region to implement the Policy for Increased Use of Minority Consultants and Construction Contractors, 43 Fed. Reg. 60220 (December 26, 1978).

Section Index

I. Regional Goals
II. Certification
III. Source Lists
IV. Calculation of MBE and WBE Participation
V. EPA Responsibilities
VI. Grantee Responsibilities
VII. Bidder/Offeror Activities
VIII. Exception Provision
IX. Post Contract Award Compliance

X. MBE/WBE Responsibilities
XI. Data Collection

I. Regional Goals

A. The Regional Administrator shall establish regional goals for MBE and WBE participation. MBE and WBE goals shall be separate and not interchangeable. The goal for WBE participation must be at least as high as the national goal. In establishing MBE and WBE goals, the Regional Administrator shall:

1. relate the goals to the objectives of the MBE/WBE policies.

2. take into consideration in setting regional goals such factors as:

a. availability* of MBE/WBE's

b. the previous regional experience in implementing the Policy for Increased Use of Minority Consultants and Construction Contractors, 43 Federal Register 60220 (December 26, 1978).

c. input from public participation.

d. types of projects on State priority lists.

e. other appropriate data.

B. Regional goals shall take the form of a range.

1. In a range goal system the Region sets the numerical boundaries of the specific percentage to be established by grantees for MBE abd WBE participation.

2. As part of its application, the grantee must propose, for approval by the Region, a fixed numerical goal within the Regional range to apply to the step or segment covered by the grant or grant amendment. Under unusual circumstances, the Regional Administrator may approve a proposed project goal outside the Regional goal range. Where the proposed goal is lower than the bottom of the Regional range. The grantee must establish that the deviation from the Regional goal is justified.

II. Certification of MBE/WBE

A. Means of Certification—Certification as MBE or WBE under EPA's policies shall be accomplished by self-certification, by a state or federally-funded agency recognized and designated by the Regional Administrator, or by the Regional Office, as follows:

1. Self-certification. Self-certification shall be through submission of a statement signed by the minority/women owner(s). Standard EPA forms for this certification should be used. A signed statement by the minority/women owner(s) which provides at least the same information requested on the EPA form will also be accepted, although use of the EPA form is strongly encouraged and recommended. Self-certification shall be the method of certification only where no state or federally funded agency has been recognized by the Regional Administrator or no Regional certification procedure exists.

2. Certification by State or federally-funded agency. The Regional Administrator with the Director of OSDBU in Headquarters may recognize any state or federally-funded agency, as the certifying agency in its jurisdiction. Criteria for qualifying as MBE or WBE for any such recognized agency must be equivalent to EPA's criteria.

*Availability includes those MBE/WBE's which find it to be in their interest to come into an area for a contract/subcontract.

3. Certification by EPA Regional Office. The Regional Administrator may establish procedures for certifying MBEs and WBEs in the Regional Office.

B. Certification Review Procedures—1. Self-certification. The grantee shall review the certification form submitted by each MBE/WBE firm. If, on the basis of that review or other information brought to the grantee's attention, the grantee determines that the firm does not meet the defintion in the applicable EPA policy, the grantee shall notify the firm in writing of its initial determination, the basis of its decision, the firm's right to respond within 15 calendar days of receipt of the initial decision, and that failure to respond will result in the initial decision becoming the final grantee decision with no right of appeal. The firm will have 15 calendar days to respond in writing to the grantee's initial determination of its status and may request an informal hearing. The grantee shall review any written submissions and oral presentations as expeditiously as possible, and on the basis of its review, shall issue its final determination concerning the MBE/WBE status of the firm. The final determination shall be in writing, stating the reasons for the determination and the right to appeal an adverse determination to the Regional Administrator.

2. Certification by recognized State or federally funded agency. Where a state or federally funded agency is recognized by the Regional Administrator and the Director of OSDBU as the certifying agency for that jurisdiction, the procedures of that agency will be the exclusive means available for certification and review of MBE/WBE status of a firm in that jurisdiction. Final determinations of a recognized agency may be appealed to the Regional Administrator.

3. EPA Regional Certification. Regional Certification procedures must be developed in consultation with the Director of OSDBU. Such procedures must provide for initial review of MBE/WBE status to take place on a Regional staff office level, with appeal to the Regional Administrator.

C. Appeal to the Regional Administrator—1. Who may appeal. Only a firm claiming MBE/WBE status under EPA policies which received a final determination from the grantee, recognized agency, or EPA Regional staff office that it does not qualify as MBE/WBE under EPA policies may file an appeal with the Regional Administrator.

2. Time and manner of appeal. An appeal of an adverse grantee, recognized agency, or EPA Regional staff office determination must be filed with the Regional Administrator within 10 calendar days of the firm's receipt of the adverse determination. Notice of appeal must be provided to the grantee, recognized agency, or EPA Regional staff office in writing at the time of appeal to the Regional Administrator. The appeal shall consist of a written statement of the firm's qualifications as MBE/WBE under EPA policy and supporting documents, if any, together with a copy of the grantee's, recognized agency's or EPA Regional staff office's final determination.

3. Regional Administrator's Determination. On the basis of the grantee's, recognized agency's, or EPA Regional staff office's final determination and the written submission by the firm, the Regional Administrator shall issue a written determination as to the MBE/WBE status of the firm. The decision of the Regional Administrator shall constitute the final decision of the agency and may not be appealed further within the Agency.

III. Source Lists

A. EPA Regions shall maintain, supplement continually, and update annually lists of those firms which have certified themselves as MBE/WBEs. Such lists are for information purposes only, and shall carry a clear and prominent statement that the firms listed have certified themselves as MBE/WBEs and are neither endorsed nor guaranteed by EPA as bona fide MBE/WBEs. It is not necessary to be on any lists in order to qualify as a bona fide MBE/WBE.

B. Grantees should develop project source lists for MBE/WBEs.

1. The grantee may wish to use available list such as those of the EPA Regional Office, adjacent municipalities, appropriate minority/women associations and agencies, and available industry associations. Names of these agencies with address and phone number should also be included on the grantee's source list.

2. The grantee may also wish to engage an MBE/WBE liaison to compile the list. These services are grant eligible pursuant to PRM 80–7, but may not be credited toward meeting a project's MBE/WBE goals.

C. Bidders/Offerors must obtain the grantee's source lists, may obtain lists from appropriate MBE/WBE agencies and associations, and may seek additional names by advertising, for example in industry association publications, and MBE/WBE trade letters.

D. MBW/WBE should make efforts to be included on appropriate source lists by contacting EPA Regional Offices, potential grantees and appropriate agencies and associations.

IV. Calculation of MBE/WBE Participation

A. Credit for MBE/WBE participation under these policies shall be granted for MBE/WBEs performing a useful business function according to custom and practice in the industry. No credit will accrue for a MBE/WBE acting merely as a passive conduit of funds to some other, non-minority firm where such activity is unnecessary to accomplish the project.

B. Goals for MBE/WBE participation shall be calculated as a percentage of total eligible contract costs.

C. Credit for MBE/WBE project-related work that is not eligible for EPA assistance may be included in the calculation of MBE/WBE participation.

D. Joint Ventures. Joint ventures shall be credited towards the grantee's percentage of MBE/WBE participation by crediting the proportion of the dollar amount of the joint venture's subcontract equal to the proportion of the MBE/WBE's in the profit of the joint venture. Where the MBE/WBE's risk of loss, control or management responsibilities are not commensurate with the share of profit, the Regional Administrator may direct an adjustment in the percentage of the joint

venture's contract to be credited as MBE/WBE participation. In the case of a joint venture which includes a MBE and WBE, credit will be calculated towards their respective goals.

E. Suppliers—1. Suppliers are defined as follows: A supplier is a business which acts as a distributor of materials or equipment, and which provides a commercially useful function, when such activity is traditional in the industry manufacturing the material or equipment supplied.

Commercially useful function will normally include:

a. Providing technical assistance to the purchaser prior to the purchase, during installation and after the supplies or equipment are placed in service;

b. Charging and billing directly for all supplies and equipment not manufactured by the supplier;

c. Manufacturing or being first tier below manufacturer of the supplies or equipment supplied;

d. Providing functions other than just accepting and referring requests for supplies or equipment to another party for direct shipment to a contractor.

2. MBE/WBE suppliers shall be credited as follows:

a. One hundred percent for MBE/WBE suppliers who manufacture the goods supplied.

b. All MBE/WBE suppliers who are wholesalers warehousing the goods supplied or who are manufacturers' representatives will be credited with one hundred percent (100%) of the price of their subcontract; however, only 25% of the MBE/WBE goal may be attained with non-manufacturing supplier contract to MBE/WBEs.

3. In those contracts of which an extraordinarily large proportion of the contract price is for equipment or supplies, the grantee may propose a lower project goal than otherwise would be required, or request the Regional Administrator to increase the 25% limit for suppliers, or a combination of the two.

F. Total dollar value of a contract with an MBE owned and controlled by a minority woman or women may be credited as MBE participation or as WBE participation, or allocated, but may *not* be credited fully as both.

V. EPA Responsibilities

A. *Headquarters.* The Office of Small and Disadvantaged Business Utilization (OSDBU) and the Office of Water Program Operations (OWPO) shall be responsible, as follows:

1. OWPO and OSDBU shall review MBE and WBE national policies by October 1, 1984, and every three years thereafter, and modify them if appropriate. The WBE national goal shall be reviewed annually.

2. The Deputy Assistant Administrator for OWPO and the Director of OSDBU shall assure that regional goals for MBE and WBE participation are consistent with national policy.

3. OSDBU shall provide to OWPO an overview of the MBE and WBE policies and procedures to assure the objectives of these policies are achieved.

4. OWPO shall make available for distribution upon request State Project Priority Lists by January 1 of each year.

5. OSDBU shall establish and maintain a liaison relationship with other federal agencies involved in MBE and WBE activities to take advantage of other Federal programs and work toward Federal uniformity.

6. OWPO shall maintain records of MBE/WBE participation as supplied by or collected from the Regions.

7. Headquarters shall maintain computer MBE/WBE source lists from data supplied by the Regions and OSDBU.

B. *Regional Responsibilities—Each Regional Administrator shall:*

1. Establish separate Regional goals for MBE and WBE participation and provide them to OSDBU and OWPO for review.

2. Review MBE/WBE goals annually.

3. Approve grantee-proposed project goals.

4. Provide guidance and advice to grantees as requested.

5. Review grantee procurement documents (invitations for bids (IFB) and requests for proposals (RFP)) pertaining to MBE/WBE requirements.

6. Review grantees' proposed contract awards to insure that apparent low bidders and apparent successful offerors have either met the project goal or made good faith positive efforts.

7. Monitor grantees for compliance with MBE/WBE requirements after contract award, through the life of the project.

8. Maintain, supplement continually, and update annually separate source lists of MBEs and WBEs from data supplied by grantees and self-certifying MBE/WBEs, and provide such lists to grantees and headquarters. Lists should provide the following information:

(a) name;

(b) address;

(c) telephone number;

(d) type(s) of work capable of performing, and

(e) designation of category of firm by ethnic group.

VI. Grantee Responsibilities

A. The grantee shall take affirmative steps to contract with MBE/WBEs and ensure that its contractors make positive efforts to contract with MBE/WBEs during all phases of work funded or to be funded under an EPA grant. These affirmative steps are the following:

1. Include qualified MBE/WBEs on solicitation lists by drawing from the source lists of EPA Regional Offices, appropriate minority/women associations and agencies, and industry associations.

2. Assured that MBE/WBEs are solicited whenever they are potential sources by:

a. holding pre-bid conferences, with interested MBE/WBEs in attendance when possible, to highlight the requirements of the MBE/WBE policies and procedures to prospective bidders.

b. including MBE/WBE policies and procedures and project goals in requests for proposals (RFP) and invitations for bids (IFB).

c. publishing announcement(s) of MBE/WBE opportunities for work on EPA funded projects.

d. providing grantee's source list to prospective bidders/offerors.

e. providing liaison services between MBE/WBEs and prospective bidders/offerors. Such services are recognized by EPA to be an allowable cost. Liaison services should not be delegated to consultants where a potential or possibility for a conflict of interest exists.

3. When feasible divide the total contracted work into smaller tasks in the solicitation documents to permit maximum MBE/WBE participation.

4. When the project requirements permit, establish delivery schedules which encourage participation by MBE/WBE.

5. Used the services and assistance of the Small Business Administration (SBA), the Minority Business Development Administration (MBDA), the Community Service Administration (CSA) and other federal, state and local agencies whenever appropriate.

B. Consult with the Regional Office for guidance when necessary, and in its application for a grant for each project, proposed separate project goals for MBE and WBE participation. Where the grantee proposes a project goal for MBE and/or WBE participation below the low end of the regional goal range, the grantee must justify the need for a lower goal.

C. After bid opening or receipt of proposal(s), evaluate bids to determine whether they are responsive with respect to MBE/WBE requirements, determine whether offers contain the requisite MBE/WBE information, and determine whether apparent low responsive bidders are responsible and offerors are qualified under the policies.

D. Forward the MBE/WBE documentation submitted with the bid to EPA (or State agency, if delegation under section 205(g) has occurred) for review after bid opening.

E. Monitor work in progress to insure that:

1. prime contractors are utilizing MBE/WBEs for work as designated in bids and in any subsequent documentation of anticipated MBE/WBE participation.

2. MBE/WBE members of joint ventures for which MBE/WBE credit is allowed are actually participating in the performance of the joint venture's subcontract.

F. Maintain records of MBE/WBE participation and suply data upon request by the Region.

VII Bidder and Offeror Activities

A. Good Faith Positive Efforts: Activities during preparation of bids and offers. Bidders/offerors shall make positive efforts, prior to bid submission or closing date for receipt of initial offers, to encourage participation in projects by MBE/WBEs. These efforts to provide opportunities for, discover, solicit and negotiate with MBE/WBEs must occur during bid/proposal preparation. Such efforts shall include, but need not be limited to:

1. Segmenting total work requirements to provide sufficient opportunities for subcontracting so that, as a minimum, MBE/WBE goals specified in procurement documents can reasonably be expected to be met.

2. Sending letters to or making other personal contacts with MBEs and WBEs; e.g.,

those who appear on lists prepared by the grantee and other MBE/WBEs known to the bidder/offeror. Sending letters or making other personal contacts with local, state, federal and private agencies and MBE/WBE associations relevant to the project. Those letters or other contacts must communicate the following:

a. Specific description of the work to be subcontracted

b. How and where to obtain a copy of plans and specifications or other detailed information needed to prepare a detailed price quotation

c. Date the quotation is due to the bidder/offeror

d. Name, address, and phone number of the person in the bidder/offeror's firm whom the prospective MBE/WBE subcontractor should contact for additional information.

e. Letters should be sent or contacts made with potential MBE/WBE subcontractors at the time the bidder/offeror solicits quotations from non-MBE/WBE prospective subcontractors, but not later than 15 calendar days prior to submission of the bid or closing date for receipt of initial offer. MBE/WBEs contacted in this manner must be allowed at least ten calendar days to prepare a quotation.

3. Making available in a timely manner appropriate additional information for preparation of quotations to those MBE/WBEs that have submitted competitive quotations.

4. Up to the time of bid submission or throughout the negotiated procurement process, the bidder/offeror must make a reasonable effort to negotiate with all MBE/WBEs that have submitted reasonable quotations or offers. For competitive bidding, negotiations with all MBE/WBEs must be completed by bid submission.

B. Demonstration of Positive Efforts: Bid/Offer submission requirements. Bidders/offerors must demonstrate that the requisite positive efforts have been made adequately. In order to demonstrate the performance of positive efforts, the following is required:

1. Competitive Bidding (e.g. Step 3 Construction Contracts)—a. All bidders must submit the following in the bid in order for the bid to be responsive:

1. Names, addresses, and phone numbers of certified MBE/WBE(s) to perform work. MBE/WBE(s) included must either be previously certified under Section II of this PRM or must have submitted a certification to the proper party (i.e. grantee, state or federally funded agency or EPA Regional Office) prior to bid opening.

2. Work to be performed by the MBE/WBEs.

3. Aggregate dollar amount of work to be performed by MBE/WBEs, showing aggregate to MBEs and aggregate to WBEs separately.

4. Percentage amount of total bid represented by MBE/WBE participation showing percentages for MBE and WBE participation separately.

b. If the bidder has not met the project goal(s) for MBE and/or WBE participation, the following documentation of positive efforts to utilize MBEs and/or WBEs must also be submitted with the bid in order for the bid to be responsive:

1. Description of scope of subcontract work and the percentage of total bid representing the segmented work.

2. Names and addresses of all a) MBE/WBEs b) local, state, federal, and private agencies which service minority/women business organizations, and c) minority associations which were contacted by the bidder.

3. Dates on which letters were sent or other contacts were made by the bidder.

4. Names of WBE/MBEs who initiated contact with the bidder, requesting information, the bidder provided such information, and when the information was provided.

5. Names of MBE/WBEs who submitted quotations to bidder and the amount of their final quote.

6. Description of negotiations which occurred with non-selected MBE/WBEs who submitted quotes and why they were not selected. Merely rejecting a quotation as "too high" without further negotiations as to essential elements of the quotation shall not constitute reasonable or adequate efforts. The bidder shall accompany his bid with a justification for the rejection of each MBE/WBE quotation or offer which was rejected and the date of the final action in the negotiation process prior to the time the bid was submitted.

Failure to submit the documentation of positive efforts pursuant to the requirements of a. and b. above shall render the bid nonresponsive and shall cause rejection of the bid.

c. The low, responsive bidder will be deemed responsible with respect to MBE/WBE requirements and may be awarded the contract if:

1. The low, responsive bidder submits within 2 days (48 hours) of bid opening letters of intent signed by MBE/WBEs listed in the bid, stating the work to be performed, price of the work and intent of the bidder and MBE/WBE to enter into a contract under those terms if the bidder is awarded the prime contract by the grantee and;

2. The low responsive bidder who has not attained the project goal(s) at the time of bid submission has demonstrated in the documentation in the bid that adequate positive efforts had been made prior to bid submission.

d. Failure to make the requisite positive efforts prior to bid submission cannot be cured after bid opening, except as provided in section X, Exception Provision, of this PRM.

2. Negotiated Procurement (e.g. architect/engineer and consultant contracts)

a. The following documentation must be submitted to the grantee by the offeror, regarless of the method of negotiated procurement:

1. Names, addresses, and phone numbers of certified MBE/WBE(s) to perform work. MBE/WBE(s) included must either be previously certified under Section II of this PRM or must have submitted a certification to the proper party (i.e. grantee, state or federally funded agency or EPA Regional office) prior to proposal.

2. Work to be performed by the MBE/WBEs.

3. Aggregate dollar amount of work estimated to be performed by MBE/WBEs.

4. Percentage amounts of total offer estimated to be represented by MBE/WBE participation.

b. If the offeror does not meet the MBE and/or WBE goal, the following documentation must also be submitted at the same time:

a. Description of scope of subcontract work and the percentage of total offer representing the segmented work.

b. Names and addresses of all (a) MBE/WBEs (b) local, State, Federal, and private agencies which service minority/women business organizations, and (c) minority associations which were contacted by the offeror.

c. Dates on which letters were sent or other contacts were made by the offeror.

d. Names of WBE/MBEs who initiated contact with the offeror and to whom the offer provided information.

e. Names of MBE/WBEs who submitted quotations or offers to offeror and the amount of their final quote.

f. Description of negotiations which occurred with non-selected MBE/WBEs who submitted offers and why they were not selected. Merely rejecting an offer as "too high," where price is a factor without further negotiations shall not constitute reasonable or adequate efforts.

3. Documentation required under 2. above must be submitted at the following times:

a. At the deadline for receipt of initial offers in the case of competitive negotiated procurement, offerors must submit the documentation for the offers to be considered technically acceptable.

b. At the beginning of discussions held with not less than three of the most highly qualified architect-engineering firms in the case of negotiated procurements conducted in accordance with procedures based upon Pub. S. No. 92–582, 40 U.S.C. § 541–544 (1976) (commonly known as the "Brooks Bill"), architect-engineering firms must submit the documentation order to be considered qualified.

4. The offeror will be deemed responsible with respect to MBE/WBE requirements and may be awarded the contract if:

a. Letters of intent signed by MBE/WBEs proposed by the offeror are submitted to the grantee prior to contract award, and;

b. Postitive efforts made by the offeror and documented in the proposal are adequate.

VIII. Exception Provision

Under exceptional circumstances, the Regional Administrator may, either upon the written recommendation of the grantee, or following EPA's own review, authorize the award of the contract to an apparent low bidder who would otherwise be rejected as non-responsible owing to specific remediable deficiencies in the MBE positive efforts performed by it prior to the submission of its bid. "Remediable deficiencies" are those that may be cured by continuing negotiations begun prior to bid submission and do not include initiation of negotiations with known MBE/WBEs or a search for MBE/WBE firms. Authority to grant such exceptions shall be limited to situations where:

a. There would otherwise be serious hardship to the grantee owing to the rejection of the apparent low bid or all bids; and

b. The apparent low bidder has expeditiously remedied or will remedy all such deficiencies in the period immediately following bid opening.

IX. Post Contract Award Compliance

A. Within 15 days after the date of contract award, the contractor must submit executed subcontracts with MBE/WBE(s) identified in the letters of intent to the EPA Regional Office.

B. The contractor shall notify the grantee in writing if listed MBE/WBE's will not be performing work proposed. Notice shall include:

(1) Name of MBE/WBE not being utilized

(2) Work designated to have performed by MBE/WBE.

(3) Dollar value of that work

(4) Reason(s) for not utilizing MBE/WBE.

(5) Name of business to perform the work instead of the MBE/WBE.

(6) Unless a MBE/WBE is named to perform the work, the prime contractor must make reasonable positive efforts to find a MBE/WBE replacement. These positive efforts must be documented by providing in writing to the grantee:

(a) name, address, and contact person of MBE/WBE contacted;

(b) quotations provided by MBE/WBE(s) to perform work; and

(c) evidence of negotiation with MBE/WBE(s) (e.g., meetings, phone calls, counter offer)

X. MBE/WBE Activities

MBEs/WBEs interested in working on EPA funded construction projects are encouraged to take the following steps:

A. Submit information to the Region and grantees to identify status as a MBE/WBE.

B. Use the appropriate method under these procedures to become certified as MBE/WBE under EPA policy.

C. Enter into state and local planning processes.

D. Contact Federal, State and local MBE/WBE liaison offices to obtain information on potential jobs.

E. Provide capability statements to EPA, State agencies, grantees, consulting engineers, and contractors, stating type(s) of work performed by the firm, size of job that the firm could handle, bonding information, and any special skills.

F. Make every effort to establish contacts and relationships with contractors for potential future business.

G. Contact EPA Regional offices or appropriate state offices to obtain information on planned construction projects.

H. Respond promptly to solicitation requests.

XI. Data Collection

A. Regions are responsible for collecting data from grantees and reporting to Headquarters MBE/WBE information. This information will be needed for two separate existing computer files. These files will be modified to include the following information:

1. *MBE/WBE Source List File*—General Information

(a) name of firm

(b) name of contact

(c) address, city, state and zip code

(d) whether MBE or WBE firm

(e) telephone number

(f) type(s) of work capable of performing

(g) capacity of firm, e.g., size of project capable of performing or bond capacity

(h) ethnic breakout (Black, Spanish or other)

(i) percent (%) or MBE/WBE ownership

2. *Contract Management File*—Specific information on each prime contract showing level and details of MBE/WBE participation. Required information for each individual prime contract is as follows:

(a) total dollar amount of A/E or prime construction contract awarded

(b) total projected dollar level of MBE/WBE participation in contract at time of prime contract award

(c) planned/actual dollar level and type of participation for each MBE/WBE

B. Output Reports

The MBE/WBE Source List File and the Contract Management File will be linked together to provide the capability to manipulate and display MBE/WBE information in various formats. For example, information could be aggregated on:

(a) number of MBE/WBE firms in a particular State or Region;

(b) number of firms performing a particular type of work in a particular area; or

(c) dollar amount of contracts awarded to certain MBE/WBE firms.

[FR Doc. 81-1931 Filed 1-16-81; 8:45 am]

BILLING CODE 6560-36-M

federal register

Monday
January 19, 1981

Part XXVIII

Environmental Protection Agency

Regulations for the Enforcement of the Federal Insecticide, Fungicide and Rodenticide Act; Classification of Uses of Active Ingredients for Restricted Use

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 162

[OPP-30029B; PH-FRL 1674-6]

Regulations for the Enforcement of the Federal Insecticide, Fungicide and Rodenticide Act; Classification of Uses of Active Ingredients for Restricted Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule adds certain uses of eight active ingredients to the list of uses which the Agency has classified for restricted use. The current list is contained in 40 CFR 162.31 and this final rule will amend that section.

EFFECTIVE DATE: This rule will not take effect before the end of 60 calendar days of continuous session of Congress after the date of publication of this rule. EPA will publish a notice of the actual effective date of this rule. See Supplementary Information for further details.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Waldrop (TS–767), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202–426–2510).

SUPPLEMENTARY INFORMATION: EPA issued a notice which was published in the **Federal Register** of August 1, 1979, (44 FR 45219) and requested comment on its proposal to classify certain uses of 21 active ingredients for restricted use. EPA took this action pursuant to Section 3(d) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, 7 U.S.C. 136a(d), and 40 CFR 162.30. 40 CFR 162.30 provides that a use shall be classified for restricted use if the Administrator determines that the incremental risk of unrestricted use, i.e., those over and above the risks of restricted use, outweigh the incremental benefits of unrestricted use, i.e., those over and above the benefits of restricted use. Applying that criterion, the Administrator preliminarily determined to classify for restricted use certain uses of the 21 active ingredients referred to above and accordingly published in the **Federal Register** notice proposing a regulation to that effect in 44 FR 45219.

Comments on the proposed regulation were received from interested parties. Of the comments received none contained objections to the action proposed by EPA with respect to eight of 21 active ingredients in question. However, comments were received which were adverse to the action proposed by EPA on the other 13 active ingredients. In this group the principal criticism was EPA's reliance on residue effects on avian species as a basis for proposing to classify certain granular formulations for restricted use. Another common criticism was submitted by a number of mosquito control districts which objected to EPA's proposed restricted use classification of temephos for mosquito control uses. These comments are currently under consideration by the agency.

Since the agency received no adverse comments on its proposal with respect to the eight active ingredients referred to, it has determined to classify those for restricted use by amending 40 CFR 162.31 at this time rather than unnecessarily delaying their classification while it considers the comments received on the other 13 active ingredients. Comments on the remaining 13 active ingredients will be addressed by the agency in a future **Federal Register** notice and a final regulation with respect to them will be promulgated at that time, if warranted.

Only one specific comment was received on any of the eight active ingredients which are the subject of this final rule. The comment related to the agency's proposed restricted use classification of certain uses of methidathion. The registrant was concerned that any future data developed to support a general use classification would be reviewed and acted upon by the Agency. The agency notes that it is prepared to review any new data developed by a registrant or other party for purposes of reclassifying a previously restricted product. See FIFRA section 3(d)(3), as amended, 7 U.S.C. 136a(d)(3). Further, all restricted use classification decisions made under these procedures will be reviewed at the time of reregistration.

The agency also notes that it has withdrawn from this final regulation the restricted use classification of EPN granular formulations 2 percent and greater based on residue effects on avian species. There were no comments submitted on the proposed restriction of these formulations, but the agency has decided to consider them with the other granular formulations still under review.

It is important to note that this regulation only classifies uses for restricted use. If a use is not classified for restricted use by this regulation, it does not mean that it is classified for general use under section 3(d) of FIFRA, as amended; it merely means that the use has not yet been classified for either general use or restricted use. However, as a practical matter, a use which remains unclassified will be generally available to all consumers since certification would not be required for purchase and use. The agency is not classifying uses for general use by regulation primarily because such a decision requires an evaluation of chronic data. Review of chronic data has not been a part of classification by regulation since much of that data has yet to be generated and submitted to the agency.

The agency has also indicated in this final rule that all uses of formulations containing 0.027 percent to 4 percent of cycloheximide are "under evaluation." This indicates that these uses are still under active review for purposes of classification by regulation. The practical effect of the "under evaluation" designation is the same as that of "unclassified," i.e., the use will be generally available to all consumers. Further, any use/formulation that is "under evaluation" would require no action on the part of any potentially affected registrant. A final classification determination of those uses/formulations which are "under evaluation" may be made through these optional classification-by-regulation procedures or may be deferred until the time of reregistration.

Any product use classified for restricted use under these regulations is limited to use by or under the direct supervision of a certified applicator. Registrants of pesticide products with uses classified for restricted use by this final rule must comply with the requirements of 40 CFR 162.30 within the deadlines specified in those regulations.

Further information on Effective Date of this rule. On December 17, 1980, President Carter signed the Federal Insecticide, Fungicide, and Rodenticide Act Extension Bill (Pub. L. 96–539). This bill amended several sections of FIFRA, including sec. 25 on rulemaking. Section 4 of the Extension Act adds a new paragraph, sec. 25(e), to FIFRA which requires EPA to submit final regulations to Congress for review before the regulation becomes effective. Copies of this rule have been transmitted to appropriate offices in both Houses of Congress.

Pursuant to sec. 4 of the 1980 FIFRA Extension Act, and in accordance with President Carter's statement on signing the bill (Weekly Compilation of Presidential Documents, p. 2814, December 22, 1980), this rule will not take effect before the end of 60 calendar days of continuous session of Congress after the date of publication of this rule. Since the actual length of this waiting period may be affected by Congressional action, it is not possible, at this time, to specify a date on which

this regulation will become effective. Therefore, EPA, at the appropriate time, will publish a notice in the **Federal Register** announcing the end of this "report and wait" period and notifying the public of the actual effective date of this regulation.

Regulatory Analysis

The agency has determined that this document does not contain a major proposal requiring preparation of a regulatory analysis under Executive Order 12044.

Evaluation Plan

Section 2(d)(8) of Executive Order 12044 requires that each new significant regulation have a plan for evaluating its effectiveness. All restricted use classification decisions promulgated under this final rulemaking will be reviewed by the agency at the time of reregistration as part of the overall risk-benefit analysis to be undertaken at that time. For a discussion of the difference between the overall risk-benefit analysis, and the incremental risk-benefit analysis performed under 40 CFR 162.30, see 42 FR 44170.

In connection with the agency's obligations under section 2(d)(8) of Executive Order 12044, one commenter questioned the agency's intent to review classification decisions at the time of reregistration, citing the anticipated length of time required to complete this process. Because of the projected length of time required, the commenter suggested that the agency include a statement about the anticipated time involved in completing the reregistration process.

While it is true that it will take at least 10–15 years to complete the reregistration of all active ingredients, the agency still believes that reregistration is the most appropriate time to review the effectiveness of these classification decisions. However, the agency will consider evaluating the effectiveness of the restricted use classification of any specific active ingredient(s) prior to reregistration if there is a demonstrated need to do so.

Statutory Review

The U.S. Department of Agriculture has reviewed the final regulation in accordance with Section 25(a) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) as amended and concurs with its publication in the **Federal Register.** The FIFRA Scientific Advisory Panel has reviewed the final regulation in accordance with Section 25(d) of FIFRA and concurs with its publication in the **Federal Register.** The panel also offered an additional special comment which is discussed below.

The panel expressed concern about the potential serious threat to public health posed by the designation of formulations of nicotine and zinc phosphide as unclassified for domestic and non-domestic uses. The panel cited the history of accidental poisoning over a long period of time with such toxicants and indicated that in its opinion, making them available to the general public while certain field uses are restricted tends to give the public a false sense of security. The panel recommended that in the future all use patterns be appropriately addressed. The panel further suggested that the technical merits of the current classification procedure be reevaluated, if necessary, to ensure that the availability of highly toxic poisons in domestic situations for use by unskilled persons is not promoted.

With respect to the panel's concern that the agency's classification decisions on certain active ingredients tend to give the public a false sense of security and that the classification procedures themselves promote the use of highly toxic poisons in domestic situations for use by unskilled persons, the agency notes the following:

1. While it is true that in some classification decisions agricultural and non-domestic uses of certain active ingredients have been classified restricted while domestic uses have remained unclassified, products with domestic use patterns are generally much less concentrated than those with agricultural crop uses and consequently pose a lesser degree of risk. This is true for the formulations of zinc phosphide and nicotine (alkaloid) addressed in this regulation.

2. During the classification-by-regulation process, all of the use patterns and formulations of an active ingredient under review are evaluated (as recommended by the panel) and subjects to the classification criteria of 40 CFR 162.11(c)(20) which impose more rigid safety limits on domestic uses than non-domestic uses. In fact, the classification criteria provide for a safety factor ten times greater for pesticides used in domestic use situations than that for pesticides used in non-domestic use situations. For instance, pesticide products are considered to be candidates for restricted use in *non-domestic* use situations if the acute dermal LD_{50} is 200 mg/kg or less while such products are considered to be candidates for restricted use in *domestic* use situations if the acute dermal LD_{50} is 200 mg/kg or less.

3. With it is true that only a limited number of domestic uses have been classified for restricted use when compared to agricultural uses, most of the active ingredients reviewed in the classification-by-regulation process do not have any domestic uses.

While respect to the panel's recommendation that highly toxic pesticides such as zinc phosphide and nicotine not be allowed in the home environment for use by unskilled persons, the agency notes that those formulations of zinc phosphide (2% and less) and nicotine (alkaloid) (1.5% and less) identified in this rulemaking as unclassified did *not* meet the risk criteria for restricted use. An examination of the accident history of both active ingredients (which also can be grounds for classifying formulations or uses for restricted use under § 162.11(c)(4)), as shown by the agency's Pesticide Incident Monitoring System (PIMS) revealed a total of thirteen incidents for each active ingredient. Although there were two reported fatalities with nicotine (alkaloid) both were ruled to be suicide. (The PIMS data file represents slightly over 34,000 reported incidents covering the period 1966 to the present.) No other serious incidents with zinc phosphide or nicotine (alkaloid) were reported. Therefore, neither the risk criteria nor accident data gave the agency reason to believe there was sufficient reason to classify either of these two active ingredients (at the percentage concentration indicated) for restricted use.

The broader policy issue of whether or not zinc phosphide and nicotine (alkaloid) should be prohibited from domestic use regardless of formulation or concentration, is not one that can be addressed in the classification by regulation process. This process was designed to focus on the incremental risks and benefits of unrestricted use and was not meant to be a comprehensive evaluation of overall risks and benefits. This more comprehensive evaluation of risks and benefits for zinc phosphide and nicotine (alkaloid) will be accomplished during reregistration.

The provisions of 40 CFR 162.16, imposing a requirement for child-resistant packaging, also are pertinent. Products which meet certain acute toxicity criteria and are labeled to allow them to be used in residential settings must be packaged in a way which will lessen the ability of small children to obtain access to the product's contents.

One further point needs to be noted. Just as the agency is concerned about the health and safety of people who use and are exposed to pesticides, there is also concern that homeowners and domestic users have a selection of available pesticides that will provide

effective and affordable pest protection and still be within "acceptable" risk limits.

The Scientific Advisory Panel report is published in its entirety below.

Scientific Advisory Panel Review of Final Rulemaking

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) Scientific Advisory Panel completed review of final rulemaking for classification of certain uses of eight active ingredients as restricted uses during the thirty-third meeting of the Panel, held in Arlington, Virginia, during the period June 26–27, 1980.

Maximum public participation was encouraged for discussion of the document under review. During the meeting, public comments were received from representatives of EPA and the pesticide industry. Public notice of the meeting was published in the **Federal Register** on June 10, 1980. In addition, special mailings and telephonic notices were sent to persons who had previously indicated an interest in activities of the Panel.

In consideration of all matters brought out during the meeting and careful review of all documents submitted by the Agency, the Panel submits the following report:

The FIFRA Scientific Advisory Panel unanimously concurs with the document submitted on June 5, 1980, outlining final rulemaking for classification of pesticides.

Special comment: The Panel is alarmed by the potential serious threat to public health posed by designation of formulations of nicotine and zinc phosphide as unclassified for all domestic and non-domestic uses. The Panel is of the opinion that such highly toxic poisons should not be allowed in the home environment for use by unskilled persons. The history of accidental poisoning over a long period of time with such toxicants would indicate their hazard potential in a variety of situations and conditions.

Permitting such formulations to remain on the market in an unclassified status while field uses of the same toxicants are classified as restricted tends to give the public a false sense of security. The Panel recommends that this problem be avoided in the future by ensuring that whenever a highly toxic material is classified as restricted on the basis of toxicity that all use patterns be appropriately addressed (i.e., field, domestic, non-domestic, etc.). The Panel urges the Agency to make this a generalized viewpoint for rulemaking and if necessary reevaluate the technical merits of current classification procedures which tend to promote the availability of highly toxic poisons in domestic situations for use by unskilled persons.

For the Chairman:

Certified as an accurate Report of Findings:

H. Wade Fowler, Jr., Ph.D., Executive Secretary, FIFRA Scientific Advisory Panel.

Date: July 15, 1980.

Persons wishing to review the comments and other information relating to this rulemaking are referred to the Document Control Officer (TS-777), Office of Pesticides and Toxic Substances, Rm. E447, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. The material is available for reviewing from 8:00 a.m.to 4:00 p.m. daily, Monday through Friday, excluding holidays.

(Secs. 3(d), 25(a), 92 Stat. 826–7, 89 Stat. 751–2, 92 Stat. 836; (7 U.S.C. 136 et seq.))

Dated: January 12, 1981.

Douglas M. Costle,

Administrator.

Part 162, Subpart A, § 162.31 is amended by alphabetically inserting chloropicrin, cycloheximide, dicrotophos, EPN, methamidophos, methidathion, nicotine (alkaloid), and zinc phosphide in the table to read as follows:

§ 162.31 Pesticide use classification.

The following uses of pesticide products containing the active ingredients specified below have been classified for restricted use and are limited to use by or under the direct supervision of a certified applicator.

Active ingredient	Formulation	Use patterns	Classification	Criteria influencing restriction
*	* *	* *	*	*
Chloropicrin	All formulations greater than 2%	All uses	Restricted	Acute inhalation toxicity.
	All formulations	Rodent control	Restricted	Hazard to non-target organisms.
	All formulations 2% and less	Outdoor uses (other than rodent control)	Unclassified	
*	* *	* *	*	*
Cycloheximide	All formulations greater than 4%	All uses	Restricted	Acute dermal toxicity.
	All formulations 0.027% to 4%	All uses	Under evaluation	
	All formulations 0.027% and less	Domestic uses	Unclassified	
*	* *	* *	*	*
Dicrotophos	All liquid formulations 8% and greater	All uses	Restricted	Acute dermal toxicity; residue effects on avian species (except for tree injections).
*	* *	* *	*	*
EPN	All liquid and dry formulations greater than 4%	All uses	Restricted	Acute dermal toxicity; acute inhalation toxicity; residue effects on avian species.
		Aquatic uses	Restricted	Effects on aquatic organisms.
*	* *	* *	*	*
Methamidophos	Liquid formulations 40% and greater	All uses	Restricted	Acute dermal toxicity; residue effects on avian species.
	Dust formulations 2.5% and greater	All uses	Restricted	Residue effects on avian species.
Methidathion	All formulations	All uses except nursery stock, safflower and sunflower.	Restricted	Residue effects on avian species.
	All formulations	Nursery stock, safflower and sunflower	Unclassified	
*	* *	* *	*	*

Active ingredient	Formulation	Use patterns	Classification	Criteria influencing restriction
Nicotine (alkaloid)	Liquid and dry formulations 14% and above	Indoor (greenhouse)	Restricted	Acute inhalation toxicity.
	All formulations	Applications to cranberries	Restricted	Effects on aquatic organisms.
	Liquid and dry formulations 1.5% and less	All uses (domestic and non-domestic)	Unclassified	
*	*	*	*	*
Zinc Phosphide	All formulations 2% and less	All domestic uses and non-domestic uses in and around buildings.	Unclassified	
	All dry formulations 60% and greater	All uses	Restricted	Acute inhalation toxicity.
	All bait formulations	Non-domestic outdoor uses (other than around buildings).	Restricted	Hazard to non-target organisms.
	All dry formulations 10% and greater	Domestic uses	Restricted	Acute oral toxicity.

[FR Doc. 81-1878 Filed 1-16-81; 8:45 am]

BILLING CODE 6560-32-M

federal register

Monday
January 19, 1981

Part XXIX

Department of Transportation

Federal Highway Administration

Urban Mass Transportation

Urban Mass Transportation Administration

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Urban Mass Transportation Administration

23 CFR Parts 450 and 630

49 CFR Part 613

[FHWA Docket No. 80-24, Notice 2]

Urban Transportation Planning

AGENCIES: Federal Highway Administration (FHWA) and Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Final rule; request for public comments.

SUMMARY: The purpose of this document is to issue amendments to existing regulations governing urban transportation planning under FHWA and UMTA programs. The changes are intended to (1) integrate the FHWA/UMTA policy for decisions on major urban transportation investments with the ongoing urban planning process; (2) reflect changes in the planning process necessitated by recent environmental requirements and agreements between the Department of Transportation (DOT) and the Environmental Protection Agency (EPA) relative to air quality; (3) emphasize the importance of Transportation System Management (TSM) in conserving energy and improving the efficiency of our transportation resources; and (4) simplify the administration of the planning process, particularly for areas under 200,000 population. Public comments on these amendments are invited. The need for future revisions to these regulations will be considered on the basis of comments received and the experience gained by the FHWA and UMTA under these regulations.

DATES: These amendments are effective on or before February 18, 1981. Written comments must be received on or before January 19, 1982.

ADDRESS: Submit written comments to FHWA Docket No. 80-24, Notice 2, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: FHWA: Sam W. P. Rea, Jr., Urban Planning Division, (202) 426-2961, or Gary Maring, Public Transportation Management Division, (202) 426-0210, or Stanley Abramson, Office of the Chief Counsel, (202) 426-0762; or UMTA: Robert Kirkland, Office of Planning Assistance, (202) 426-4991, or James Ryan, Office of Planning Assistance, (202) 426-2360, or Anthony Anderson, Office of Chief Counsel, (202) 426-1906, all located at 400 Seventh Street, SW., Washington, D.C. 20590. FHWA office hours are from 7:45 a.m. to 4:15 p.m. ET; UMTA office hours are from 8:30 a.m. to 5 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: This document amends the FHWA/UMTA regulations for urban transportation planning (23 CFR 450 and 49 CFR 613) and the FHWA regulations for Federal-aid program approval and project authorization (23 CFR 630, Subpart A). These amendments are considered to be significant under the criteria established by the Department of Transportation pursuant to Executive Order 12044 because they involve important Departmental policy and major urban investments by FHWA and UMTA. A regulatory evaluation is available for inspection in the public docket (No. 80-24, Room 4205). Copies of the evaluation may be obtained by contacting Mr. Sam W. P. Rea, Jr., at the address provided above under the heading "For further information contact."

On September 17, 1975, FHWA and UMTA jointly issued final regulations (40 FR 42976) implementing the urban transportation planning process that is mandated under the Federal-Aid Highway Acts (23 U.S.C. 101 et seq.) and the Urban Mass Transportation Act of 1964, as amended (UMT Act) (49 U.S.C. 1601 et seq.).

Central to the joint planning regulations is the designation of a metropolitan planning organization (MPO) for each urbanized area. The MPO is the forum through which principal elected officials of general purpose local government cooperatively decide transportation issues. State and local responsibilities for cooperatively carrying out transportation planning and programming must be clearly identified.

The MPO in cooperation with the State and publicly owned operators of mass transportation services is responsible for carrying out the continuing, comprehensive and cooperative (3C) urban transportation planning process mandated by the Congress, and for developing the planning work programs, transportation plan and transportation improvement program required by the joint planning regulations. The transportation improvement program is a multiyear program of transportation improvements, including an annual element, and must be endorsed annually by the MPO. Federal assistance for mass transit or highway projects in an urbanized area is given only to those projects which appear in the TIP.

The UMTA and FHWA review and evaluate the transportation planning process in each urbanized area. Federal certification of the process does not constitute approval or rejection of any given transportation project, but simply constitutes the formal recognition that an acceptable 3C process exists. This certification is a prerequisite to subsequent Federal approvals of individual project proposals.

Although these regulations have been implemented effectively, the revisions issued today are intended to promote consistency between national and local objectives, to improve decisionmaking by providing for greater coordination between the planning and project development processes for major urban transportation investments, to implement various transportation-related legislative requirements, such as air quality and energy conservation, and to simplify the administration of the planning process, particularly for areas under 200,000 population. In many cases, these revisions simply formalize what has already taken place on an informal basis.

Disposition of Comments

A notice of proposed rulemaking (NPRM) for the urban transportation planning regulations was published in the **Federal Register** on October 30, 1980 (45 FR 71990). Over 119 comments were received, including 54 from metropolitan planning organizations, 39 from State and local governments, 12 from national organizations and groups, 9 from transit operators and authorities, 3 from other Federal agencies, and 3 from private citizens and other interested parties. Several commenters submitted more than one response to the docket.

The majority of commenters were very positive and supportive of the proposed revisions. Many suggested editorial and other relatively minor changes and clarifications. Some commenters criticized certain proposed revisions and questioned the basis for these actions, particularly with respect to major urban transportation investments.

In the preparation of the final regulations, set forth below, consideration was given to all comments received as of January 9, 1981, insofar as they relate to matters within the scope of the NPRM. Except for editorial changes, and except as specifically

discussed herein, these regulations and the reasons therefore, are the same as contained in the NPRM. The great majority of the changes are clarifications rather than substantive alterations; however, certain comments did result in substantive alterations to the regulations.

A number of requests were received for extensions of time to submit comments on the NPRM or for an opportunity to review and comment on a subsequent refinement of the regulations in proposed form. These requests were denied due to the overriding interest in the timely improvement of the urban transportation planning process. An additional consideration was the fact that the policies and procedures for major urban transportation investments were the subject of a previous NPRM (43 FR 57478, December 7, 1978), which was fully discussed in the Supplementary Information section of the urban transportation planning NPRM published on October 30, 1980. However, in partial response to these requests and in accordance with the regulatory policies and procedures established by DOT pursuant to Executive Order 12044, public comments on these final regulations are being invited and may be submitted to FHWA Docket No. 80–24, Notice 2 during the 12 months following publication of the regulations. The need for future revisions to these regulations will be considered on the basis of comments received and the experience gained by the FHWA and UMTA in operating under these regulations.

In view of the interest expressed in these regulations, each section of these regulations which has been revised or which was the subject of major commentary or concern is discussed below. The General heading provides a discussion of major topics which go beyond individual sections, including Major Urban Transportation Investments, Air Quality and Transportation System Management. Individual sections and appendices are then discussed under the headings of the parts or subparts in which they are found.

General

Major Urban Transportation Investments

The final rule includes a number of provisions that deal with planning activities for major urban transportation investments. These provisions accomplish three objectives. First, the revised regulation ensures involvement of local officials, acting through the MPO, in corridor planning studies. Second, the regulation establishes uniform FHWA and UMTA requirements for the analysis of major urban transportation investments. Finally, the regulation makes clear the role of major investment analyses in the transportation planning process.

In the past, projects proposed for funding by FHWA have been developed through the areawide planning effort, followed by highway location studies and preparation of environmental impact statements (EIS's). The location studies have in some instances been conducted by State highway agencies with only secondary involvement of local officials, usually acting through the Metropolitan Planning Organization (MPO). Projects proposed for UMTA funding have been assessed in the areawide analysis and then studied in more detail in corridor level alternatives analysis, documented in a draft EIS. Alternatives analyses have typically been conducted by the local transit operator, again in some instances without full MPO involvement.

The separate corridor level analyses by the implementing agencies have tended to constrain full consideration of various transportation "modes" (e.g., automobiles, mass transit). To address this problem, the requirements for the analysis of major investments are included within the cooperative planning process established in § 450.112. Section 450.112 defines responsibility for urban transportation planning as a cooperative effort among the MPO, the State, and local public transit operators. This section is modified in the final rule to include within the fully cooperative process all planning activities for major investments leading to the development of the draft EIS. The intent is to ensure cooperation without prescribing specific responsibilities or degrees of involvement for each agency. This flexibility permits local officials to decide the specific institutional arrangements and procedures to be used in the consideration of transportation alternatives. These procedures would be tailored to the range of alternatives being considered, their stage of advancement in the process, and other local considerations. It is anticipated that the degree of responsibility and involvement of the various agencies will vary with the status of development of implementation proposals. For example, the responsibility of MPOs would be heaviest at the areawide planning level, with appropriate input from implementing agencies. As proposals become more definitive, implementing agency responsibility would increase and become predominant as the project nears implementation.

Several commenters expressed concern about the role of the MPO in the development of corridor refinement studies and the lack of clarity in the proposed rules regarding the relationships between the Federal, State, and local governments. A number of commenters interpreted the revised regulation as assigning to the MPO lead responsibility for corridor refinement studies. As discussed above, the provisions of this regulation require the involvement of MPOs, in the development of proposed highway and transit projects, as well as in the urban transportation planning process itself. The Department's authority to ensure the involvement of local elected officials, acting through the MPO, beyond the areawide planning stage has been firmly established by the Congress under the provisions of the Federal-Aid Highway Acts (23 U.S.C. 101 et seq.), the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 et seq.), and the Clean Air Act, as amended (42 U.S.C. 7401 et seq.). However, the Department has no intention of dictating the respective roles of the MPO, the State and the publicly owned operators of mass transportation services in such project-related activities. The regulation requires only that the MPO be involved. The nature and extent of that involvement has always been a matter of State and local discretion. This regulation does not alter the roles and responsibilities of the applicants for FHWA and UMTA funding, which are clearly established by law. Furthermore, with respect to the Federal-aid highway program, the involvement of the MPOs in the project development process is not intended to infringe upon the sovereign rights of the States to determine which projects are proposed for Federal-aid funding under the provisions of Title 23, U.S.C. The Federal-aid highway program remains a federally assisted State program.

Although this regulation specifically provides for MPO involvement at more stages than the previous rule, particularly with respect to major urban transportation investments, the basic premise for this involvement remains the same. The regulation seeks to foster cooperation and consensus among local elected officials as to the appropriate priorities among proposed highway and transit projects, and to harmonize the planning and programming of these projects, particularly where they affect the entire urbanized area.

To clarify the intention to provide complete flexibility in the conduct of

corridor refinement studies, § 450.112 is amended in the final rule to include a new paragraph (b) that specifically states that the MPO, the State, and public transit operators will determine their appropriate degree of responsibility for corridor refinement studies.

Requirements for major investment planning set forth in § 450.122 rely upon planning activities required by the regulations since 1975. While past planning efforts have included considerations of cost and effectiveness, the final rule ensures that a consistent approach will be employed in all analyses of major investments. Section 450.122 requires that the costs and effectiveness of major new transportation facilities be explicitly considered in the areawide assessment of transportation needs. This assessment will then be used to narrow the range of options to a number of reasonable and potentially cost-effective alternatives. The range of the remaining alternatives may be quite narrow or very broad. For example, a narrow range of alternatives would be expected if the investments only involve increasing the capacity of existing facilities. Where major widening of an existing freeway is proposed the capital intensive alternatives might differ only in the number of lanes to be added and the possible restriction of these lanes to high-occupancy vehicles. Similarly, where additional parallel tracks are proposed for an existing rail facility, the major capital alternatives might differ only in the number of miles of facility to which tracks are added. In other cases, however, the range of alternatives might be quite broad and could include such varied projects as a new freeway, a busway, a light rail line, and a heavy rail line.

Section 450.122 also requires that the narrowed range of alternatives be further evaluated in corridor refinement studies. These studies ensure that the selection of an alternative is based on more reliable cost and effectiveness information developed for all remaining alternatives in the corridor. For any freeway or busway project included within the range of alternatives, corridor refinement studies assess their location, degree of grade separation and access control, approximate right-of-way requirements, interchange locations, number of lanes, and general operating characteristics. For any heavy rail, light rail, or automated guideway projects among the alternatives, corridor studies examine the transit technology, degree of grade separation, station locations, operating characteristics, and general alignment of the facility. The same level of detail is employed for all alternatives, regardless of their nature. Corridor refinement studies are analogous to highway location studies. Corridor refinement studies are also analogous to transit alternatives analyses, with greater detail used in the specification and assessment of the alternatives. The greater level of detail yields more reliable estimates of costs and effectiveness than have been developed in past alternative analyses. This detail provides greater confidence in the selection of an alternative with which to proceed into preliminary engineering.

Section 450.122 makes clear that the draft EIS is the document in which the results of corridor refinement studies are to be presented. This procedure is consistent with current environmental requirements and with the joint environmental regulation published on October 30, 1980 (45 FR 71968). Some commentors expressed uncertainty about the relationship of the areawide analysis of alternatives and the corridor refinement study leading to the draft environmental impact statement. To express this relationship graphically a simple flow chart has been prepared and is included at the end of this discussion.

Section 450.122 also identifies the FHWA and UMTA funds that may be used for corridor refinement studies. In the past, highway location studies have been funded by FHWA construction funds while transit alternatives analyses have used UMTA Section 8 funds. In order to support the more detailed analysis undertaken in a corridor refinement study, UMTA recognizes that additional funding may be required. Consequently, this section implements the provision of the Surface Transportation Assistance Act of 1978 that UMTA Section 3 funds may be used to support detailed alternatives analyses. Specific funding arrangements will be established on a case-by-case basis by Federal, State, and local officials.

The final rule amends § 450.114 to require that the Unified Planning Work Program (UPWP) describe corridor planning activities, regardless of funding source and implementation responsibility. In the past, the UPWP has usually described areawide planning activities, as well as UMTA Section 8 funded alternatives analyses. Highway location studies proposed for FHWA funding were included in the Transportation Improvement Program (TIP) but were not described in the UPWP. Conversely, alternatives analyses proposed for UMTA Section 8 funding were described in the UPWP but not included in the TIP. The final rule will provide better coordination of corridor planning activities through comprehensive UPWP documentation.

Several commenters questioned the need for this requirement. They observed that corridor studies using FHWA construction funds would have to be documented in both the UPWP and the TIP. However, for the reasons noted above, full coordination of planning and project development activities would be enhanced by a closer tie between the UPWP and the TIP. The level of detail of UPWP documentation is not prescribed and should be determined by the participating parties. Therefore, to ensure full coordination of all planning and project development activities, the final rule retains the UPWP documentation requirement.

It is important to note that the certification review required by § 450.124 encompasses Subpart A of the regulations (23 CFR 450). Therefore, planning for major investments is explicitly subject to the certification review process, and the review is expected to assess the soundness of the entire process leading to preparation of a draft EIS for major investments.

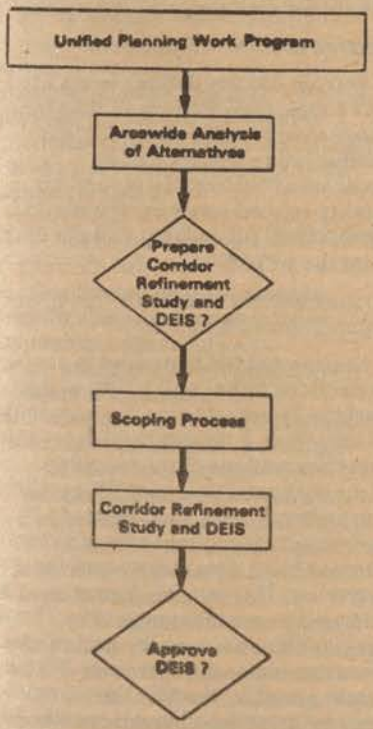
A new appendix has been prepared to provide advisory information on FHWA and UMTA procedures in administration of corridor refinement studies. In the past, major investments have been subject to separate UMTA and FHWA administrative procedures. To support the uniform major investment planning revisions included in this document, FHWA and UMTA have developed a single set of procedures that is identified in Appendix C to 23 CFR 450, Subpart A.

Several commenters asked for clarification of the range of planning activities to which this appendix applies. Consequently, the title of the appendix has been changed to denote that the appendix deals with the administration of planning for major urban transportation investments. Other commenters expressed reservations on the nature of federal approvals of proposed methodologies for corridor refinement studies, as described in paragraph 2. The intent of this paragraph is to ensure consistency of FHWA and UMTA administration of corridor refinement studies. The paragraph does not prescribe how the federal reviews and approvals will be accomplished. Therefore, the introduction to the appendix has been revised to indicate that FHWA and/or UMTA will determine the appropriate nature of Federal reviews and approvals during refinement studies. Finally, paragraph 1(c) has been modified to

make clear that the information used to demonstrate the need for further study at the corridor level would usually be taken from the areawide assessment of transportation needs, rather than from a separate planning study.

In view of the changes to the joint planning regulations, UMTA has reevaluated its existing policy statements on major urban investments. Every effort has been made to streamline the relevant policy and procedure statements to minimize duplication with the proposed revisions to the joint planning regulations. As a result, the 1976 Major Urban Mass Transportation Investment Policy (41 FR 41512, September 22, 1976) and the 1978 Policy Toward Rail Transit (43 FR 9428, March 7, 1978) have been superseded. Section 613.204 now includes the requirement, formerly in the Major Investment Policy, that major urban mass transportation projects must be determined to be cost-effective before they are eligible for Federal support. Remaining elements of these policies and procedures that are unique UMTA requirements are incorporated in 49 CFR Part 613 as an appendix. The procedural

Planning Process for Major Urban Transportation Investments



elements of this appendix are fully compatible with the procedures outlined in the joint FHWA/UMTA environmental regulation (23 CFR 771), and supersede the Notice of Revised Policy published by UMTA on October 30, 1980 (45 FR 71986).

Finally, FHWA and UMTA wish to ensure a smooth transition to these changes in the ongoing planning and project development efforts. Consequently, those corridors for which a draft EIS has been filed with EPA or will be filed within 90 days of the effective date of the final rule, will not be affected by the revised regulation. The revised regulations will apply, however, to corridors where the draft EIS is supplemented under the FHWA/UMTA environmental process, unless the Administrator of FHWA and/or UMTA determines that it is not necessary. In corridors where a draft EIS is under preparation, FHWA and/or UMTA will work with State and local officials to identify any appropriate actions on a case-by-case basis.

Air Quality

Sections 104, 108, 112, 114, 120, and 124 in Subpart A of Part 450 and Sections 304, 312, 316, and 320 in Subpart C of Part 450 contain revisions related to the transportation/air quality planning and programming roles and responsibilities of the MPO. The changes reflect modifications required by the Clean Air Act Amendments of 1977 (Pub. L. 95–95) as well as a series of agreements reached between DOT and EPA as they relate to the urban transportation planning process and Federal review and approval responsibilities. These revisions identify those actions necessary for the enhanced coordination of the air quality and transportation planning processes.

Several commenters questioned and noted confusion about a proposed revision to § 450.106 which specified that the MPO should, where feasible, be designated as the organization responsible for the transportation portion of the SIP. One commenter pointed out that such a requirement ignored several important State responsibilities in the SIP process. We agree that including this designation within this regulation is confusing and have eliminated it from the final rule. The specific SIP designation procedure is fully covered by EPA in its rulemaking (40 CFR, Part 51, Subpart M).

In response to concerns about EPA's role in the certification process, § 450.124 has been changed to refer to the DOT/EPA Memorandum of Understanding of June 14, 1978 which outlines EPA's role.

Commenters also questioned the proposed requirement in §§ 450.112(e) and 450.316(b) that prohibits an MPO from endorsing any project, program, or plan which does not conform with the SIP. This requirement is specifically stated in Section 176(c) of the Clean Air Act and is thus retained in the final rule.

One commenter requested that specific Federal air quality conformity requirements be included in this rulemaking. As noted in the preamble to the NPRM, FHWA and UMTA are revising 23 CFR 770, Air Quality Guidelines, in a separate action. This revision will provide the detailed procedures necessary to implement the conformity and priority requirements (Section 176(c) and (d)) of the Clean Air Act. Since there is significant linkage between planning, programming, and project conformity findings, we believe it is important that the entire conformity procedure be included as a single document. Thus, the revised urban transportation planning regulations incorporate this requirement by reference rather than separate planning requirements.

Transportation System Management (TSM)

Since the original joint regulations were published in 1975, a number of questions have arisen regarding the definition of TSM and the distinction between the TSM element and the long-range element. To clarify the definition and scope of TSM, revisions have been made to Part 450 and conventional terms for elements of the plan, i.e., short-and long-range elements, are not used. It should be noted that the importance of TSM is in no way diminished with the revisions; in fact, § 450.116(a) has been revised to include TSM as a key component of the transportation plan. In addition, since TSM pervades the whole process it is included as the first element required in § 450.120(a). The revisions particularly recognize the national concern for energy conservation in response to Executive Order 12185 on energy conservation (44 FR 75093, December 19, 1979).

The regulations have been revised to clarify the purpose of TSM as primarily addressing operational and service issues both short-and long-range. Changes to § 450.116(b) emphasize the synergistic effect possible with systematic applications of TSM actions and highlight the applicability of a

problem area-oriented approach to TSM. Section 450.116(c)(2) has been revised in order to emphasize that the long-range planning process should be just as sensitive to potential major regulatory policy changes or, in fact, long-term operational measures as is the short range element. This change is consistent with § 450.120(a)(8) which was recently changed in a similar manner in a rulemaking (45 FR 58022, August 29, 1980) connected with Executive Order 12185 on Energy Conservation.

The joint planning regulations specifically address urban goods movement issues, because it is clear that these issues directly affect the quality of transportation services in urban areas. A modification, consisting of an additional technical activity item, to § 450.120(a)(8) provides the framework for urban goods movement planning, emphasizing a problem identification, site-specific approach. The modification also specifically recognizes the need for involvement of the private sector in goods movement planning activities. In addition to the specific modification to § 450.120(a)(8), the new "TSM Appendix" presents the movement of goods as an intergral part of the planning process. Also, the phrase "persons and goods" is used in the description of the short-range and long-range elements of the planning process.

Most of the comments related to the proposed TSM changes were favorable. However, one commenter suggested that the goal "to improve mobility" be included in § 450.120(a)(8)(ii). We agree and have changed to reflect this suggestion.

Also, one commenter expressed concern with § 450.120(a)(7) regarding the number of agencies involved in the planning process. These agencies do not have to participate in every issue; however, they must be involved where their interests are affected. We believe no change to the wording is necessary.

The new Appendix A replaces the 1975 version completely. Therefore, it is designed to stand alone as guidance on the intent, goals, scope and requirements of TSM. This appendix is organized into seven sections covering the goals of FHWA and UMTA in requiring TSM, the scope of what TSM includes, roles and responsibilities in addressing TSM requirements, necessary technical activities, documentation requirements, programming, and funding.

The section on goals clearly lays out the rationale for TSM and its emphasis on system operations and services. New issues are facing the planning process and an approach for recognizing these new issues is provided.

The scope of TSM is then discussed. The range of tactics available is described. This listing is arranged in a general way and replaces the list in the 1975 appendix. That list has been misinterpreted as a checklist of tactics which every area must assess, one-by-one, and accept or discard based on local conditions. The new list illustrates the kinds of actions that fall into the service and operational improvement categories represented in general by TSM. Also discussed are some issues regarding the definition of TSM, particularly the relationship of short-term/long-term and high-cost/low-cost distinctions to the intent of TSM. The concept of different operating environments (or problem areas) is also introduced.

The section on roles and responsibilities recognizes that the MPO has lead responsibility for coordinating all TSM activities. However, the need to include a broad range of actors in the planning process is now explicit. This is needed to reflect the range of public and private operating agencies and authorities responsible for implementing TSM actions and programs.

Technical activities to be included in the Unified Planning Work Programs are described more explicitly than in the 1975 appendix. However, the activities listed are intended to be illustrative, not a mandatory checklist.

The requirements for documentation of area TSM planning are clarified in the next section of the appendix. No new documentation is required for TSM, rather, TSM is to be documented in the normal products of the planning process. Much discretion is left to localities to decide how best to report on TSM activities.

Finally, a section on programming is added to better describe the kinds of results which would be expected of TSM planning. This section should help localities understand the types of projects which will be emphasized in reviewing implementation efforts in TSM.

Most of the comments received on the appendix A were very positive. However, there were some significant suggestions made and some points that need further clarification. There were several comments in support of the emphasis given to urban goods movement in appendix A. Some clarification on urban goods movement funding was desired. HPR and PL funds are available for planning studies and technical analyses of urban goods movement projects.

Many comments suggested that a number of the TSM items contained in the UPWP be eliminated, such as a description of goals and objectives as well as the planning process. We agree with this comment. The appendix now advises that "the UPWP should only describe TSM planning to be undertaken during the period it covers."

Several comments were made regarding the use of motorcycles as a transportation mode. We agree that it is a significant mode. As a result we have listed motorcycle and moped provisions along with bicycle provisions in the range of tactics presented in the appendix.

23 CFR Part 450, Subpart A

Section 450.100 Purpose

Section 450.100 describes the general purpose of the final regulation. The purpose of the regulation is to implement certain sections of 23 U.S.C. and the UMT Act of 1964, as amended, which require urbanized areas to have a continuing, cooperative, and comprehensive transportation planning process as a condition of receipt of Federal capital or operating assistance.

Section 450.102 Applicability

Section 450.102 provides that this subpart is applicable to the transportation planning process for urbanized areas, and that certification under this subpart is necessary prior to urbanized area program approvals.

Section 450.104 Definitions

Section 450.104 defines terms used in this subpart. Definitions of the terms, "cost-effectiveness analysis," and "major urban transportation investment" as well as several air quality-related terms have been added by this final rulemaking without change from the NPRM.

Section 450.106 Metropolitan planning organization: Designation

Section 450.106 is revised to conform to Sections 169(a) and 305(b) of the Surface Transportation Assistance Act of 1978 (Pub. L. 95–599) which provides that designations of metropolitan planning organizations (MPOs), after November 7, 1979, shall be made by agreement among the units of general purpose local government and the Governor. This section, however, is not intended to mandate new or reaffirmed designation action on the part of local governments or the Governor. To the extent possible, the MPO designated shall be established under specific State legislation, State enabling legislation or by Interstate compact. In addition, the principal elected officials of the general purpose local governments shall be adequately represented on the MPO.

Several commenters requested that we more clearly define what constitutes "agreement" between units of general purpose local government and the Governor in the designations or redesignations made after that point in time. We have used the precise language of the legislation. We expect State and local officials to develop mutually acceptable procedures for making MPO designations. We are not imposing a Federal mandate on the definition of "adequate representation" of principal elected officials on the MPO policy body. In the spirit of a cooperative planning process, we expect State and local officials to develop mutually acceptable organizational structure and representation.

Several commenters requested that the geographical scope of the transportation planning process as identified in § 450.110 and the geographical requirement relating to the representation on the MPO (§ 450.106(d)) be identical. We do not believe that such a requirement would be appropriate. The existing regulation requires that, as a minimum, the jurisdiction of the metropolitan planning organization encompass the urbanized area, as this boundary relates to the eligibility requirements of FHWA and UMTA capital and operating assistance programs. However, it is good planning practice to include areas likely to be urbanized when conducting long-range planning. To integrate transportation planning with other planning activities in the area, and to permit flexible institutional arrangements, we intend to retain the permissive language of the existing regulation.

Section 450.108 Metropolitan planning organization: Agreements

Section 450.108 requires that the responsibilities for the cooperative transportation planning and programming shall be identified in an agreement or memorandum of understanding between the State and the MPO. The responsibilities of the MPO and the publicly owned operators of mass transportation services shall also be specified by agreement. Where the MPO and the A–95 agency are different, there shall be an agreement which coordinates their activities. If the MPO is not designated for air quality planning under section 174 of the Clean Air Act, there shall be an agreement between the two organizations on their respective responsibilities. To the extent possible, these agreements must be contained in a single cooperative agreement. The requirement of an agreement between the MPO, the State, the publicly owned transit operators, and the air quality agency may be met if the parties agree to document their responsibilities in a unified planning work program. In order to minimize red tape, the requirement that agreements be sent to FHWA and UMTA (section 450.108(g)), proposed in the NPRM, is deleted in the final rule.

Section 450.110 Metropolitan planning organization: Geographic scope

Section 450.110 requires that the transportation planning process at least cover the urbanized area and the area likely to be urbanized in the period covered by the long-range element of the transportation plan.

Section 450.112 Metropolitan planning organization: Responsibilities

Section 450.112 provides that the MPO, in cooperation with the State and the local mass transit operators, be responsible for the urban transportation planning process specified in §§ 450.120 and 450.122. The MPO is also responsible for developing the unified planning work program (§ 450.114), the transportation plan (§ 450.116), and the transportation improvement program (TIP) (§ 450.118). In addition, the MPO is required to develop, or assist in developing, the transportation control measures of the State implementation plan (SIP) in nonattainment areas. In accordance with the Clean Air Act, the MPO is prohibited from endorsing any project, program or plan which does not conform to the SIP.

The MPO, the State, and publicly owned operators of mass transportation services determine the responsibility of each in the conduct of corridor refinement studies described in § 450.122. The discussion, including the response to comments, relating to the responsibilities for § 450.122 activities is contained under the heading, "Major Urban Transportation Investments."

Section 450.114 Urban transportation planning process: Planning work programs

Section 450.114 states that the urban transportation planning process must include a Unified Planning Work Program (UPWP). The UPWP includes: (1) a discussion of the area's important transportation issues; (2) a description of all transportation and transportation-related planning activities, including corridor planning activities (§ 450.122), regardless of funding sources; (3) a description of transportation-related air quality planning activities, regardless of funding sources or which agency conducts such activities; and (4) documentation of all work to be performed with planning assistance provided under Section 8 of the UMTA Act (49 U.S.C. 1607(a)) and 23 U.S.C. 104(f) and 307(c).

Several commenters expressed concern that elimination of the prospectus and the subsequent inclusion of some of its elements in the UPWP might result in an increase in paperwork and staff effort. Therefore, we have revised § 450.114 of the regulations to make the development of a prospectus optional.

One commenter noted that the revised section 450.114 no longer contains language which encourages combining UPWP requirements with those of other planning programs. We do want to continue this encouragement and are, therefore, reinstating the language of the previous section which is still applicable.

Section 450.116 Urban transportation planning process: Transportation plan

Section 450.116 provides that the urban transportation planning process include the development of a transportation plan consisting of both a short-range element and a long-range element. Transportation system management, which is described in Appendix A to Subpart A, is a key component of both the short-range and the long-range elements. The short-range must (1) provide for the near term transportation needs of persons and goods in the urbanized area; (2) identify TSM actions that present a systematic approach to solving urban transportation problems; and (3) be included in the transportation improvement program (TIP). The long-range element must (1) provide for the long-term transportation needs of persons and goods in the urbanized area through capital investments, strategies, and policy changes; (2) identify new transportation policies, strategies, facilities, or major changes in existing facilities, in sufficient detail to identify the location and mode to be implemented; and (3) fully explore TSM as a policy and investment strategy for long-range transportation and development plans in the particular area. The transportation plan must be consistent with the area's long-range land use plan; urban development objectives; and its social, civil rights, economic, environmental, system performance, and energy conservation objectives.

The majority of the commenters responded favorably to the change to the more conventional terms for the elements of the plan (i.e., long- and short-range elements). However, others were confused with the terminology. They contend that short-range element

as defined is limited only to TSM actions. This is not our intent. Therefore, § 450.116(b) has been changed to reflect the intent that the short-range element contain all investments and strategies to serve near-term transportation needs, including TSM actions. Likewise. § 450.116(c) has been changed to reflect the long-term focus of the long-range element.

Section 450.118 Urban transportation plan process: Transportation improvement program

Section 450.118 provides that the urban transportation planning process include development of a transportation improvement program (TIP), including an annual element prescribed in Subpart C—Transportation Improvement Program. The program is a staged multiyear program of transportation improvement projects consistent with the transportation plan developed under § 450.116.

Section 450.120 Urban transportation planning process: Elements

Section 450.120 requires that the urban transportation planning process include: (1) consideration of TSM strategies in all phases; (2) consideration of social, economic and environmental effects, including transportation-related air quality problems; (3) provisions to ensure meaningful citizen participation in local transportation planning; (4) participation of all persons regardless of race, color, sex, national origin, or physical handicap; (5) special efforts to plan public mass transportation facilities that can be utilized by elderly and handicapped persons; (6) consideration of energy conservation goals; (7) provisions for involvement of traffic, ridesharing, parking and enforcement agencies, airport and port authorities, and appropriate private transportation providers.

Section 450.120(a)(3) stresses the importance of citizen participation by clarifying the scope of the citizen participation which is desirable. This provision is necessary in order to comply with the Departmental Policy Statement on Citizen Participation in Local Transportation Planning. It does not address financial support for citizen participation in local planning and project development. Section 450.120(a)(3) was modified to emphasize the continuing and meaningful participation of the public, especially minorities, women and other interested persons, in the 3C planning process. It shoud be noted, therefore, that the certification review process is expected to assess citizen participation in the planning process in light of this increased emphasis on continuing and meaningful participation.

Section 450.120(a)(8) provides that the urban transportation planning process include the following activities as necessary and to the degree appropriate for the size of the metropolitan area and the complexity of its transportation problems; (1) analysis of conditions of travel, transportation facilities, vehicle fuel consumption and systems management; (2) evaluation of alternative TSM improvements and development of the short-range element of the transportation plan; (3) projections of the urban area economic, land use, and demographic activities, in order to project potential transportation demands; (4) examination of the distribution of the costs and impacts of transportation plans and programs; (5) analysis of alternative transportation investments or strategies to meet areawide needs and to aid in development of the long-range element of the transportation plan; (6) refinement of the transportation plan by conducting corridor, transit technology, staging, sub-area, feasibility, location, legislative, fiscal, functional, classification, institutional, air quality impact, and energy impact studies; (7) monitoring and reporting of urban development, transportation and energy consumption indicators; (8) programming which merges the plan refinements of the long-range element and the short-range element improvements to produce a TIP as specified in subpart C; and (9) analysis of goods and services movement problem areas.

Several commenters requested greater precision in the language for paragraph (a)(8)(iv) particularly, regarding the phrase "various segments of the population." Consequently, this section has been rewritten with the phrase deleted. This new section requires an examination of the distribution of costs and impacts. This examination should be tailored to the issues and problems encountered in each urban area. In some instances, this may be the distribution among various communities. In others, this may be the distribution among various population segments by income or ethnic origin. The term "transportation alternatives" has been changed to "transportation plans and programs" to better express the intent of this section.

Section 450.122 Urban transportation planning process: Major urban transportation investments

Section 450.122 requires that the analysis of alternatives, to meet areawide needs for new transportation facilities, shall include consideration of the cost and effectiveness of the proposed major urban investments. At the corridor refinement studies level, the analysis of alternatives will also include consideration of cost-effectiveness, in addition to evaluation of location, degree of grade separation, and the operating characteristics of the alternatives. The corridor refinement studies will serve as the basis for the draft environmental impact statement (DEIS) and will be eligible for funding under sections 3 and 8 of the UMT Act of 1964, as amended, and under the planning and construction funding sections of 23 U.S.C., as appropriate. The discussion, including the responses to comments relating to this section, is contained in the preamble under the heading "Major Urban Transportation Investments."

Section 450.124 Urban transportation planning process: Certification

Section 450.124 provides that the UMTA and the FHWA Administrators will jointly review the transportation planning process for each urbanized area to determine if it meets the requirements of subpart A. In nonattainment areas, the administrators will review to ensure conformance with the SIP and afford the U.S. Environmental Protection Agency the opportunity to review the adequacy of the planning process.

Several comments were concerned with the elimination of the requirement for an annual certification. We believe this change to be appropriate given the relatively slow rate of change occurring in the planning process on a yearly basis. We intend that while a formal certification review should not be needed annually, informal assessments of the need for a certification review would be a continuing function in the FHWA and UMTA administration of the planning process.

Appendix A

Appendix A is discussed under the heading, "Transportation System Management."

Appendix B

Appendix B to 23 CFR Part 450, Subpart A on transportation for elderly and handicapped persons will be revised. That revision will be published at a later date.

Appendix C

Appendix C is discussed under the heading, "Major Urban Transportation Investments."

Appendix D

As part of a joint FHWA/UMTA effort to reduce redtape and simplify administrative and technical requirement in small metropolitan areas, FHWA and UMTA issued guidance on August 1, 1980, related to meeting the minimum requirement of the joint planning and programming regulations for urbanized areas of less than 200,000 population. This guidance was published in the **Federal Register** on October 23, 1980 (49 FR 70249). The guidance has been revised to make it consistent with this rulemaking and is included as Appendix D. Many commenters reacted favorably to the guidance.

23 CFR Part 450, Subpart B

The revisions to Subpart B are of purely editorial nature. These revisions were not included in the NPRM as their publication is proposed form would have served no useful purpose.

23 CFR Part 450, Subpart C

As discussed in the NPRM, the provisions of 23 CFR Part 450, Subpart C are being revised in order to: (a) reflect recent amendments to this subpart which were issued in connection with amendments to the Interstate substitution and withdrawal regulations (23 CFR Part 476, Subpart D), published by FHWA and UMTA on October 20, 1980, (45 FR 69390); (b) make technical revisions to this subpart to make it consistent with the proposed modification in Subpart A; and (c) revise provisions relating to the transportation/air quality planning and programming roles and responsibilities of the MPO and Federal review and approval responsibilities.

23 CFR Part 630, Subpart A

Section 630.106 Policy

Section 630.106(b) is added to prescribe that Federal support is available only for those major urban transportation investment alternatives that meet local, State and national goals.

49 CFR Part 613, Subpart B

Section 613.204 Additional Criteria for Urban Mass Transportation Administrator's Approvals Under 23 CFR 450.320

Section 613.204 requires that the UMT Admninistrator will grant program approval only if the projects meet local, State, and national goals in a cost-effective manner.

(Catalog of Federal Domestic Assistance Program Numbers 20.205, Highway Research, Planning and Construction; 20.500, Urban Mass Transportation Capital Grants; 20.501, Urban Mass Transportation Capital Improvement Loans; and 20.507, Urban Mass Transportation Capital and Operating Assistance Formula Grants. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to these programs)

Issued on: January 14, 1981.

John S. Hassell, Jr.,

Federal Highway Administrator.

Theodore C. Lutz,

Urban Mass Transportation Administrator.

Title 23—Highways

In consideration of the foregoing, Chapter I of Title 23, Code of Federal Regulations, and Chapter VI of Title 49, Code of Federal Regulations, are amended as set forth below.

1. Part 450, Subpart A of 23 CFR is revised to read as follows:

PART 450—PLANNING ASSISTANCE AND STANDARDS

Subpart A—Urban Transportation Planning

Sec.

450.100 Purpose.
450.101 Applicability.
450.104 Definitions.
450.106 Metropolitan planning organization: Designations.
450.108 Metropolitan planning organization: Agreements.
450.110 Metropolitan planning organization: Geographic scope.
450.112 Metropolitan planning organization: Responsibilities.
450.114 Urban transportation planning process: Planning work programs.
450.116 Urban transportation planning process: Transportation plan.
450.118 Urban transportation planning process: Transportation improvement program.
450.120 Urban transportation planning process: Elements.
450.122 Urban transportation planning process: Major urban transportation investments.
450.124 Urban transportation planning process: Certifications.
Appendix A—Advisory information on transportation system management.
Appendix B—[Reserved]
Appendix C—Advisory information on the administration of corridor refinement studies for major urban transportation investments.
Appendix D—Advisory information on the simplification of administrative requirements for planning in metropolitan areas of less than 200,000 population.

* * * * *

Authority: 23 U.S.C. 104(f)(3), 134, and 315; Sections 3, 5, and 8 of the Urban Mass Transportation Act of 1964, as amended, (UMT Act) (49 U.S.C. 1602, 1604, and 1607); Sections 110, 172, 174, 176 of the Clean Air Act; and 49 CFR 1.48(b) and 1.51.

SUBPART A—URBAN TRANSPORTATION PLANNING

§ 450.100 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 134, and Sections 5(l) and 8(a) and (c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1604(l) and 1607(a) and (c)), which require that each urbanized area, as a condition to the receipt of Federal capital or operating assistance, have a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs consistent with the comprehensively planned development of the urbanized area.

§ 450.102 Applicability.

The provisions of this subpart are applicable to the transportation planning process in urbanized areas. Certification under this subpart shall be a prerequisite for program approvals in urbanized areas pursuant to 23 U.S.C. 105(d) and 134(a), Section 8(a) of the UMT Act (49 U.S.C. 1607(a)), and Subpart C of this part.

§ 450.104 Definitions.

(a) Except as otherwise provided, terms defined in 23 U.S.C. 101(a) are used in this subpart as so defined.

(b) As used in this subpart:

"Cost-effectiveness analysis" of major urban transportation investments means an analysis of the costs of several alternatives and their effectiveness in meeting local, State, and national goals and objectives. In the analysis: (1) costs are capital, operating, and maintenance expenditures estimated with sufficient detail to distinguish between alternatives; and (2) effectiveness measures assess the degree of attainment of local, State and national transportation, social, economic, and environmental goals. These include, but are not restricted to, mobility, safety, environment, energy, goals related to central city viability, neighborhood preservation, employment, housing and accessibility for minority, elderly and lower income residents, and land use and development.

"Governor" means the Governor of any one of the fifty States, or Puerto Rico, and includes the Mayor of the District of Columbia.

"Major urban transportation investment" means a project that involves new construction or extension of a freeway segment, busway, or fixed guideway transit facility; adding lanes to a freeway segment or busway; or adding tracks to a fixed guideway transit facility. It does not include: (1) lesser localized improvements to

existing freeway, busway, or fixed guideway transportation facilities; (2) safety improvements or resurfacing, restoration, or rehabilitation of existing facilities; (3) added lanes to short freeway and busway segments (normally less than 1 mile) to alleviate specific, localized traffic flow problems; (4) added segments to fixed guideway transit facilities to provide specific localized improvements to system operations; (5) projects that are part of a demonstration program; and (6) the emergency replacement of facilities damaged or destroyed as a result of a natural disaster or catastrophic failure.

"Metropolitan planning organization (MPO)" means that organization designated as being responsible, together with the State, for carrying out the provisions of 23 U.S.C. 134, as provided in 23 U.S.C. 104(f)(3), and capable of meeting the requirements of Sections 3(e)(1), 5(l), and 8(a) and (c) of the UMT Act (49 U.S.C. 1602(e)(1), 1604(l), and 1607(a) and (c)). This organization is the forum for cooperative decisionmaking by principal elected officials of general purpose local government.

"Nonattainment area" means a region as defined in Section 171 of the Clean Air Act.

"State implementation plan (SIP)" means a plan approved or promulgated under Section 110 of the Clean Air Act.

§ 450.106 Metropolitan planning organization: Designations.

(a) Designations of metropolitan planning organizations (MPO's) made after November 7, 1979, shall be made by agreement among the units of general purpose local governments and the Governor. To the extent possible, only one MPO shall be designated for each urbanized area or group of contiguous urbanized areas.

(b) Funds authorized by 23 U.S.C. 104(f) shall be made available by the State to the MPO, as required by 23 U.S.C. 104(f)(3). To the extent possible, the MPO shall be eligible to receive planning funds authorized by Section 8 of the UMT Act of 1964, as amended (49 U.S.C. 1607a).

(c) To the extent possible, the MPO designated shall be established under specific State legislation, State enabling legislation, or by Interstate compact, with authority to carry out metropolitan transportation planning, and should perform the functions required by the Office of Management and Budget (OMB) Circular A–95 "Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects" (41 FR 2052, Jan. 13, 1976).

(d) Principal elected officials of general purpose local government within the jurisdiction of the MPO shall have adequate representation on the MPO.

(e) Nothing herein shall be deemed to prohibit the MPO from utilizing, through contractual agreements, the staff resources of other agencies to carry out selected elements of the planning process.

(f) An MPO designated under the provisions of this section shall remain designated until another MPO is designated under the provisions of this section.

§ 450.108 Metropolitan planning organization: Agreements.

(a) The responsibilities for cooperatively carrying out transportation planning and programming shall be clearly identified in an agreement or memorandum of understanding between the State and the MPO.

(b) Where the MPO is different from the A–95 agency, there shall be an agreement between the two organizations which prescribes the means by which their activities will be coordinated, as required by Part IV of OMB Circular A–95. This agreement shall specify how transportation planning and programming will be part of the comprehensively planned development of the urbanized area.

(c) There shall be an agreement between the MPO and publicly owned operators of mass transportation services which specifies cooperative procedures for carrying out transportation planning and programming as required by this subpart.

(d) If the MPO is not designated for air quality planning under Section 174 of the Clean Air Act, there shall be an agreement between the MPO and the designated agency describing their respective roles and responsibilities for air quality related transportation planning.

(e) To the extent possible, there shall be one cooperative agreement containing the understandings required by this section among the State, MPO, publicly owned operators of mass transportation services and, where necessary, the A–95 agency and the agency responsible for air quality planning.

(f) Where parties involved agree, the requirement for an agreement specified in paragraphs (a), (c) and (d) of this section may be satisfied by including the responsibilities and procedures for carrying out a cooperative process in the unified planning work program.

§ 450.110 Metropolitan planning organization: Geographic scope.

The transportation planning process shall, as a minimum, cover the urbanized area and the area likely to be urbanized in the period covered by the long-range element of the transportation plan described in § 450.116.

§ 450.112 Metropolitan planning organization: Responsibilities.

(a) The MPO in cooperation with the State, and in cooperation with publicly owned operators of mass transportation services, shall be responsible for carrying out the urban transportation planning process specified in § 450.120 and § 450.122 and shall develop the planning work programs, transportation plan, and transportation improvement program specified in §§ 450.114 through 450.118. The MPO shall be the forum for cooperative decisionmaking by principal elected officials of general purpose local government.

(b) The MPO, the State, and publicly owned operators of mass transportation services shall determine the responsibility of each in the conduct of the corridor refinement studies described in § 450.122.

(c) The MPO shall develop or assist in developing the transportation control measures of the SIP in nonattainment areas which require transportation control measures.

(d) The MPO shall annually endorse the plans and programs required by §§ 450.114 through 450.118.

(e) In nonattainment areas which require transportation control measures the MPO shall not endorse any project, program, or plan which does not conform with the SIP.

§ 450.114 Urban transportation planning process: Planning work programs.

(a) The urban transportation planning process shall include the development of a unified planning work program (UPWP) which:

(1) Discusses the important transportation issues facing the area;

(2) Describes all urban transportation and transportation-related planning activities, including the corridor refinement activities discussed in § 450.122, anticipated within the area during the next 1- or 2-year period regardless of funding sources;

(3) Describes the transportation-related air quality planning activities anticipated, regardless of funding sources or agencies conducting such activities; and

(4) Documents work to be performed with planning assistance provided under Section 8 of the UMT Act (49 U.S.C. 1607(a)) and 23 U.S.C. 104(f) and 307(c).

(b) Arrangements may be made to combine the unified planning work program requirements of other Federal sources of physical planning funds (e.g., Department of Housing and Urban Development and Department of the Interior).

(c) The urban transportation planning process may include the development of a prospectus. To the extent that the prospectus satisfies the requirements of § 450.108 and paragraph (a)(1) of this section, it may be included by reference in the UPWP.

§ 450.116 Urban transportation planning process: Transportation plan.

(a) The urban transportation planning process shall include the development of a transportation plan consisting of a short-range element and a long-range element. Transportation system management (TSM), as described in Appendix A to this subpart, shall be a key component of these elements. The transportation plan shall be reviewed annually to confirm its validity and its consistency with current transportation and land use conditions.

(b) The short-range element of the transportation plan shall:

(1) Provide for the near-term transportation needs of persons and goods in the urbanized area;

(2) Identify TSM actions such as traffic engineering, ridesharing, pedestrian and bicycle facilities, alternative work schedules, goods movement, high occupancy vehicle treatments, and public transportation improvements (including regulatory, pricing, management, and operational options), that present a systematic approach in addressing problem areas; and

(3) Be reflected in the transportation improvement program.

(c) The long-range element of the transportation plan shall:

(1) Provide for the long-term transportation needs of persons and goods in the urbanized area;

(2) Identify new transportation policies, strategies, or facilities or major changes in existing facilties and may be in sufficient detail to identify location and mode to be implemented; and

(3) Fully explore TSM as a policy and investment strategy for the long-range transportation and development plans for the area.

(d) The transportation plan shall be consistent with the area's comprehensive long-range land use plan and urban development objectives, with local, State, and national goals and objectives, and with the area's overall social, civil rights, economic, enviornmental, system performance, and energy conservation goals and objectives.

§ 450.118 Urban transportation planning process: Transportation improvement program.

(a) The urban transportation planning process shall include development of a transportation improvement program (TIP) including an annual element as prescribed in Subpart C of this part.

(b) The program shall be a staged multiyear program of transportation improvement projects consistent with the transportation plan developed under § 450.116.

§ 450.120 Urban transportation planning process: Elements.

(a) The urban transportation planning process shall:

(1) Provide for the consideration of TSM strategies or actions in all phases of the planning process;

(2) Provide for the consideration of social, economic, and environmental effects, with appropriate emphasis on consideration of transportation-related air quality problems and in support of the requirements of 23 U.S.C. 109(h), and Sections 5(h)(2) and 14 of the UMT Act (49 U.S.C. 1604(h)(2) and 1610), and Section 174(b) of the Clean Air Act;

(3) Include provisions to ensure early and continuing involvement of the public, as actively supported and strongly encouraged by the Departmental Policy Statement on Citizen Participation in Local Transportation Planning (45 FR 71938, October 30, 1980). Individuals and groups should have full access to all relevant information. Citizens should be provided such assistance as appropriate to assure meaningful participation in the process. Minorities, women and other interested persons should have an adequate opportunity for full participation in the process and representation on advisory committees;

(4) Be consistent with Title VI of the Civil Rights Act of 1964 and the Title VI assurance executed by each State under 23 U.S.C. 324 and 29 U.S.C. 794, which ensure that no person shall on the grounds of race, color, sex, national origin, or physical handicap be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under any program receiving Federal assistance from the Department of Transportation;

(5) Include special efforts to plan public mass transportation facilities and services that can effectively be utilized by elderly and handicapped persons pursuant to Section 16 of the UMT Act (49 U.S.C. 1612), Section 165(b) of the Federal-Aid Highway Act of 1973, as amended, and 49 CFR 27;

(6) Provide for the consideration of energy conservation goals, objectives, and where established, energy conservation targets;

(7) Provide for the involvement of the traffic, ridesharing, parking, and enforcement agencies; airport and port authorities; and appropriate private transportation providers;

(8) Include the following activities as necessary and to the degree appropriate for the size of the metropolitan area and the complexity of its transportation problems:

(i) An analysis of existing conditions of travel, transportation facilities, vehicle fuel consumption, and systems management;

(ii) An evaluation of alternative TSM improvements in the development of the transportation plan to:

(A) Improve mobility;

(B) Make more efficient use of existing transportation resources;

(C) Assist in improving air quality;

(D) Reduce energy consumption for transportation overall; and

(E) Respond to short-term disruptions in the energy supply;

(iii) Projections of urban area economic, demographic, and land use activities consistent with urban development goals, and projections of potential transportation demands based on these levels of activity;

(iv) Examination of the distribution of costs and impacts of transportation plans and programs;

(v) Analysis of alternative transportation investments or strategies to meet area wide needs for transportation facilities and to aid in the development of the long-range element of the transportation plan, such analysis to include estimates of the air quality impacts, impacts on the economic vitality of existing commercial centers and the energy consumption of each alternative;

(vi) Refinement of the transportation plan through the conduct of corridor, transit technology, and staging studies; and sub-area, feasibility, location, legislative, fiscal, functional classification, institutional, air quality impact and energy impact studies;

(vii) Monitoring and reporting of urban development, transportation, and energy consumption indicators and a regular program of reappraisal of the transportation plan implementing programs;

(viii) Implementation programming which merges the results of plan refinement of the long-range element and the improvements recommended in the short-range element of the

transportation plan to produce a TIP as specified in Subpart C of this part; and

(ix) An analysis of goods and services movement problem areas, as determined in cooperation with appropriate private sector involvement, including, but not limited to, port access and traffic impacts of urban goods and services operations.

(b) The urban transportation planning process shall include preparation of technical reports to assure documentation of the development, refinement, and reappraisal of the transportation plan.

§ 450.122 Urban transportation planning process: Major urban transportation investments.

(a) The analysis of alternatives for transportation investments to meet areawide needs for new transportation facilities described by § 450.120(a)(8)(v) shall consider the cost and effectiveness of proposed major urban investments in attaining local, State, and national goals and objectives.

(b) In corridors where a major urban transportation investment is proposed in the long-range element of the urban transportation plan, the corridor studies described in § 450.120(a)(8)(vi) shall further refine the analysis of alternatives at the corridor scale. These studies shall include an evaluation of the cost-effectiveness, the location (i.e., general alignment), the degree of grade separation, and the operating characteristics of the alternatives under consideration. Studies involving transit alternatives shall also include an evaluation of transit technology.

(c) Corridor refinement studies shall serve as the basis for the draft environment impact statement which is prepared pursuant to 23 CFR 771.

(d) Corridor refinement studies are eligible to receive funds authorized under Sections 3 and 8 of the UMT Act of 1964, as amended, and planning and construction funds apportioned under 23 U.S.C., as appropriate.

§ 450.124 Urban transportation planning process: Certification.

(a) The Federal Highway and Urban Mass Transportation Administrators jointly will review and evaluate as appropriate the tranportation planning process in each urbanized area to determine if the process meets the requirements of this subpart.

(b) In nonattainment areas requiring transportation control measures, the FHWA and UMTA Administrators will:

(1) Review and evaluate the transportation planning process to assure conformance with the SIP in accordance with procedures contained in 23 CFR 770, and

(2) Afford the Environmental Protection Agency (EPA) the opportunity to review the adequacy of the planning process in accordance with the Memorandum of Understanding of June 14, 1978, between DOT and EPA regarding the integration of transportation and air quality planning.*

(c) If, upon the review and evaluation conducted under paragraphs (a) and (b) of this section, the FHWA and UMTA Administrators jointly determine that the transportation planning process in an urbanized area meets or substantially meets the requirements of this subpart, they may take one of the following actions, as appropriate:

(1) Certify the transportation planning process; or

(2) Certify the transportation planning process subject to one of the following conditions:

(i) That certain specified corrective actions be taken; or

(ii) That the process is a basis for approval of only those categories of programs or projects that the Administrators may jointly determine and that certain specified corrective actions be taken.

(d) The State and the MPO shall be notified of the actions taken under paragraph (c) of this section.

(e) A certification under paragraph (c) of this section will remain in effect until a new certification determination is made.

Appendix A—Advisory Information on Transportation System Management Under UMTA and FHWA Joint Regulations, 23 CFR Part 450, Subparts A and C, and 49 CFR 613, Subparts A and B

1. *Purpose.* To implement the updated urbanized area planning requirements contained in Title 23 of the United States Code and the Urban Mass Transportation Act of 1964, as amended, UMTA and FHWA have jointly issued revised regulations (23 CFR Part 450 and 49 CFR Part 613). These regulations require that the transportation planning process in each urbanized area develop (1) a plan addressing Transportation System Management (TSM) in both the long- and short-range elements and (2) a Transportation Improvement Program (TIP).

This appendix provides additional guidance on the intent and scope of the requirement for Transportation System Management. Criteria that the U.S. Department of Transportation will use in reviewing the adequacy of the TSM activities in planning and programing are also included.

2. *Goals.* Transportation plans and programs are, to an increasing extent, being called upon to address a host of issues, such as energy conservation, air quality, environmental problems and urban revitalization. At the same time, increasing costs of transportation facilities and decreasing fiscal resources make funding major new investments extremely difficult. These factors have made it increasingly important that transportation resources—facilities, equipment and services—be operated in the most efficient manner possible. It is this need that led to the concept of TSM and its inclusion as a required feature of transportation plans for urbanized areas.

When originally introduced, the TSM concept represented a significant change in the direction of transportation planning and programing. TSM requires the planning process to expand its focus to include assessments of improved *service and operations*, as well as *facilities*, as a potential means to maximize mobility. TSM also requires the process to address both *supply* and *demand*. The TSM concept requires viewing the transportation system as a whole with all modes receiving attention. The philosophy calls for addressing the transportation of people and goods, not merely movement of vehicles.

TSM accounts more explicitly for new factors in transportation decisionmaking such as energy, environment, air quality, and fiscal limitations. These constraints on mobility must be dealt with if it is to be maintained or expanded. In addition, opportunities to enhance mobility exist in urban revitalization efforts that the process should be capable of stimulating.

TSM should be tied to planning required by the Clean Air Act and planning specified by a variety of other statutes covering energy conservation. Consistency in plans undertaken to meet these goals is best developed at the local level.

3. *Scope.* Transportation System Management is a philosophy about planning, programing, implementation and operations that calls for improving the efficiency and effectiveness of the transportation system by improving the operations and/or services provided. TSM aspects of the Transportation Plan address services and operations of the system and identify management and operational changes needed to improve efficiency and effectiveness.

A range of tactics (actions) is available to meet the goals outlined. Examples are:

Traffic operations improvements.

Ridesharing.

Incentives to use of high occupancy vehicles (such as buses, carpools and vanpools), including preferential parking, reserved lanes, exclusive ramps, etc.

Pedestrian provisions.

Bicycle, motorcycle, and moped provisions.

Parking management programs, including enforcement, pricing, supply management, zoning changes, permit systems, etc.

Work schedule changes, including flexitime, staggered hours, compressed work weeks.

Goods movement measures.

Pricing actions.

Paratransit services.

Transit route and schedule changes.

Transit management improvements.

Innovative transit services types.

In every case, these tactics address the operations or services provided by the

*Available for inspection and copying from FHWA and UMTA as prescribed in 49 CFR Part 7.

transportation system. In addition, some of these tactics can affect transportation demand, as opposed to only supply.

Transportation System Management is applicable to a number of operating environments and with a wide range of agencies and groups participating. For example, the central business district (CBD) is a likely site for high occupancy vehicle parking preferences, bus lanes, pedestrian facilities, auto restrictions, etc., while neighborhoods are appropriate for parking permit programs and traffic operational actions discouraging through travel. Further, a radial corridor is an appropriate place for high occupancy vehicle lanes, express bus services and park and ride lots. Each of these actions need the support and coordination of a broad range of agencies and interest groups.

Transportation System Management measures often have synergistic effects. In other words, several tactics applied together may often be more effective as a group than individual actions taken in an uncoordinated manner. Therefore, there should be a systematic approach to TSM planning rather than a piecemeal approach. For example, a package of measures to improve the efficiency of a corridor as a whole should be developed as opposed to only looking at individual problem areas in the corridor in an isolated manner.

Since Transportation System Management actions involve operations and services on existing facilities rather than development of major new facilities, they are generally *low cost.* Certain actions such as high occupancy vehicle incentives or development of a transit mall, may involve substantial sums, however.

TSM involves both short and long-term actions. Service and operation changes generally can be implemented more quickly than construction of new facilities and thus can have a short-range focus. However, TSM strategies may also involve *long-term* facility improvements (e.g., dedication of a new facility to high occupancy vehicle use) and have long-term impacts.

4. *Roles and Responsibilities.* A wide range of agencies is likely to participate in addressing TSM considerations in the planning process. While the MPO is primarily responsible for TSM coordination, other agencies, including State DOTs, city traffic departments, public transit operators and enforcement agencies, as well as the private sector, should also be involved. These agencies generally have better knowledge of the operations of specific system elements under their control and can be called on to implement improvements. Private sector involvement in programs such as ridesharing, work schedule changes, goods movement, auto restricted zones, etc., is vital to their success.

The metropolitan planning organization (MPO) has lead responsibility for the coordination of the TSM activities called for by the joint planning regulations. This does not mean, however, that the MPO must conduct all TSM work itself. Rather, local agencies, such as city traffic departments, the State DOT and the area's public transit operators should be involved. The decision on which agency should conduct needed analyses should be made locally and should be based on the scale and level of the particular project or problem under study. For example, it is probably most appropriate that operators conduct route and schedule studies and other similar transit management analyses and that local traffic departments undertake signalization studies. In order to support these efforts, MPOs are encouraged to pass Federal planning assistance funds through to such agencies.

Private sector involvement is also important. Employers should be involved in ridesharing or transit-use promotions or in work rescheduling to spread peaks. Also, private providers of mass transit services should be considered for new services, such as paratransit or special user operations. Studies of goods movement management issues, such as truck routes, port access, downtown delivery, etc., should involve the private sector and port authorities.

Ensuring that all likely participants have an appropriate role can be critical to the success of a specific strategy. For example, a downtown parking management program would require participation of a variety of city agencies such as planning and zoning, traffic, and administration. Police involvement early in the planning process would ensure that enforcement is given adequate attention. Downtown businessmen, whose operations might be affected, should be involved. Support from such a group could be critical. The transit operator could suggest key bottlenecks where parking changes could be beneficial. Finally, the MPO can analyze regional impacts and serve to coordinate the overall effort.

5. *Technical Activities.* To adequately address the goals of the requirement for TSM, a number of key technical activities should be undertaken in each urbanized area as part of the continuing planning process.

Each area's Unified Planning Work Program (UPWP) should reflect as necessary, and to the extent appropriate, the following critical activities:

System monitoring and data collection, including traffic and auto occupancy counts and transit ridership monitoring and surveys;

Regional scale problem identification, allowing for selection of areas for detailed study of person and goods movement problems;

Transit service planning, including reviews of service area, route, schedules, etc., on a continuing basis;

Transit management analyses, covering maintenance practices, organization, personnel policies, financial planning, training, labor relations, etc.;

Ridesharing and high occupancy vehicle analyses for HOB lanes, parking management, alternative work schedules, etc.;

Analysis of signal timing optimization and other traffic engineering measures;

Coordination of local agency activities to ensure that these will result in a plan that is internally consistent;

Selective post-project evaluations to determine the effectiveness of implemented projects and areas for modification;

Energy contingency planning.

UMTA and FHWA will review each area's UPWP closely to ensure that sufficient attention is given to these critical activities.

6. *Documentation.* No new documentation products are required to address TSM. The plans and programing implications of TSM will be documented in the normal products of the urbanized area planning process.

The Unified Planning Work Program (UPWP) should describe TSM planning to be undertaken during the period it covers, including treatment of the critical technical areas outlined above.

Individual technical reports, such as short-range transit plans or traffic engineering studies, should document the procedures that were used to develop, refine or reappraise TSM aspects of the plan; the evaluation of alternative strategies; and the strategies recommended for implementation.

The transportation plan report(s) should describe TSM aspects, incuding a brief description of system problem areas, goals and objectives, and recommended TSM improvements. This documentation should provide local officials with a clear understanding of what is being recommended, e.g., type of improvements, locations, financial aspects, etc.

The Transportation Improvement Program/Annual Element (TIP/AE) should identify implementation costs and schedules, funding sources, and agency responsibilities for TSM projects to be implemented.

The manner in which TSM is documented should not be confused with the need for project justification. Technical information that may be needed for justifying certain types of transit projects should be provided in technical reports on those projects and is not required in the document(s) describing TSM aspects of the transportation plan.

The joint planning regulations require that the plan be reviewed and endorsed periodically. Certification reviews will ensure that TSM is adequately addressed in the plan and that it is updated and endorsed properly.

7. *Programming.* Effective planning for Transportation Systems Management should result in the programing and implementation of TSM type projects. One measure of the adequacy of the TSM planning effort conducted in an urbanized area is the leval of TSM activity found in the area's Transportation Improvement Program (other measures include past progress in TSM implementation, and most importantly, the overall efficiency of existing system service and operations). While FHWA and UMTA will not prescribe the number of types of projects that must appear in an area's TIP, an adequate level of effort in TSM planning will usually result in programs and projects in the following areas, regardless of the source of funds:

Ridesharing.

Traffic control signalization.

High occupancy vehicle incentives.

Pedestrian and bicycle facilities.

In addition, an adequate level of effort in TSM planning focused on the efficiency of existing services will generally result in the existence, on an ongoing basis, of programs covering transit service monitoring and assessment, transit service adjustments, transit maintenance programing, financial

mangement programs and management and organizational improvement programs. Progress in these activities will receive close attention from UMTA and FHWA.

8. *Funding.* A variety of funding sources are available to support planning and implementation for TSM. UMTA places priority on use of Section 8 technical studies funds for TSM planning as does FHWA on use of PL and HP&R funds. Implementation funds are available from UMTA through the Section 3 discretionary capital grant program, the Section 4(i) innovative techniquest and methods program and the Section 5 urban mass transportation formula grant program. Federl-aid highway funds may also be used to implement a wide range of TSM-type projects. Federal Aid Urban System funds offer the greatest flexibility for use for TSM-type projects including traffic operations, ridesharing, pedestrian and bicycle facilities, high occupancy vehicle incentives, and transit. Traffic control signalization projects may be funded at the 100 percent Federal share level.

Appendix B—[Reserved]

Appendix C—Advisory Information on the Administration of Corridor Refinement Studies For Major Urban Transportation Investments

The following procedures will apply in FHWA and UMTA administration of corridor refinement studies for major urban transportation investments. The nature of the various Federal reviews and approvals will be determined by FHWA and/or UMTA, as appropriate.

1. When an applicant requests approval for a corridor refinement study, the request will be supported by:

(a) An identification of the corridor(s) in which major transportation investments may be warranted;

(b) A description of a number of reasonable alternative major investments for the corridor(s); and

(c) Information, summarized from the results of areawide planning activities, that demonstrates the need for further study of major urban transportation investments.

2. As part of the scoping process and as early as possible, FHWA and/or UMTA will reach agreement with the applicant on the following aspects of the study:

(a) The range of the alternatives to be studied including, at a minimum, a no action alternative and TSM alternatives;

(b) Procedures to be used to estimate the cost and effectiveness of each alternative;

(c) The evaluation methodology;

(d) The process for citizen involvement; and

(e) The administrative arrangements among the MPO, the State, and the public transit operator(s) for conduct of the study.

3. Federal administrative responsibility for the corridor refinement studies depends primarily upon the range of alternatives to be considered. The administration of the study may involve both FHWA and UMTA as joint lead agencies. A joint lead agency agreement will normally result where:

(a) The range of alternatives include a mix of highways and mass transportation investments;

(b) It is uncertain whether FHWA or UMTA will be requested to fund the Investment; or

(c) The FHWA and UMTA Administrators decide to establish joint lead agency agreements.

4. During joint corridor refinement studies, FHWA and UMTA will review and monitor the progress of the studies and provide guidance as necessary. Preparation of the draft EIS will conform to the provisions of the FHWA/UMTA environmental regulations (23 CFR Part 771).

Appendix D—Advisory Information on the Simplification of Administrative Requirements For Planning in Metropolitan Areas Less Than 200,000 Population

Introduction

The simplification of Federal program requirements has been given a high priority by the Administrators of FHWA and UMTA and by the Office of the Secretary. The objective in developing the guidance was to: (1) reduce the burden of Federal planning requirements in all urbanized areas under 200,000 population; (2) reduce the administrative burden on FHWA and UMTA staffs; and (3) aid newly designated urbanized areas in developing a planning process which is adequate to address their unique needs while avoiding excessive detail and wasteful expenditures.

This appendix provides for an appropriate level of effort for smaller urbanized areas.

Advisory Guidance

There will be no need for a formal agreement except where the MPO and the A-95 agency are different. The requirements of other agreements may be satisfied through description of roles and responsibilities in the work program and/or TIP.

The Unified Planning Work Program (UPWP) may be a brief summary of the important transportation issues facing the area, and the work activities in the UPWP addressing these issues. The review of the UPWP need only be by the Federal funding agencies. Joint review and approval procedures should be worked out by these agencies.

In accordance with Section 134, Title 23, U.S.C., the transportation plan must be based on transportation needs and consider long-range land use plans, overall goals and objectives, and their impact on future development. In small urbanized areas the long-range plan may be a simple statement about land use policy and the location of major public facilities, and transportation improvements. The focus should be on the development of the short-range element and TSM improvements.

The level of technical effort should be commensurate with the problems being addressed. Maximum use should be made of simplified planning techniques, which are discussed in several planning manuals specifically developed for small areas.

The transportation improvement program/annual element of the plan should be scaled to the needs of the area. If only a few projects can be funded annually, the document may need only be a single page with the coming year's projects clearly identified.

The certification review of the small area planning process should be as simple as possible and should be based to the maximum extent on previously submitted data. In new areas (those added as a result of the 1980 Census), the determination of planning adequacy should recognize that extensive planning may not be ongoing in these areas. In most cases, we would expect new urbanized areas to be certified initially with appropriate conditions.

While the regulations under subpart C call for specific initiation procedures, the key to local involvement is the MPO endorsement. This should also be the focus of Federal review.

The only nonfederally funded TSM projects that need to be included in the TIP/AE are those which local officials determine will have a substantial impact on federally-funded projects in TIP/AE.

2. Part 450, Subpart B of 23 CFR is amended as follows:

§ 450.200 [Amended]

a. By amending § 450.200(b) to remove the phrase "by the Governor" in the third sentence.

§§ 450.202 450.204, and 450.206 [Amended]

b. By amending §§ 450.202, 450.204, and 450.206 to remove term "Pub. L." wherever it appears therein and to substitute in lieu thereof the term "PL"

§§ 450.202, and 450.206 [Amended].

c. By amending §§ 450.202(c) and 450.206(b) to remove the phrase "section 9" wherever it appears therein and to substitute in lieu thereof the phrase "section 8".

3. Part 450, Subpart C of 23 CFR is revised to read as follows:

* * * * *

Subpart C—Transportation Improvement Program

Sec.

450.300 Purpose.
450.302 Applicability.
450.304 Definitions.
450.306 Transportation improvement program: General.
450.308 Transportation improvement program: Content.
450.310 Annual element: Project initiation.
450.312 Annual element: Content.
450.314 Annual element: Modification.
450.316 Action required by metropolitan planning organization.
450.318 Selection of projects for implementation.
450.320 Program approval.

* * * * *

Authority: 23 U.S.C. 105, 134(a), and 135(b); Sections 3, 5, and 8(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1604, and 1607(c)); Sections 110, 172, 174, and 176 of the Clean Air Act; and 49 CFR 1.48(b) and 1.51.

Subpart C—Transportation Improvement Program

§ 450.300 Purpose.

The purpose of this subpart is to establish guidelines for the development, content, and processing of a cooperatively developed transportation improvement program in urbanized areas and to prescribe guidelines for the selection by implementing agencies of annual programs of projects to be advanced in urbanized areas.

§ 450.302 Applicability.

(a) This subpart applies to projects in or serving urbanized areas with funds made available under:

(1) 23 U.S.C. 104(b)(6) (urban systems projects);

(2) 23 U.S.C. 103(e)(4) (Interstate substitution projects);

(3) Sections 3 and 5 of the Urban Mass Transportation Act of 1964, as amended (UMT Act) (49 U.S.C. 1602 and 1604—UMTA capital and operating assistance projects);

(4) 23 U.S.C. 104(b)(1) (projects on extensions of primary systems in urbanized areas), except as provided in this subpart;

(5) 23 U.S.C. 104(b)(5) (projects on the Interstate System), except as provided in this subpart.

(b) Projects under paragraphs (a)(4) and (5) of this section, which are included in the highway safety improvement program, may be excluded from the transportation improvement program at the option of the State.

§ 450.304 Definitions.

(a) Except as otherwise provided, terms defined in 23 U.S.C. 101(a) are used in this subpart as so defined.

(b) As used herein:

"Annual element" means a list of transportation improvement projects proposed for implementation during the first program year.

"Governor" means the Governor of any one of the fifty States, or Puerto Rico, and includes the Mayor of the District of Columbia.

"Highway safety improvement program" means a program prepared by the State pursuant to 23 CFR 924.

"Interstate substitution projects" means projects funded under 23 U.S.C. 103(e)(4) (Withdrawal of Interstate segments and substitution of either nonhighway public mass transit projects or highway projects, or both).

"Interstate System projects" means projects funded under 23 U.S.C. 104(b)(5).

"Metropolitan planning organization (MPO)" means that organization designated as being responsible, together with the State, for carrying out the provisions of 23 U.S.C. 134, as provided in 23 U.S.C. 104(f)(3), and capable of meeting the requirements of Sections 3(e)(1), 5(1), and 8(a) and (c) of the UMT Act (49 U.S.C. 1602(e)(1), 1604(l), and 1607(a) and (c)). This organization is the forum for cooperative decision-making by principal elected officials of general purpose local government.

"Nonattainment area" means a region as defined in Section 171 of the Clean Air Act.

"State implementation plan (SIP)" means a plan approved or promulgated under Section 110 of the Clean Air Act.

"Transportation improvement program (TIP)" means a staged multiyear program of transportation improvements including an annual element.

§ 450.306 Transportation improvement program: General.

(a) The transportation improvement program (TIP) shall be developed and updated annually under the direction of the metropolitan planning organization (MPO) in cooperation with:

(1) State and local officials;

(2) Regional and local transit operators;

(3) Recipients authorized under Section 5(b) (2) or (3) of the UMT Act (49 U.S.C. 1604(b) (2) or (3)); and

(4) Other affected transportation and regional planning and implementing agencies.

(b) The TIP shall consist of improvements recommended from the short-range and long-range elements of the transportation plan developed under § 450.116.

(c) The TIP shall cover a period of not less than 3 years, but may at local discretion cover up to 5 or more years.

§ 450.308 Transportation improvement program: Content.

The TIP shall:

(a) Identify transportation improvements recommended for advancement during the program period;

(b) Indicate the area's priorities;

(c) Group improvements of similar urgency and anticipated staging into appropriate staging periods;

(d) Include realistic estimates of total costs and revenues for the program period.

§ 450.310 Annual element: Project initiation.

Federally funded projects shall be initiated for inclusion in the annual element at all stages in the development of the transportation improvement for which program action is proposed. These projects shall be initiated as follows:

(a) Proposed urban system highway projects shall be initiated by local officials in whose jurisdiction the project is located.

(b) Proposed urban system nonhighway public mass transit projects and Interstate substitution nonhighway public mass transit projects shall be initiated by principal elected officials of general purpose local governments in consultation with local transit operating officials or by local transit operating officials.

(c) Proposed UMTA Section 3 projects (49 U.S.C. 1602) shall be initiated by recipients authorized under Section 5(b) (1) or (2) of the UMT Act (49 U.S.C. 1604(b) (1) or (2)), by local transit operating officials, or by principal elected officials of general purpose local governments in cooperation with local transit operating officials.

(d) Proposed UMTA Section 5 projects (49 U.S.C. 1604) shall be initiated by recipients authorized under Section 5(b) (1) or (2) of the UMT Act (49 U.S.C. 1604(b) (1) or (2)). Nothing in this paragraph is intended to prohibit or discourage the initiation by such recipients of projects recommended by local transit operating officials or by principal elected officials of general purpose local governments in cooperation with local transit operating officials.

(e) Proposed urban extension and Interstate System projects shall be initiated by the State highway agency.

(f) Proposed Interstate substitution highway projects shall be initiated according to the provisions of this section for the Federal-aid system of which they will be a part.

§ 450.312 Annual element: Content.

(a) Except as provided in § 450.302(b), the annual element shall contain:

(1) Projects initiated under § 450.310 and endorsed under § 450.316; and

(2) For informational purposes, all nonfederally funded transportation systems management projects.

(b) With respect to each project under paragraph (a) of this section the annual element shall include:

(1) Sufficient descriptive material (i.e., type of work, termini, length, etc.) to identify the project;

(2) Estimated total cost and the amount of Federal funds proposed to be obligated during the program year;

(3) Proposed source of Federal and non-Federal funds; and

(4) Identification of the recipient and State and local agencies responsible for carrying out the project.

(c) Projects proposed for Federal support that are not considered by the State and MPO to be of appropriate scale for individual inclusion in the annual element may be grouped by functional classification, geographic area, and work type.

(d) The annual element shall be reasonably consistent with the amount of Federal funds expected to be available to the area. Federal funds that have been allocated to the area pursuant to 23 U.S.C. 150 shall be identified.

(e) The total Federal share of projects included in the annual element and proposed for funding under Section 5 of the UMT Act (49 U.S.C. 1604) may not exceed apportioned Section 5 funds available to the urbanized area during the program year.

(f) In nonattainment areas which require transportation control measures, the annual element shall give priority to projects identified in the transportation control portion of the SIP in accordance with procedures contained in 23 CFR 770.

§ 450.314 Annual element: Modification.

The annual element may be modified at any time consistent with the procedures established in this subpart for its development.

§ 450.316 Action required by the metropolitan planning organization.

(a) The TIP, including the annual element, shall be endorsed annally by the MPO.

(b) In nonattainment areas which require transportation control measures, the MPO shall not endorse any project or program which does not conform to the SIP.

(c) The MPO shall submit the TIP including the annual element:

(1) To the Governor and the Urban Mass Transportation Administrator, and

(2) Through the State to the Federal Highway Administrator.

§ 450.318 Selection of projects for implementation.

(a) The projects proposed to be implemented with Federal assistance under Sections 3 and 5 of the UMT Act (49 U.S.C. 1602 and 1604) and nonhighway public mass transit projects under 23 U.S.C. 103(e)(4) shall be those contained in the annual element of TIP submitted by the MPO to the Urban Mass Transportation Administrator.

(b) Upon receipt of the TIP, the State shall include in the statewide program of projects required under 23 U.S.C. 105:

(1) Those projects drawn from the annual element and proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(6) (Federal-aid urban system) in which it concurs; provided, however, that in any case where the State does not concur in a nonhighway public mass transit project, a statement describing the reasons for the nonconcurrence shall accompany the statewide program of projects; and

(2) Those projects drawn from the annual element and proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(1) (Projects on urban extensions of the Federal-aid primary system) and 23 U.S.C. 104(b)(5) (Interstate System projects in urbanized areas); and

(3) Those projects not drawn from the annual element that are proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(1) (Projects on urban extensions of the Federal-aid primary system) and 23 U.S.C. 104(b)(5) (projects on the Interstate System) provided that:

(i) Such project or projects were initiated pursuant to § 450.310(e); and

(ii) Such project or projects are for highway transportation improvements for which there has been a Federal authorization to acquire right-of-way or Federal approval of physical construction or implementation where right-of-way acquisition was not previously federally funded.

(c) For each project under paragraph (b)(3) of this section a statement shall accompany the statewide program of projects which shall:

(1) Include the views of the MPO; and

(2) Indicate how the requirements of 23 U.S.C. 134(a) have been met.

(d) The preparation and endorsement of the TIP and the selection of projects in accordance with this subpart will meet the requirements of 23 U.S.C. 105(d), 23 U.S.C. 134(a), and Section 8(a) of the UMT Act (49 U.S.C. 1607(a)).

(e) The State shall notify the MPO of actions taken under paragraph (b) of this section.

§ 450.320 Program approval.

(a) Upon the determination of the Federal Highway Administrator and the Urban Mass Transportation Administrator that the TIP or portion thereof is in conformance with this subpart and that the area is under planning certification, programs of projects selected for implementation under § 450.318 will be considered for approval as follows:

(1) Federal-aid urban system projects included in the statewide program of projects under 23 U.S.C. 105 will be approved by:

(i) The Federal Highway Administrator with respect to highway projects;

(ii) The Urban Mass Transportation Administrator with respect to nonhighway public mass transit projects; and

(iii) The Federal Highway Administrator and the Urban Mass Transportation Administrator jointly in any case where the statewide program of projects submitted pursuant to 23 U.S.C. 105 does not include all Federal-aid urban system nonhighway public mass transit projects contained in the annual element.

(2) Interstate substitution nonhighway public mass transit projects included in the annual element of the TIP will be approved by the Urban Mass Transportation Administrator.

(3) Projects proposed to be implemented under Sections 3 and 5 of the UMT Act (49 U.S.C. 1602 and 1604) included in the annual element of the TIP will be approved by the Urban Mass Transportation Administrator after considering any comments received from the Governor within 30 days of the submittal required by § 450.316(b)(1).

(4) Federal-aid urban extension and Interstate projects included in the statewide program of projects under 23 U.S.C. 105 will be approved by the Federal Highway Administrator.

(b) Approvals by the Federal Highway Administrator or joint approvals by the Federal Highway Administrator and Urban Mass Transportation Administrator will be in accordance with the provisions of this subpart and with 23 CFR 630, Subpart A. Approvals granted under this section will constitute:

(1) The approval required under 23 U.S.C. 105; and

(2) A finding that the program is based on a continuing, comprehensive transportation planning process carried on cooperatively by the States and local communities in accordance with the provisions of 23 U.S.C. 134.

(3) In nonattainment areas which require transportation control measures, a finding that the program conforms with the SIP and that a priority has been given to transportation control measures contained in the SIP in accordance with procedures contained in 23 CFR 770.

(c) Approvals by the Urban Mass Transportation Administrator will be in accordance with the provisions of this subpart and with other applicable provisions of 49 CFR 613, Subpart B. These approvals will constitute:

(1) The approval required under Section 8(a) of the UMT Act (49 U.S.C. 1607(a));

(2) A finding that the projects are based on a continuing, cooperative and comprehensive transportation planning process carried on in accordance with

the provisions of Section 8 of the UMT Act (49 U.S.C. 1607), as applicable;

(3) A finding that the projects are needed to carry out a program for a unified or officially coordinated urban transportation system in accordance with the provisions of Sections 5(l) or 8(c) of the UMT Act (49 U.S.C. 1604(l) or 1607(c)), as applicable; and

(4) In nonattainment areas which require transportation control measures, a finding that the program conforms with the SIP and that a priority has been given to transportation control measures contained in the SIP in accordance with procedures in 23 CFR 770.

PART 630—FEDERAL-AID PROGRAMS APPROVAL AND PROJECT AUTHORIZATION [AMENDED]

4. In Part 630, Subpart A, § 630.106 is amended by redesignating paragraphs (b) and (c) as (c) and (d) respectively, and adding a new paragraph (b) to read as follows:

§ 630.106 Policy.

* * * * *

(b) Federal support is available only for those major urban transportation investment alternatives that meet local, State, and national goals and objectives in a cost-effective manner.

* * * * *

Title 49—Transportation

PART 613—PLANNING ASSISTANCE AND STANDARDS

5. Part 613, Subpart A of 49 CFR is amended by revising the authority statement to read as follows:

Authority: 23 U.S.C. 104(f)(3), 134, and 315; Sections 3, 5, and 8(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1604, and 1607(c)); Sections 110, 172, 174, and 176 of the Clean Air Act; and 49 CFR 1.48(b) and 1.51.

6. Part 613, Subpart B of 49 CFR is revised to read as follows:

Subpart B—Transportation Improvement Program

Sec.

613.200 Transportation improvement program.
613.202 Additional criteria for Urban Mass Transportation Administrator's approvals under 23 CFR 450.320.
613.204 Additional criteria for Urban Mass Transportation Administrator's approvals under 23 CFR 450.320.

Appendix—Policy and procedures for major urban transportation investments.

Authority: 23 U.S.C. 105, 134(a), and 135(b); Sections 3, 5, and 8(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1604, and 1607(c)); Sections 110, 172, 174, and 176 of the Clean Air Act; and 49 CFR 1.48(b) and 1.51.

Subpart B—Transportation Improvement Program

§ 613.200 Transportation improvement program.

The transportation improvement program regulations establishing guidelines for the development, content, and processing of a cooperatively developed transportation improvement program in urbanized areas and also prescribing guidelines for the selection, by implementing agencies, of annual programs of projects to be advanced in urbanized areas which are set forth in 23 CFR Part 450, Subpart C, are incorporated into this subpart.

§ 613.202 Additional criteria for Urban Mass Transportation Administrator's approvals under 23 CFR 450.320.

(a) This section establishes certain additional criteria to be considered by the Urban Mass Transportation Administrator in his/her program approval pursuant to 23 CFR 450.320(a)(3) for all projects proposed for implementation with Federal assistance under Sections 3 and 5 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602 and 1604), in urbanized areas having a population of 200,000 or more.

(b) The Urban Mass Transportation Administrator will grant program approval for projects under paragraph (a) of this section only after he/she has determined that:

(1) The transportation plan developed pursuant to 23 CFR 450.116 contains TSM strategies and actions which are reflected in the annual element of the transportation improvement program; and

(2) Reasonable progress has been demonstrated in implementing previously programmed projects.

§ 613.204 Additional criteria for Urban Mass Transportation Administrator's approvals under 23 CFR 450.320.

The Urban Mass Transportation Administrator will grant project approvals for major urban investments pursuant to 23 CFR 450.320(a)(3) only if he/she determines that the projects meet local, State, and national goals and objectives in a cost-effective manner.

Appendix—Policy and Procedures for Major Urban Mass Transportation Investments

Since the beginning of the 1970's, the Federal Government has provided an increasing share of the Nation's capital investment in urban mass transportation. In the years ahead, as more and more communities seek Federal financial aid to improve and expand their mass transportation systems, it is more essential than ever that Federal funds be effectively and efficiently utilized.

Since each metropolitan area has differing characteristics, Federal mass transportation assistance cannot be based on standardized prescriptions. Rather, Federal support should be flexible, relying heavily on local ability to assess present and anticipated transportation needs, identify and evaluate alternative opportunities for improvement, and initiate needed actions.

The Federal Government does, however, have a strong interest in ensuring that Federal funds available for mass transportation investments be used prudently and with maximum effectiveness. While there are no simple or standard procedures that will guarantee this outcome, a careful and systematic evaluation of the implications of alternative courses of action in advance of a Federal commitment should improve the quality of decisions. To this end, a completed corridor refinement study will be required as a condition of eligibility for Federal assistance for a major mass transportation investment.

A major mass transportation investment is any project which involves new construction or extension of a fixed guideway system (rapid rail, light rail, commuter rail, automated guideway transit) or a busway, except where such projects are part of a demonstration program. Rehabilitation and modernization projects are not included in the scope of this definition.

Rail transit means all forms of rail passenger transportation serving metropolitan areas. It includes "rail rapid transit", "light rail" and "commuter (or regional) rail" technology operating on surface, elevated or sub-surface rights-of-way. The definition excludes busways and "people movers" or other types of automated guideway technology (AGT), although similar rigorous standards are also applicable to those investments.

"Rail Lines" means both extensions to existing metropolitan rail systems and initial segments of new urban or metropolitan rail systems.

I. Increasing the Effectiveness of Rail Transit Investments

The Federal Government has a strong obligation to ensure that the Federal assistance dollars are spent prudently and with maximum effectiveness. To this end, UMTA will adhere to the following set of policies which will apply to all rail transit proposals:

1. Any approval for preliminary engineering of a rail transit proposal must be preceded by a federally approved corridor refinement study which considers a full range of modal alternatives such as rapid transit, light rail, busway, people mover and transportation system management (TSM) options, and service and alignment alternatives, as well as a no action alternative. Applicants will be required to show clearly and convincingly the need for partially or fully grade-separated transit service and to demonstrate that the proposed transit solution is, on balance, superior to other options, considering such factors as

ridership, capital and operating expenses, transportation service, and social environmental, urban revitalization, and energy conservation objectives.

2. Urban areas will have to demonstrate a compelling need for high-performance transit service in order to obtain Federal assistance for rail rapid transit. The use of partially or fully on surface rights-of-way, may offer a substantially less costly, less disruptive, and more flexible rail transit option, and should be seriously considered, especially in places where extensive underground or elevated construction would otherwise be required.

3. Where the long range element of an areawide plan calls for the construction of an area-wide network or rail lines, UMTA will require that the system be analyzed, approved and built in stages. Initial segments of the system should be proposed in corridors which can justify the need for fixed guideway service within 15 years of the date of the analysis. Each segment should be capable of justification on its own merits. This incremental approach to construction of urban rail transit is aimed at insuring that the burden of financing the sytem is spread out in time, that high volume corridors receive priority attention, that benefits of the public investment begin to accrue as soon as possible, that an appropriate balance is maintained between long and short range needs for transportation improvements, and that maximum flexibility is preserved to modify the system in response to advances in technology, changes in growth patterns, and other unforeseen circumstances.

This policy encourages the construction of the most effective segments first and discourages localities from relying on a continued flow of Federal funding to complete unworthy or marginally justified segments of a system.

Each successive segment will normally be subject to a corridor refinement study. Corridors which cannot justify fixed guideway transit service within 15 years of the analysis should be provided with levels and types of service appropriate to their needs, with the level of service being progressively upgraded as demand develops.

4. UMTA will give preference to initial rail segments serving densely populated central portions of metropolitan areas including central cities and close-in suburbs. This policy is designed to target Federal transit investment in areas with the greatest potential payoff, in terms of ridership, relief of congestion, help to transit dependents, energy conservation and air quality improvements.

5. Localities proposing to build rail transit with Federal assistance will be required to commit themselves to the development and implementation of a program of local supportive policies and actions designed to enhance the proposed system's cost-effectiveness, patronage and prospect for economic viability. The Department will require evidence of reasonable progress in carrying out this program of supportive policies as a condition of initial and subsequent construction funding approvals.

The supportive actions shall include the following:

Zoning policies and development incentives to stimulate high density private real estate development around selected transit stations;

Land use plans that support or reinforce the developmental impact and shaping influence of the rail transit system;

Station area improvements in the form of plazas, malls, walkways, open spaces and other pedestrian amenities that might help reverse the physical deterioration of the central business district or revitalize declining residential neighborhoods;

Coordinated bus and/or paratransit feeder services to the rail system especially in low density suburban areas;

Adequate parking and other mode transfer facilities at suburban transit stations;

Pricing, regulatory or traffic control measures aimed at managing the peak-period use of automobiles within rail corridors (e.g., traffic metering, tolls, higher parking fees, elimination of employer-subsidized parking).

6. UMTA will require localities to develop realistic estimates of future operating expenses and to identify and reach a local consensus on the specific means of funding these expenses. In particular, UMTA will require, as a condition of Federal capital assistance, the development of a stable and reliable source of local revenue to cover operating deficits.

7. Full funding contracts will be negotiated with a fixed ceiling on the Federal contribution, subject to a defined method of adjustment for inflation. Localities will be required to complete the project as defined and absorb any additional costs incurred, except under certain specific extraordinary circumstances.

8. UMTA will strengthen its role in monitoring projects in order to prevent over-design, the introduction of unnecessary embellishments, and the use of untested technologies, subsystems, and components which might adversely affect system performance and future operating and maintenance costs.

II. Procedures for Major Urban Mass Transportation Investments

This section outlines the procedures which UMTA will normally follow in reviewing corridor refinement studies, in implementing the Environmental Impact Statement (EIS) requirement of the National Environmental Policy Act of 1969, and in making funding commitments.

1. The procedures set forth in Appendix C of 23 CFR 450, Subpart A are used in the development of alternative major urban mass transportation investments in areawide and corridor refinement studies. They are supplemented by the following procedures.

2. After the end of the circulation period for the draft EIS, the applicant should designate, in a separate document, the locally preferred alternative and state a rationale for the choice. This document should clearly state that any recommendation is solely that of the applicant and that UMTA's judgment is reserved until the environmental process is complete.

3. Upon review of the locally preferred alternative report and the comments received on the draft EIS, UMTA will decide whether the corridor refinement study requirements have been satisfied and whether the locally preferred alternative warrants funds for preliminary engineering. This decision will be based upon an appraisal of the cost-effectiveness of the locally preferred alternative compared to the other alternatives examined in the analysis. The grant may be for preliminary engineering of the locally preferred alternative as well as other promising alternatives evaluated in the draft EIS. Approval of the preliminary engineering grant does not imply any commitment to finance construction of the project.

Preliminary engineering should develop system cost, effectiveness and impact information, with particular attention to alternative designs, operations, detailed location decisions and appropriate mitigation measures. The final EIS should be developed during preliminary engineering. The final EIS may consider a smaller set of alternatives but no action should be taken which would limit the choice of reasonable alternatives studied in the draft EIS until completion of the circulation of the final EIS.

UMTA may admit projects into preliminary engineering whose combined cost exceeds available Federal authorization levels. This will be done in anticipation of any of several possibilities: the withdrawal of projects as a result of changing local priorities; a local decision to use non-Federal resources to finance more than 20 percent of total cost; enactment of additional authorizations; or changing conditions such as the availability of detailed cost estimates which might lead to a later decision that a particular project should not be federally financed.

4. During the execution of preliminary engineering, the applicant will complete all the steps which must precede a Federal indication of intent to fund the project. These steps include providing evidence of firm commitment of the non-Federal capital share, providing evidence of State and/or local consensus regarding the financing of operating deficits, and planning for and gaining financing of operating deficits, and planning for and gaining financial commitment to necessary supportive actions to promote effective utilization of the proposed fixed guideway system.

A letter of intent may be issued for construction in a specific dollar amount only upon completion of the circulation of the final EIS and review of the capital grant application, the transcript of the public hearing, and the detailed cost estimates emerging from preliminary engineering. The decision to issue such a letter will be based upon a comparison of projects then pending.

5. If UMTA determines that the project warrants Federal support, UMTA will also develop with the locality a full funding contract which will (1) fix the total amount of the Federal contributions, subject to a defined method of adjusting for inflation; (2) include a mutually agreeable schedule for anticipating Federal contributions during the life of the project; and (3) require the locality to complete construction of the project as defined, and to absorb any additional cost incurred, except under certain specific "extraordinary" circumstances.

6. Specific annual contributions under the letter of intent and full funding contract will

be subject to the availability of appropriations and the ability of the grant recipient to use the funds effectively. UMTA will limit the sum total of letters of intent to the sum of the future Section 3 authorizations, less an amount which is necessary for those portions of the Section 3 program which are not covered by letters of intent.

[FR Doc. 81-1920 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-22-M

federal register

Monday
January 19, 1981

Part XXX

Department of Energy

Economic Regulatory Administration

Puerto Rican Naphtha Entitlements

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 211

[Docket No. ERA-R-80-31]

Puerto Rican Naphtha Entitlements

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby adopts a final rule amending the Mandatory Petroleum Allocation Regulations to modify the entitlement benefit accorded naphtha imported into Puerto Rico and used as a petrochemical feedstock under the Entitlements Program regulations, 10 CFR 211.67. The amendment adopted today is intended to alleviate the naphtha feedstock cost disadvantage suffered by Puerto Rican petrochemical producers as a result of their reliance on high-priced imported naphtha, as compared with their U.S. mainland competitors that have access to lower cost domestically produced naphtha.

The naphtha entitlement benefit is determined by the differential between the average cost of naphtha imported into Puerto Rico and an imputed cost of domestic naphtha. The final rule adopted today retains the naphtha/crude oil price ratio methodology to impute the cost of domestic naphtha. However, the factor applied to the weighted average per barrel cost of crude oil for all domestic refiners to impute the cost of domestic naphtha is raised from 108 to 117 percent. Finally, the runs credit "cap" on the maximum value of the naphtha entitlement benefit is eliminated.

EFFECTIVE DATE: March 1, 1981. The final rule adopted today will be initially applicable to refiners' runs to stills for the month of January 1981, which are required to be reported by refiners to DOE by March 5, 1981, and will be reflected in the Entitlements Notice issued in March 1981.

FOR FURTHER INFORMATION CONTACT:

Karen Walker (Hearing Procedures), Economic Regulatory Administration, Room B-210, 2000 M Street, NW., Washington, D.C. 20461, (202) 653-3971.

Jack Vandenberg (Office of Public Information), Economic Regulatory Administration, Room B-110, 2000 M Street, NW., Washington, D.C. 20461, (202) 653-4055.

Cynthia Ford (Hearing Procedures), Economic Regulatory Administration, Room B-210, 2000 M Street, NW., Washington, D.C. 20461, (202) 653-3971.

David A. Welsh (Office of Petroleum Operations), Economic Regulatory Administration, Room 6208, 2000 M Street, NW., Washington, D.C. 20461, (202) 653-3459.

John W. Glynn (Office of Regulatory Policy), Economic Regulatory Administration, Room 7202, 2000 M Street, NW., Washington, D.C. 20461, (202) 653-3053.

William Funk or Christopher M. Was (Office of General Counsel), Department of Energy, Room 6A-127, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6736 or 252-6744.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Discussion of Comments:
A. Support for the Rulemaking.
B. Alternative Methodologies Proposed to Impute A Value for Domestically Produced Naphtha.
C. Retention of the 108 Percent Naphtha/Crude Oil Price Ratio Factor.
D. Cap on the Maximum Value of a Naphtha Entitlement.
E. Effective Date of a Final Rule.
III. Amendments Adopted.
IV. Procedural Requirements.

I. Background

By adoption of the Puerto Rican Naphtha Entitlements Program in 1976, the Federal Energy Administration (FEA), a predecessor agency to DOE, sought to alleviate a competitive disadvantage suffered by Puerto Rican petrochemical producers in relation to other domestic petrochemical producers located on the mainland. *See* preamble to the final rule, 41 FR 30321 (July 23, 1976). The competitive disadvantage resulted from the combined effects of rapidly increasing prices for imported crude oil and naptha on the world market and the imposition of price controls on the production and refining of domestic crude oil. Because the Puerto Rican petrochemical industry is reliant on high-priced imports, the feedstock costs of the Puerto Rican firms increased as prices on the world markets rose. In contrast, however, the feedstock costs of mainland petrochemical producers remained lower than those of the Puerto Rican firms due to the existence of price controls on domestic crude oil. To the extent that the cost of Naphtha feedstocks imported by Puerto Rican petrochemical producers exceeded the feedstock costs of mainland petrochemical producers, they were placed at a disadvantage with respect to the marketing of their products in competition with mainland petrochemical producers.

Under the regulations adopted in 1976 and currently in effect, Puerto Rican firms are eligible to receive an entitlement benefit for each barrel of naphtha imported for use as a petrochemical feedstock. The value of a naphtha entitlement is determined by the difference between the weighted average cost of naphtha imported into Puerto Rico for use as a petrochemical feedstock and an imputed cost of domestically produced naphtha. However, the maximum value of the per barrel naphtha entitlement for any month cannot exceed the value of a single crude oil runs credit.[1] When world naphtha prices are such that Puerto Rican firms are not eligible for a full crude oil runs credit, the value of the naphtha entitlement is calculated by applying the ratio of the difference between the weighted average cost per barrel of imported naphtha reported by Puerto Rican petrochemical firms and the imputed cost of domestically produced naphtha, divided by a modified crude oil runs credit (calculated by excluding the small refiner bias benefits under § 211.67(e) and the adjustment for residual fuel oil transported in foreign flag tankers for sale on the East Coast under § 211.67(d)(4)).

The imputed cost of domestic naphtha is calculated by applying a factor of 108 percent to the weighted average cost per barrel of crude oil for all domestic refiners in a month. The 108 percent factor was established based upon the relationship between uncontrolled world market prices for naphtha (based on Rotterdam postings) and crude oil costs (based on estimated delivered costs of a mix of crude oils to Rotterdam) during the first six months of 1977. The current 108 percent factor has been in effect since December 1977. *See* 42 FR 61853 (December 7, 1977).

As noted in the preamble to the Notice of Proposed Rulemaking (NOPR) that initiated this proceeding, however, beginning in mid-1978 the current program has failed to eliminate the naphtha feedstock cost differential incurred by Puerto Rican petrochemical firms. As a result, since the second quarter of 1978, the post-entitlements feedstock cost of Puerto Rican petrochemical producers has been significantly higher than the *imputed* cost of domestic naphtha feedstock to mainland petrochemical firms, calculated on the basis of the 108 percent factor used under the existing

[1] A "runs credit" for a month is that fraction of an entitlement derived by multiplying the National Domestic Crude Oil Supply Ratio (DOSR) for that month, see § 211.62, by the price of an entitlement for that month.

regulations to impute domestic naphtha costs. *See* preamble to the NOPR at 45 FR 59818, 59819–20 (September 10, 1980).

The cause of the apparent ineffectiveness of the existing program identified in the NOPR was the unanticipated and disproportionately rapid increases in prices for imported naphtha as compared with price increases for crude oil. The extreme volatility of naphtha prices on the world market was recognized in the NOPR, in which we noted that:

> * * * imported naphtha prices no longer track world market crude oil prices, which historically had been the case. Starting with the second quarter of 1978, imported naphtha prices have fluctuated disproportionately in comparison with crude oil prices. In this period, increases in the price for imported naphtha have been more rapid and steeper than crude oil price increases. These market conditions suggest that the underlying premise of the Puerto Rican Naphtha Entitlements Program that a *constant* relationship exists between naphtha prices and crude oil prices may no longer be valid. 45 FR at 59819 (emphasis added).

Several factors were identified in the NOPR as contributing to the disproportionately higher naphtha prices on the world market during the two year period beginning with the second quarter of 1978, including increased demand during that period for petrochemicals and light-end petroleum products produced from naphtha, and a relative scarcity of light crude oils during much of that period following the Iranian revolution.

In the NOPR, we also noted that the increase in imported naphtha prices had two countervailing impacts upon the operation of the existing Puerto Rican Naphtha Entitlements Program. On the one hand, we noted that the 108 percent naphtha/crude oil price ratio factor no longer provided a reasonable basis for imputing the cost of domestic naphtha because it did not reflect the increased value of naphtha compared with crude oil evidenced by the changed market conditions since the second quarter of 1978. To the extent that the imputed cost of domestic naphtha calculated by using the constant 108 percent factor was too low, the naphtha feedstock cost differential determined by comparing the weighted average cost of naphtha imported by the Puerto Rican petrochemical producers with this *imputed* value was overstated. In other words, if a more accurate method to impute the cost of domestic naphtha reflecting its higher value is used for the two year period beginning with the second quarter of 1978, the amount by which naphtha feedstocks imported into Puerto Rico were "under-equalized" (*i.e.*, the amount by which the naphtha cost differential exceeded the maximum naphtha entitlement benefit of a single crude oil runs credit) is reduced.

On the other hand, the disproportionate increases in imported naphtha prices had a second effect. To the extent that the increased prices for imported naphtha caused the naphtha cost differential to exceed by a significant amount the value of a single crude oil runs credit, the single runs credit "cap" on a naphtha entitlement value was no longer adequate to alleviate the competitive disadvantage suffered by the Puerto Rican petrochemical firms.[2]

In the NOPR, we observed that "* * * it appears that there is some movement back to a more normal naphtha/crude oil price relationship during the past few months * * *." Notwithstanding that fact, we proposed alternative amendments to the existing program in order to make it more responsive to the changed market conditions and to alleviate any naphtha feedstock cost disadvantage suffered by the Puerto Rican petrochemical firms during the remaining life of the Entitlements Program, which will terminate when the President's authority to regulate crude oil pricing expires on September 30, 1981.

The first two alternative proposals proposed a change in the method of imputing the cost of domestic naphtha. The first alternative proposal provided that an imputed cost of domestic naphtha would be calculated on the basis of the value of naphtha used by domestic refiners in gasoline production, determined by a formula derived by DOE. The second alternative provided that the inputed cost of domestic naphtha would be calculated by subtracting a fixed adjustment from the wholesale price of unleaded regular gasoline. The adjustment was to be derived by comparing wholesale unleaded gasoline prices and imputed domestic naphtha costs (calculated according to the formula used in the first alternative proposal) during a recent reference period. Under both proposals, we proposed to increase the maximum naphtha entitlement benefit to two runs credits, rather than the single runs credit ceiling currently provided. The third alternative proposal retained the present methodology of calculating the imputed cost of domestic naphtha based on a naphtha/crude oil price ratio, but increased the maximum naphtha entitlement benefit to two runs credits.

DOE solicited comments on its alternative proposals, as well as other issues identified in the preamble to the NOPR.

[2] When the naphtha cost differential exceeded the runs credit "cap" by a significant amount, the Puerto Rican firms were still left at an actual post-entitlements feedstock cost disadvantage, notwithstanding the offsetting effect that use of a more accurate factor to impute the cost of domestic naphtha would have had upon the calculation of the naphtha cost differential.

II. Discussion of Comments

DOE held a public hearing on the proposed amendments in San Juan, Puerto Rico on September 25, 1980, at which eight interested parties testified. In addition, 21 written comments were received from interested parties, some of whom had testified at the public hearing. Testimony and written comments were received from representatives of Puerto Rican petrochemical firms, firms located in Puerto Rico that produce naphtha for sale on the island, mainland refiners, the Secretary of State of Puerto Rico, the Puerto Rican Office of Energy, the Department of Justice, and one concerned private citizen.

This section summarizes the major comments on the principal issues that are within the scope of this rulemaking. Our response to the public comments is set forth either in this section or in the next section of this preamble in which we discuss our reasons for adoption of the final rule promulgated as a result of this proceeding.

A. Support for the Rulemaking

Commenters were almost evenly split in their support for or their opposition to the rulemaking. Ten commenters, consisting of mainland refiners and the Peerless Petrochemical Company, a producer of naphtha located on Puerto Rico, opposed all of the alternative proposals to amend the naphtha entitlements program, and favored retention of the existing program. Some other mainland refiners, while submitting comments on the alternative proposals made in the NOPR, recommended that the naphtha entitlements program be terminated. Among the reasons cited by those opposed to the rulemaking and urging that no action be taken by DOE was the relatively short time left until decontrol, the view that the gasoline-based methodology proposals involved complicated formulas that could not be implemented without further refinement of the data to be used, and that retention of the existing program was the least complicated solution providing the greatest degree of certainty for participants in the entitlements program.

Twelve commenters supported the rulemaking by favoring one or more of the alternative proposals. The Puerto

Rican petrochemical firms supported the thrust of the rulemaking as providing at least some measure of relief to remedy their competitive problems resulting from their reliance on high priced imported naphtha feedstocks. The Puerto Rican government and certain mainland refiners also expressed support for the rulemaking. The Puerto Rican Sun Oil Company, a producer of naphtha on the island, supported the rulemaking if entitlements benefits were extended to Puerto Rican naphtha producers.

We disagree with those commenters opposed to the rulemaking that the relatively short time remaining before total decontrol should preclude us from proceeding to adopt a final rule that will correct certain deficiencies in the existing naphtha entitlements program. Having identified the problems, we believe it is appropriate to take action to amend the program, notwithstanding the limited time left before total decontrol. Furthermore, the final rule adopted today provides a simple solution to the problems with the program, can be implemented swifty with a minimization of further agency involvement, and will provide a degree of certainty for Puerto Rican petrochemical firms for the remaining life of the program.

B. Alternative Methodologies to Impute A Value for Domestically Produced Naphtha

A great deal of comment was directed at the alternative methodologies proposed to impute a cost of domestically produced naphtha. The imputed cost domestic naphtha is a crucial issue because its value affects the naphtha feedstock cost differential of the Puerto Rican petrochemical firms in relation to their mainland competitors, which in turn determines the value of the naphtha entitlement benefit under the regulations.

Only seven commenters supported either (and in some cases, both) of the gasoline-based methodologies (identified as the first and second alternatives in the NOPR) to impute the cost of domestic naphtha. The reasons offered in support of the gasoline-based methodologies were that, in general, integrated refiners make decisions whether to use naphtha in motor gasoline or petrochemicals production in a manner similar to that assumed by the proposals; the value of domestic naphtha is closely tied to its value as a component in the motor gasoline pool; and either of the proposals would be responsive to changes in market conditions in the future. However, several of these commenters suggested modifications to the formula utilized in the gasoline-based methodologies to arrive at an imputed cost for domestic naphtha. For example, Exxon, Mobil and Shell, which all either recommended that the naphtha entitlements program be terminated or opposed all alternatives proposed in the rulemaking in the first instance, but proceeded to address the proposed amendments, criticized certain assumptions underlying the gasoline-based methodologies because they resulted in the imputed domestic naphtha value being *understated.*

On the other hand, the Puerto Rican petrochemical producers using naphtha feedstock opposed adoption of the gasoline-based methodologies and criticized certain inaccurate assumptions underlying the formula that they asserted resulted in the imputed domestic naphtha value being *overstated.* In general, their criticisms of the gasoline-based methodologies formula included: (1) the assertion that data proposed to be used that is reported to DOE on the Form P–302–M–1 is not an accurate indication of the refinery gate price for unleaded gasoline, because it includes data reflecting other than wholesale transactions; (2) the formula fails to take into account that lower quality naphtha feedstocks that cannot be blended into gasoline are used by the Puerto Rican firms, particularly Union Carbide Caribe, in the production of olefins; and (3) the formula did not reflect industry practice regarding the processing and blending of naphtha into motor gasoline which affected the capital recovery and operating expense cost factors contained in the formula. CORCO also opposed the gasoline-based methodologies because of their dependence on variables (such as the wholesale price of unleaded gasoline) that the firm claimed cannot be predicted with as much certainty as crude oil costs, thus introducing more unpredictability as to the naphtha entitlement value at the time naphtha purchases are made by the firm.

The Puerto Rican petrochemical producers using naphtha feedstocks *and* the mainland refiners that opposed the rulemaking favored retention of the existing naphtha/crude oil price ratio methodology to impute the cost of domestic naphtha, but for different reasons. The support of the mainland refiners for this proposal was based upon their recommendation that DOE take no action and retain the existing program in view of the short time remaining before decontrol and because continuation of the naphtha/crude oil price ratio is the simplest alternative. The Puerto Rican firms commented that it was appropriate to retain the existing methodology based on the *cost* of crude oil, because the methodology used should reflect the additional cost of obtaining naphtha from crude oil. Union Carbide Caribe pointed out that the value of naphtha used in unleaded gasoline production is not relevant to a non-integrated olefin producer such as itself, that utilizes lower quality naphtha feedstocks that cannot be used in gasoline production.

C. Retention of the 108 Percent Naphtha/Crude Oil Price Ratio Factor

In the preamble to the NOPR, we solicited comments concerning: (1) whether we should retain the naphtha/crude oil price ratio methodology for arriving at an imputed price for domestic naphtha, and (2) if we do, whether the current 108 percent factor should be revised in light of changed market conditions and, if so, what is the appropriate basis for revising the factor. (45 FR at 59822).

The Puerto Rican petrochemical firms urged the retention of the existing 108 percent factor notwithstanding the fact, as noted in the NOPR, that the relationship of Rotterdam naphtha to crude oil costs has fluctuated at levels generally well above 108 percent since the second quarter of 1978.[3] They argued, however, that the factor should not be based on Rotterdam prices that reflect distortions in foreign markets. They asserted that the 108 percent factor was justified as a reasonably accurate measure of the value of domestic naphtha on a cost basis. They also asserted that no change in the 108 percent factor should be made in the interest of simplicity, given the limited duration of the program.

Many of the commenters that favored retention of the existing 108 percent factor with a single runs credit cap did not address the issue of whether the factor should be revised. However, some commenters urged that if the Rotterdam naphtha/crude oil price ratio methodology were retained, the factor should be revised upward because use of the 108 percent factor *understates* the imputed value of domestic naphtha, thereby increasing the naphtha cost differential that affects the value of the naphtha entitlement benefit. Some commenters suggested that the factor be adjusted monthly, based on changes in market conditions.

[3] As noted previously, the ratio of Rotterdam naphtha to crude oil prices during the first six months of 1977 was the basis on which the 108 percent factor was established.

D. Cap on the Maximum Value of a Naphtha Entitlement

In the NOPR, we proposed to increase the "cap" on the maximum value of a naphtha entitlement to two crude oil runs credits under all three alternative proposals. Seven commenters, including all of the Puerto Rican petrochemical firms and the Puerto Rican government, urged that the "cap" be removed entirely. These commenters argued that elimination of the "cap" would not reduce their incentives to seek the lowest priced naphtha supplies, because the value of a naphtha entitlement is based on the weighted *average* cost per barrel of naphtha imported by all Puerto Rican firms. Thus, they contend that an adequate incentive currently exists for them to seek the lowest cost naphtha supplies, because a firm that purchases naphtha at a price above the average price will not be fully compensated under the program. The Puerto Rican firms also maintained that removal of the "cap" would not cause world naphtha prices to increase, because they do not constitute a large enough share of the market. CORCO also asserted that removal of the "cap" would enhance the competitiveness of the Puerto Rican petrochemical producers, by removing any future possibility they will be "under-equalized" if imported naphtha prices were to rise, thereby contributing to the development of the Puerto Rican economy.

Thirteen commenters favored the retention of a single crude oil runs credit cap on the maximum value of a naphtha entitlement. These commenters included those that opposed the rulemaking, and others that supported a gasoline-based methodology. With respect to the issue of incentives for the Puerto Rican firms to seek the lowest cost naphtha supplies, Exxon suggested that sufficient incentive to purchase low-priced naphtha might not exist if the "cap" were raised since there are only three firms that directly benefit from the rule, and if one firm paid a premium for naphtha supplies it would not suffer a significant penalty because it would drive the *average* cost up as well. Another firm, Puerto Rican Sun Oil Company, opposed raising the "cap" because the price of naphtha that *it* produces on the island would become uncompetitive.

E. Effective Date of Final Rule

While we did not solicit comments in the NOPR as to when a final rule adopted in this proceeding should be made effective, numerous comments were received on the subject. All of the Puerto Rican commenters asserted that retroactive relief, back to dates varying from April 1, 1979 to May 1, 1980, is appropriate. They suggested that they should be compensated for past months during which their naphtha feedstock costs were not equalized as a result of the effect of the single runs credit "cap" and asserted that retroactive relief is appropriate because DOE unreasonably delayed the initiation of this rulemaking proceeding.

Other commenters opposed making a final rule retroactive. Exxon pointed out that the magnitude of the past "under-equalization" of the Puerto Rican firms is illusory to some extent because it results, in part, from the *under-valuation* of the imputed cost of domestic naphtha using the 108 percent factor, which in turn overstates the naphtha cost differential. Both Exxon and Mobil also indicated that prices for petrochemical products have increased more rapidly than increases in cost for imported naphtha feedstocks, suggesting that the competitive difficulties encountered by Puerto Rican firms did not result solely from the failure of the naphtha entitlements program to equalize feedstock costs fully.

The question of whether a rule should be given retroactive effect involves equitable considerations. These considerations include the justifiable reliance on the former rule by those that will be aggrieved by the new rule, the burden imposed upon those that will be aggrieved by the new rule, and our obligation to adopt a rule that comports with the statutory objectives of the EPAA. In this instance, retroactive application of any of the proposals would provide the Puerto Rican petrochemical firms with additional entitlement benefits at the expense of all other mainland refiners, which have justifiably relied on the existing naphtha entitlements program and did not have notice of a pending change in the program until issuance of the NOPR in this proceeding. It is clear that retroactive application of a new rule would impose a significant burden by increasing the post-entitlements crude oil costs of all other participants in the entitlements program. Finally, the Puerto Rican petrochemical firms have benefited from use of the 108 percent factor in the past, which has understated the value of domestic naphtha and overstated the naphtha feedstock cost differential. While we acknowledge that this benefit has been more than offset in certain months by the much higher feedstock costs of the Puerto Rican firms and that the program has not functioned perfectly in the past in responding to rapidly changing market conditions, we do not believe that retroactive relief before January 1, 1981 is justified in this case.

The final rule adopted today will be effective March 1, 1981, initially applicable to refiners' runs to still for the month of January 1981. We are not making this final rule effective until March 1, 1981 to eliminate any misunderstanding as to the rule that will apply to the reporting of data by refiners in February (reflecting December runs to stills), which will be the current rule under the existing program. The changes made by the final rule adopted today will be initially applicable to refiners' January 1981 runs to stills, which are required to be reported by refiners to DOE by March 5, 1981, and will be reflected in the entitlements transactions specified by the Entitlements Notice issued in the latter part of March 1981.

The administration of the Entitlements Program involves a two month delay to allow for the reporting of data by refiners to DOE and the subsequent issuance of an Entitlements Notice on the basis of the reported data. Thus the final rule adopted today, while not effective until March 1, 1981, will be applied retroactively to refiners' runs to stills as of January 1, 1981. Relief retroactive to January 1, 1981 is justified for the following reasons. We do not believe that reliance by mainland refiners, or any other parties that will be aggrieved by adoption of the final rule, upon the continuation of the existing program was justified after October 1, 1980. In the NOPR, we indicated our tentative intention to make the amendments to be adopted effective commencing with refiners' runs to stills in October 1980 in the proposed regulatory language for each of the three alternative proposals. Thus, parties were on notice that the final rule might be applicable to refiners' runs to stills as early as October 1980.

The burden imposed upon mainland refiners is considerably mitigated as well. While the post-entitlements crude oil costs of mainland refiners will be increased for January 1981, those costs will not be reflected until issuance of the March 1981 Entitlement Notice, which specifies entitlement transactions based on January 1981 crude oil receipts and runs to stills. Under DOE price regulations, adjustments to crude oil costs to take into account entitlement transactions are not permitted to be reflected in product prices until the month after the entitlement transactions occur. Thus increased costs resulting from adoption of the final rule are not recoverable by mainland refiners in

prices for controlled products until April 1981 in any event. Further, we do not believe that mainland refiners' crude oil purchases for January 1981 would have been influenced significantly by this rule.

Finally, we believe that there is a compelling statutory interest that this final rule be made applicable to refiners' runs to stills in January 1981 to preserve the competitive viability of the Puerto Rican petrochemical industry, in accordance with the goal set forth in section 4(b)(1)(D) of the EPAA. We also believe that it is appropriate that this final rule, correcting deficiencies of the existing naphtha entitlements program, be made effective as soon as possible given the limited duration of the program.

III. Amendments Adopted

The final rule that we have decided to adopt retains the naphtha/crude oil price ratio methodology to impute the cost of domestic naphtha. However, we have decided to raise the factor applied to the monthly weighted average cost per barrel of crude oil for all domestic refiners to 117 percent. As proposed in the NOPR, the ratio used to calculate the value of a naphtha entitlement is revised so that it is based on the actual runs credit, rather than the modified runs credit used under the existing rule. Finally, the runs credit "cap" on the maximum value of the naphtha entitlement benefit will be eliminated.

The naphtha/crude oil price ratio methodology has been retained for several reasons. The majority of commenters, including the Puerto Rican petrochemical firms using naphtha feedstock and mainland refiners, opposed the gasoline-based methodologies and favored retention of the naphtha/crude oil price ratio methodology. The comments submitted by the Puerto Rican petrochemical firms and mainland refiners also identified difficulties with several assumptions underlying the formula that we proposed for imputing a cost of domestic naphtha based on the wholesale price of unleaded regular gasoline. The Puerto Rican petrochemical firms asserted that modifications to the formula were necessary so that the imputed value for domestic naphtha was not overstated, while the mainland refiners claimed that other adjustments to the formula were necessary so that the imputed value for domestic naphtha was not understated. We recognize that some adjustments to the formula might be necessary, and that the calculations pursuant to the formula would be more complicated, would involve more variables, and would be more difficult to administer. Therefore, we have decided not to adopt either gasoline-based methodology.

Retention of the naphtha/crude oil price ratio methodology will make it easier to implement the amendments adopted today, while minimizing agency involvement in the short time left before expiration of the program. It should also meet the concerns expressed by the Puerto Rican petrochemical firms regarding predictability, so that they can make naphtha purchases with a reasonable degree of certainty as to value of the naphtha entitlement benefit.

The naphtha/crude oil price ratio will continue to be based on Rotterdam prices for those products, as in the past. We believe that the relationship of the prices of naphtha crude oil in Rotterdam is a reasonably accurate measure of the value of those products in relation to one another, particularly in light of the fact that an adequate data base for sales of domestic naphtha, a decontrolled product, does not exist. The 117 percent factor is derived by taking the average of the Rotterdam naphtha/crude oil price relationships for the first ten months of 1980. We selected these ten months as a base period because they are the most recent months for which data is available and reflect the return of a relatively stable naphtha/crude oil price relationship that takes into account changed conditions in the markets for naphtha and crude oil since 1977, when the factor was last revised. *See* 42 FR 61853 (December 7, 1977). While this period reflects changed market conditions since 1977 that have affected the value of naphtha and crude oil in relation to one another, it is free of significant market disruptions such as occurred in 1979. We believe that this 117 percent factor based on more recent experience will remain valid for the nine months remaining in the program.

We have decided to eliminate the runs credit "cap" on the maximum value of a naphtha entitlement benefit that can be received by Puerto Rican petrochemical producers. While we proposed increasing the "cap" to a double runs credit, we did not specifically propose elimination of the cap because we did not want to reduce the incentives of Puerto Rican petrochemical producers to seek the lowest priced naphtha supplies.[4] Several factors, one of which was not evident at the time the NOPR was issued, have caused us to reconsider our proposal. First, we are persuaded by the comments of the Puerto Rican petrochemical firms that they will still have an incentive to seek the lowest priced naphtha supplies even in the absence of a "cap," because they are competitive with one another and to the extent a firm purchases naphtha above the average price of all naphtha feedstocks imported into Puerto Rico, it will not be fully compensated for *its* feedstock cost differential. Second, since issuance of the NOPR the value of a crude oil runs credit has been rapidly decreasing. This has been due to a number of factors, including the phased decontrol of crude oil prices, the sale of crude oil that was formerly price-controlled at market level prices as a result of the implementation of tertiary enhanced oil recovery projects, and the new entitlements treatment accorded crude oil used to fill the Strategic Petroleum Reserve. In light of the continually decreasing runs credit between now and the end of the entitlements program, imposition of a runs credit "cap" would very likely preclude meaningful relief for the Puerto Rican petrochemical firms in a period of rising naphtha prices.

We also believe that our decision to increase the naphtha/crude oil price ratio factor to 117 percent will insure that the Puerto Rican petrochemical firms are not overcompensated because of an understated imputed value for domestic naphtha.

IV. Procedural Requirements

A. Section 404 of the DOE Act

Pursuant to the requirements of Section 404(a) of the Department of Energy Organization Act, we have referred these amendments to the Federal Energy Regulatory Commission (FERC) for a determination whether they would significantly affect any matter within the Commission's jurisdiction. The Commission has advised us that it "has decided not to exercise its discretion to determine that the proposed rule significantly affects any function within the jurisdiction of the Commission."

B. National Environmental Policy Act

As indicated in the preamble to the NOPR, it has been determined that these amendments would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq.*), and, therefore, neither an environmental assessment nor an environmental impact statement is required by NEPA and the applicable DOE regulations for compliance with NEPA.

[4] We believe that arguments that would be posed by mainland refiners in opposition to elimination of the "cap" would be similar to those posed in opposition to doubling the "cap" that were considered in this rulemaking.

C. Executive Order 12044

In accordance with Executive Order No. 12044 "Improving Government Regulations" (43 FR 12661, March 24, 1978) and DOE's implementing Order 2030.1, "Procedures for the Development and Analysis of Regulations, Standards, and Guidelines" (44 FR 1032, January 3, 1979), a Regulatory Analysis has been prepared which examines the impacts of the alternatives that were evaluated in this rulemaking. A summary of the Regulatory Analysis is attached as an appendix. The entire Regulatory Analysis is available for public inspection at Room B-110 of the Economic Regulatory Administration, 2000 M Street, NW, Washington, D.C.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 751 *et seq.*, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, 15 U.S.C. 787 *et seq.*, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, 42 U.S.C. 6201 *et seq.*, Pub. L. 94-163, as amended, Pub. L. 94-385, and Pub. L. 95-70; Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*, Pub. L. 95-91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267)

In consideration of the foregoing, Part 211 of Chapter II, Title 10 of the Code of Federal Regulations, is amended as set forth below.

Issued in Washington, D.C., January 12, 1981.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

1. Subparagraph 211.67(d)(5) is amended by revising subparagraph (i), deleting former subparagraph (iii), revising and renumbering former subparagraph (iv), deleting former subparagraph (v), and renumbering former subparagraph (vi) to read as follows:

§ 211.67 Allocation of domestic crude oil.

* * * * *

(d) *Adjustments to volume of crude oil runs to stills.*

* * * * *

(5)(i) The volume of a refiner's crude oil runs to stills beginning with the month of January, 1981 in a particular month for purposes of the calculations in paragraph (a)(1) of this section and the calculations for the national domestic crude oil supply ratio shall include the number of barrels of naphthas which are imported into Puerto Rico (other than imports from the U.S. Virgin Islands and other than naphthas imported into Puerto Rico which are acquired pursuant to an exchange or similar matching purchase and sale transaction for naphthas produced by a refinery located in the the United States) and are utilized in that month as a petrochemical feedstock at a petrochemical plant owned or operated by that refiner in Puerto Rico, as reduced in paragraph (d)(5)(ii) of this section. The number of eligible barrels of naphthas for a particular month further shall be multiplied by a fraction the numerator of which is equal to the weighted average per barrel cost of all naphthas imported into Puerto Rico for that month as to which entitlement issuances are sought less the imputed per barrel cost of domestically produced naphthas for that month, and the denominator of which is the entitlement value for a barrel of crude oil included in the volume of a refiner's crude oil runs to stills for that month. For purposes of this subdivision (5)(i), the imputed per barrel cost of domestically produced naphthas for a particular month, commencing with January, 1981 shall be equal to 117 percent of the weighted average per barrel cost of all the crude oil receipts for all domestic refiners for that month.

(ii) The volume of naphthas eligible for inclusion in the volume of a refiner's crude oil runs to stills in a particular month under paragraph (d)(5)(i) of this section shall be reduced by the volume of export sales (under § 212.53 of Part 212 of this chapter, including sales to a purchaser which certifies it or an entity affiliated with that purchaser will export the product so purchased), for that month of products produced at the petrochemical plant that has processed the imported naphthas.

(iii) Notwithstanding any other provisions of this section, a firm other than a refiner that owns a petrochemical plant in Puerto Rico shall be eligible to receive entitlements with respect to naphthas processed at such a plant on the same basis as is provided for refiners in paragraphs (d)(5) (i) and (ii) of this section, except that such a firm shall not be eligible for any additional entitlements under the provisions of paragraph (e) of this section. Any such firm shall file reports under § 211.66 on the same basis as a refiner.

(iv) Any firm that is eligible for entitlement issuances under this subparagraph shall obtain appropriate certifications from any other firm to which it sells products produced at a petrochemical plant located in Puerto Rico. Such certification shall set forth whether or to what extent the products so purchased will be sold (whether directly by that other firm or indirectly through any firm affiliated with that other firm) in transactions that constitute export sales under § 212.53 of Part 212 of this chapter. Any firm purchasing products produced at a petrochemical plant located in Puerto Rico shall, upon the request of the owner or operator of that facility, certify to that owner or operator as to whether or what extent the further sale of those products by that firm (or any affiliate thereof) will constitute export sales under § 212.53.

* * * * *

Appendix—Summary of Final Regulatory Analysis Amendments to the Puerto Rico Naphtha Entitlements Program

The Final Regulatory Analysis confirms the findings of the Draft Regulatory Analysis in regard to the problems with the current program and the need to remedy them. The analysis discusses briefly the public testimony submitted in this rulemaking proceeding, the rationale for the determination of the final amendments adopted and their impact on the program.

This Analysis reviews problems with the current program described in the Draft Regulatory Analysis, specifically that it frequently has not been able to equalize the cost of naphtha feedstocks between the Puerto Rican petrochemical manufacturers and their U.S. mainland competitors during the past two years. One of the principal reasons cited for the program's ineffectiveness is its continued use of a 108 percent naphtha/crude oil price ratio even though it no longer provides a reasonable basis for imputing the value of naphtha compared with crude oil as documented by market changes during the past two years. The other problem with the program is that the current limitation of a naphtha entitlement benefit to one crude oil runs credit frequently constrains the naphtha entitlement benefit; therefore, it is unable to offset the higher world naphtha prices that have occurred over the past two years.

The oral and written comments on the three alternative amendments proposed to equalize better the cost of naphtha feedstocks of the Puerto Rican petrochemical firms overwhelmingly supported the retention of the current naphtha/crude oil price ratio methodology. However, the respondents differed on whether the present factor of 108 percent should be revised upward and whether the maximum value of a naphtha entitlement should continue to be limited to one crude oil runs credit. The other two alternatives, both of which would have changed the method of calculating the cost of domestic naphtha by imputing a value based on its alternative use in gasoline production, received very little support. Although there was no substantial opposition to the gasoline-based, opportunity cost approach on the basis of its validity as a method for determining a domestic naptha value, there were a number of criticisms and suggestions concerning the derivation of several factors used in the calculations.

The amendments adopted will increase the naphtha/crude oil ratio factor from 108 percent to 117 percent and remove entirely the ceiling on a naphtha entitlement benefit. Although world naphtha prices have declined gradually during the past year, the overall trend of higher naphtha values tends to invalidate the continued use of the 108% ratio factor in calculating the value of domestic naphtha. The 117% ratio factor was derived by averaging the Rotterdam naphtha-to-crude oil price ratios for the first ten months of 1980 for which firm data is available. The analysis states that this period was chosen because it was characterized by the absence of any significant world petroleum supply disruption and a slight downturn in the world economy. As a consequence, it is a fairly accurate indicator of the present value of naphtha and it is likely that this representative value will prevail for the duration of the program.

The amendment to raise the price ratio factor from 108% to 117% will reduce the value of a naphtha entitlement. Use of a higher ratio factor will increase the imputed value for domestic naphtha which, in turn, reduces the cost differential between Puerto Rican petrochemical firms and their U.S. mainland competitors. Inasmuch as the cost differential determines the value of a naphtha entitlement, a lower value will result. Removal of the ceiling on the value of a naphtha entitlement will remove any constraints on size of benefits, but this should not have any impact unless world naphtha prices rise suddenly. Although ERA does not anticipate the kind of price volatility that was experienced in the naphtha market during 1979, this amendment is being adopted as a precautionary measure so that entitlement benefits will not be constrained in the event of unforeseen price increases in the world naphtha market.

The Analysis concludes that the amendments meet the principal objectives of the rulemaking, by providing the following:

- Fair compensation of the Puerto Rican petrochemical firms for their feedstock cost disparities.
- Insurance against a recurrence of the feedstock cost under-equalization that the Puerto Rican firms experienced earlier.
- Assurance that the Puerto Rican industry is neither competitively advantaged, nor disadvantaged.
- Adequate incentives for Puerto Rican naphtha purchasers to compete for favorable prices.
- Administrative simplicity and no additional reporting burden for the industry and DOE.

The analysis concludes that the only objective of this rulemaking that the adopted amendments do not achieve is enabling of the program to respond to wide price fluctuations in the world naphtha market. In view of the very short time remaining for the operation of the program, ERA no longer thinks that this objective is of critical importance.

The analysis states that the reasons for retaining the current methodology outweigh, on balance, those supporting the other Alternatives. Although the opportunity cost methodology offers the advantage of flexibility by automatically reflecting changes in naphtha values, this requirement is diminished in view of the anticipated stability in the naphtha/crude oil price relationship over the limited time remaining in the program. Furthermore, adoption of the opportunity cost methodology would require ERA's evaluation of requisite data to be used in the model, adjustments to ongoing programs, and increased administrative time. The analysis concludes that if the program were to continue beyond the current expiration date of September 30, 1981, it would be necessary to re-evaluate the possible use of the gasoline-based, opportunity cost methodology.

[FR Doc. 81-1919 Filed 1-16-81; 8:45 am]
BILLING CODE 6450-01-M

federal register

Monday
January 19, 1981

Part XXXI

Department of the Interior

Fish and Wildlife Service

Endangered and Threatened Plants; Determination of Two New Mexico Plants, Eriogonum Gypsophilum (Gypsum Wild Buckwheat), and Hedeoma Todsenii (Todsens Pennyroyal), To Be Threatened and Endangered Species, With Critical Habitat

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Plants; Determination of Two New Mexico Plants To Be Endangered Species and Threatened Species, With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Eriogonum gypsophilum* (gypsum wild buckwheat) to be a Threatened species and *Hedeoma todsenii* (Todsens pennyroyal) to be an Endangered species and determines their Critical Habitat under the authority contained in the Endangered Species Act. These plants occur in New Mexico on public lands administered by the Bureau of Land Management and the U.S. Army. The plants are threatened by a number of factors, including: possible habitat disturbance, grazing, off-road vehicle use, and the lack of protection planning. This rule will implement the protection provided by the Endangered Species Act of 1973, as amended for these two plants.

DATES: This rule becomes effective on February 18, 1981.

ADDRESSES: Questions concerning this action may be addressed to the Director (FWS/OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, (703/235–2771).

SUPPLEMENTARY INFORMATION:

Eriogonum gypsophilum (gypsum wild buckwheat) was first collected by Wooten and Standley in 1909 on a hill southwest of Lakewood, New Mexico (Wooten and Standley, 1913). This member of the knotweed family is a small, erect, herbaceous perennial, which measures about 8 inches high, and is restricted to gypsum soils. This plant's entire range is limited to a 0.2 square mile area (130 acres) in the Seven Rivers Hills of Eddy County at elevations from 3,290 to 3,450 feet. The area occupied by *Eriogonum gypsophilum* and the Critical Habitat area is public land administered by the Bureau of Land Management. This area is semi-arid with an average annual precipitation of 14 inches. The continued existence of this plant and the fragile habitat in which it occurs are being threatened by off-road vehicles, grazing, and by the Brantley Dam Project, particularly if proper protection planning for the plant does not continue to occur.

Hedeoma todsenii was first discovered in August 1978, by Dr. Thomas K. Todsen, and was described in 1979 by Dr. Robert S. Irving (1979). *Hedeoma todsenii*, a member of the mint family, is a perennial herb which measures 4–8 inches in height and is somewhat woody at the base. Its leaves are opposite, small, and measure .3–.6 inches long, .1–.2 inches wide. Its flowers are solitary along the stem and measure about 2 inches long and are orange-red. *Hedeoma todsenii* occurs on steep, gravelly-gypsum limestones on the White Sands Missile Range, in Sierra County, New Mexico on public lands administered by the Department of the Army.

This rule will implement the protection provided by the Endangered Species Act of 1973 for both of these plants. The following paragraphs further discuss the actions to date involving these plants, the threats to their continued existence, and the effects of the action.

Background

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be Endangered, Threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director published a notice in the **Federal Register** (40 FR 27823) of his acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposal in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be Endangered species pursuant to Section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Eriogonum gypsophilum* was included in the Smithsonian's report, the 1975 notice of review, and the 1976 proposal. General comments received in relation to the 1976 proposal were summarized in the April 26, 1978, **Federal Register** publication which also determined 13 plant species to be Endangered or Threatened species (43 FR 17909–17916). The Endangered Species Act Amendments of 1978 required that all proposals over two years old be withdrawn. A one year grace period was given to proposals already over two years old. On December 10, 1979, the Service published a notice (44 FR 70796) withdrawing the June 16, 1976, proposal along with four other proposals which had expired.

Based on sufficient new information the Service reproposed *Eriogonum gypsophilum* on July 25, 1980, and proposed its Critical Habitat for the first time (45 FR 49853). Additional field visits conducted by the Fish and Wildlife Service in the summer of 1980 provided additional economic data and biological evidence verifying the precarious status of the species. A public meeting was held on this proposal in Carlsbad, New Mexico, on August 27, 1980.

Hedeoma todsenii and its Critical Habitat were proposed on July 25, 1980, (45 FR 49857) for the first time. A public meeting was held on this proposal on August 26, 1980, in Alamogordo, New Mexico.

The regulations to protect Endangered and Threatened plants appear at 50 CFR 17 and establish the prohibitions and a permit procedure to grant exceptions, under certain circumstances, to the prohibitions.

The Department has determined that this is not a significant rule and does not require the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR 14.

Summary of Comments and Recommendations

In the July 25, 1980, **Federal Register** proposed rules (45 FR 49857 and 45 FR 49853) and associated notifications and press releases, all interested parties were requested to submit factual reports or information which might contribute to the development of a final rule. Letters were sent to the Governor of New Mexico, the U.S. Army, the Bureau of Land Management, the Water and Power Resources Service, and local governments notifying them of the proposed action and soliciting their comments and suggestions. All comments received during the period from July 25, 1980, through November 3, 1980, were considered and are discussed below.

The Governor of New Mexico commented on the *Eriogonum gypsophilum* proposal and stated that the protection of *Eriogonum gypsophilum* appeared appropriate and warranted. No comment was received

from the New Mexico Governor on *Hedeoma todsenii.*

The U.S. Water and Power Resources Service provided both preliminary comments and further recommendations on the *Eriogonum gypsophilum* proposal. They noted that they would continue to include consideration of this plant in their planning process.

The U.S. Department of the Army also offered preliminary input and further comments on the *Hedeoma todsenii* proposal. Their comment on the proposal stated that they would work with the Service in an effort to protect *Hedeoma todsenii.*

A New Mexico botanist commented that he agreed with the *Hedeoma todsenii* as Endangered proposal and that the *Eriogonum gypsophilum* as Threatened proposal is reasonable. The Garden Clubs of America and the New Mexico Garden Club offered their support for both proposals.

A public meeting was held on the *Hedeoma todsenii* proposal on August 26, 1980, in Alamogordo, New Mexico. The Service made presentations on the proposal. Two individuals attended the meeting, asked questions about the plant, and offered their assistance in protecting *Hedeoma todsenii.*

A public meeting was held on the *Eriogonum gypsophilum* proposal on August 27, 1980. The Service made presentations on the *Eriogonum gypsophilum* proposal, as well as on *Hedeoma apiculatum* (another proposed plant). Three individuals attended the meeting—2 from the National Park Service and 1 from the Water and Power Resources Service. No comments or questions from the audience addressed *Eriogonum gypsophilum.*

Conclusion

After a thorough review and consideration of all information available, the Director has determined that *Eriogonum gypsophilum* Wooten and Standley (gypsum wild buckwheat) is likely to become an Endangered species within the foreseeable future throughout all or a significant portion of its range; and that *Hedeoma todsenii* Irving (Todsens pennyroyal) is in danger of extinction throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Act.

These factors and their application to these two plants are as follows:

(1) *Present or threatened destruction, modification, or curtailment of their habitat or range.*

Eriogonum gypsophilum

Historically, *Eriogonum gypsophilum* has been known for nearly 70 years from only one locality in Eddy County, New Mexico. The eastern portion of this plant's range has been reduced in size due to the construction of a major highway (US 285). Present stocking rates of cattle seem to have little effect on the species, but long term records are not available. Increased grazing pressure could possibly prove detrimental to this species. Off-road vehicles such as motorcycles account for some mortality of the *Eriogonum gypsophilum* and this type of use should be restricted from the small area occupied by this species.

The proposed Brantley Dam Project which was authorized on October 20, 1972 (Public Law 92–514) is located in the same area as the *Eriogonum gypsophilum* population. A 1977 report contained the following comments on the effect of that dam on *Eriogonum gypsophilum.* The dam itself should have only a minor impact on the *Eriogonum gypsophilum.* The lowest elevation at which the plants occur is estimated to be at 3,290 feet. The 3,280 foot elevation level is the hypothetical project flood level of the impoundment. Thus, the rising water level probably will not affect the plants. If a flood should occur above this level, it should be of a very short duration and is predicted to be harmless unless plants are in flower, then reduced seed set would be expected (Spellenberg, 1977).

The stability of the gypsum may be affected very near the reservoir, as it has on the east side of Lake McMillan where slumping of gypsum bluffs has occurred. If this occurs, up to several hundred plants out of a total estimated population of 2,800 might be affected by new patterns of erosion and changes in microhabitat. Water and Power Resources Service personnel do not expect this to be a problem at the Brantley Dam project. A salt cedar fringe can be expected to develop around the new margin of the conservation pool. At Lake McMillan this salt cedar fringe extends up to as much as 10 vertical feet above the base of the levee. The development of a similar fringe around the Brantley Dam proposed pool might affect *Eriogonum gypsophilum* nearest the 3,290 foot level (Spellenberg, 1977).

Water and Power Resources personnel believe *Eriogonum gypsophilum* can probably exist with the Brantley Dam Project and they have noted that the plant's well being has been included in the project's planning process. They believe that the problems of slumping and the salt cedar fringe can be dealt with so as to insure the continued existence of the plant. The Water and Power Resources Service also notes that the Brantley Dam has been relocated downstream of its original location (which was addressed by Spellenberg) and is now 2 miles south-southeast of the closest *Eriogonum gypsophilum* population.

Hedeoma todsenii

Hedeoma todsenii is endemic to loose gravelly limestone slopes in the San Andres Mountains of New Mexico. The populations occur on public lands administered by the U.S. Army. The combined area of its two known populations is approximately 3000 m^2 and the number of surviving plants is estimated at 750. The reproductive potential, as measured by seed set, is low with an average seed yield of 0.22 seeds per flower (Irving, 1980).

The remoteness of *Hedeoma todsenii's* population and the restricted nature of the White Sands Missile Range affords *Hedeoma todsenii* considerable protection. Yet, its fragile habitat and the small number of known populations and individuals which comprise them combine to leave the species particularly vulnerable and in need of protection. While there is little likelihood of *Hedeoma todsenii* populations being hit by a missile, even minor changes in the usage of its protected canyon sites could threaten the continued existence of the species. Activities such as large scale troop movements or the construction of storage facilities, missile retrieval roads, or power and communication lines could jeopardize the habitat of *Hedeoma todsenii* without proper planning for its protection. No protection or management plan currently exist for this species.

(2) *Overutilization for commercial, sporting, scientific, or educational purposes.*

There is no evidence to suggest overutilization of either of these plants for any of the above purposes.

(3) *Disease and predation (including grazing).*

Some light grazing occurs mostly along cattle trails in the habitat of *Eriogonum gypsophilum.* An increase in the intensity of this grazing could be detrimental to *Eriogonum gypsophilum* due to trampling.

(4) *The inadequacy of existing regulatory mechanisms.*

New Mexico State Law, Chapter 45, Article 11, Section 1–4, affords limited protection within 400 yards of any highway to all plants (except noxious weeds). This protection includes limited prohibitions against destruction, mutilation, or removal of living plants (except seeds) on State or private land. For those *Eriogonum gypsophilum*

plants occurring close to US 285 this would apply. No other state law offers these plants any protection.

In the case of *Eriogonum gypsophilum* the Bureau of Land Management and the Water and Power Resources Service do not currently have any regulations dealing with Endangered and Threatened plants. In the case of *Hedeoma todsenii* the Army's regulations dealing with endangered species were published in 1977 (42 FR 16385). The Endangered Species Act will now offer additional needed protection for these species.

(5) *Other natural or man-made factors affecting their continued existence.*

The small size and number of the populations cause these species, especially *Hedeoma todsenii,* to be in greater danger of extinction due to natural fluctuations.

Critical Habitat

The Act defines "Critical Habitat" as "(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of Section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of Section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species."

Critical Habitat for *Hedeoma todsenii* is being determined to include the entire area in New Mexico where the species is known to occur. This area encompasses 2 km^2 of the White Sands Missile Range which is administered by the Department of the Army. Critical Habitat for *Eriogonum gypsophilum* is being determined to include 130 acres in New Mexico where the species currently occurs. This area is public land administered by the Bureau of Land Management. In the future, adjacent suitable habitat may be included as essential to the conservation of these species, because it is necessary to provide areas for proper management, reintroduction, and natural expansion. Modifications of these Critical Habitat designations may be proposed in the future.

Section (f)(4) of the Act requires, to the maximum extent practicable, that any proposal to determine Critical Habitat be accompanied by a brief description and evaluation of those activities which, in the opinion of the Secretary, may adversely modify such habitat if undertaken, or may be impacted by such designation.

Any activities which would result in increased trampling or disturbance of the extremely fragile areas where *Hedeoma todsenii* occurs would probably adversely modify the Critical Habitat. The long-term solution on how to best protect *Hedeoma todsenii* may be to greatly reduce all traffic in the area where this plant occurs. In this respect, Critical Habitat designation may affect Federal activities within the 2 km^2 area of *Hedeoma todsenii's* Critical Habitat, which is administered by the Department of the Army.

Any activity which would result in disturbance of the area where *Eriogonum gypsophilum* occurs would probably adversely modify the Critical Habitat. The long-term solution on how to best protect *Eriogonum gypsophilum* may be to develop a protection plan for the species, which would address and remove present threats. In this respect, Critical Habitat designation may affect Federal activities. The Water and Power Resources Service should include in their planning process for the Brantley Dam Project ways to insure the continued existence of *Eriogonum gypsophilum.* These plans should address the problems of slumping of the gypsum soils and ways to protect the habitat of the *Eriogonum gypsophilum* so that it is not used for any activity which would not be compatible with the plant's continued existence. The Bureau of Land Management may need to limit future stocking rates of cattle and off-road vehicle use in the small area where the *Eriogonum gypsophilum* occurs. This increased planning and the steps required by these agencies should not constitute a large impact or hardship on either agency.

Section 4(b)(4) of the Act requires the Service to consider economic and other impacts of specifying a particular area as Critical Habitat. The Service has prepared an impact analysis and believes at this time that economic and other impacts of this action are not significant in the foreseeable future. The area proposed as Critical Habitat for *Hedeoma todsenii* encompasses 2 km^2 of a very lightly and not critically used portion of the White Sands Missile Range. If the Army diverted certain activities from the 2 km^2, it would not greatly affect their operations. The only impact would probably be that additional planning to ensure protection of this site would be required. As stated earlier, efforts to protect the *Eriogonum gypsophilum* would only require additional planning and only minimal input of resources and manpower.

The Service has notified and is working with these other agencies which have jurisdiction over the land and water under consideration. These agencies were requested to submit information on economic or other impacts of the proposed action and this information was utilized in completing this analysis. The Service's Economic Impact Analysis was used as part of the basis for the Service's decision whether to exclude any area from the Critical Habitats for *Eriogonum gypsophilum* and *Hedeoma todsenii.*

Effects of the Rule

In addition to the effects discussed above, the effects of this rule will include, but will not necessarily be limited to, those mentioned below.

The Act and implementing regulations published in the June 24, 1977, Federal Register (42 FR 32373) set forth a series of general prohibitions and exceptions which apply to all Endangered plant species. All of those prohibitions and exceptions also apply to any Threatened species, unless a special rule pertaining to that Threatened species has been published and indicates otherwise. The regulations referred to above, which pertain to Endangered and Threatened plants, are found at §§ 17.61 and 17.71, of 50 CFR and are summarized below.

With respect to *Eriogonum gypsophilum* and *Hedeoma todsenii* all prohibitions of Section 9(a)(2) of the Act, as implemented by § 17.71 would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions would apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.71 also provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered or Threatened species under certain circumstances. International and interstate commercial trade in these plants does not exist. It is anticipated that few permits involving plants of wild origin would ever be issued, since these plants are not common in the wild or in cultivation. Additional paperwork and permits required for the public would be minimal.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species which is listed as Endangered or Threatened. This protection will now

accure to these plants. Provisions for Interagency Cooperation implementing Section 7 are codified at 50 CFR Part 402. These require Federal agencies not only to insure that activities they authorize, fund, or carry out, are not likely to jeopardize the continued existence of these plants, but also to insure that their actions are not likely to result in the destruction or adverse modification of their Critical Habitat which has been determined by the Director. A discussion of the involved Federal agencies appears in the Critical Habitat section of this rule. No other Federal involvement is foreseeable at this time.

National Environmental Policy Act

An environmental assessment has been prepared in conjunction with this rule. It is on file in the Service's Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia, and may be examined during regular business hours, by appointment. This assessment forms the basis for a decision that this is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Author

This rule is being published under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; 87 Stat. 844). The primary author of this rule is Ms. E. LaVerne Smith, Washington Office of Endangered Species (703/235–1975).

Literature Cited

Irving, R. S. 1979. *Hedeoma todsenii* (Labiatae), a new and rare species from New Mexico, *Madroño* 26(4): 184–187.

Irving, R. S. 1980. *Hedeoma todsenii* Status Report. Submitted to the U.S. Fish and Wildlife Service, Albuquerque, New Mexico. February 1, 1980.

Spellenberg, R. 1977. A report on the investigation of *Eriogonum gypsophilum* and *Haplopappus spinulosus* ssp. *laevis* in the vicinity of the Brantley Reservoir, Eddy County, New Mexico. Report prepared for the Bureau of Reclamation, Amarillo, Texas. 140 pp.

Wooton, E. O. and P. C. Standley. 1913. Descriptions of new plants preliminary to a report upon the flora of New Mexico. *Contr. U.S. Nat. Herb.* 16: 109–196.

Regulations Promulgation

Accordingly, § 17.12 of Part 17 of chapter I of Title 50 of the U.S. Code of Federal Regulations is amended, as set forth below.

1. Section 17.12 is amended by adding, in alphabetical order, the following plants:

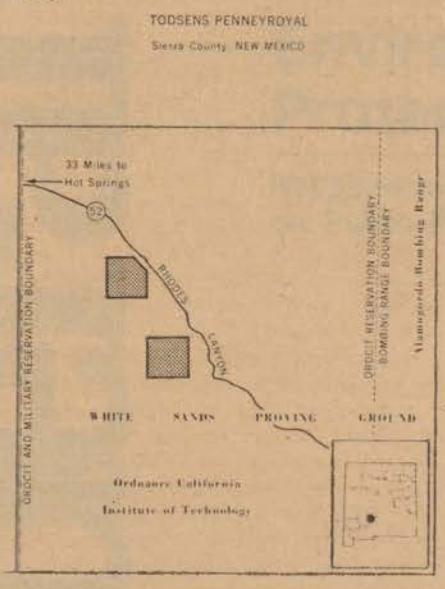
§ 17.12 Endangered and threatened plants.

Species		Historic range	Status	When listed	Critical habitat	Special rule
Scientific	Common name					
Lamiaceae—Mint family: *Hedeoma todsenii.*	Todsens pennyroyal.	USA(NM)	E		17.96(a)	NA
Polygonaceae—Knotweed family: *Eriogonum gypsophilum.*	Gypsum wild buckwheat.	USA(NM)	T		17.96(a)	N/A

2. Also the Service § 17.96(a) by adding the Critical Habitat of *Hedeoma todsenii* after that of the *Hudsonia Montana,* family Cistaceae and the Critical Habitat of *Eriogonum gypsophilum* after that of *Zizania Texana,* family Poaciea as follows:

Family Lamiaceae: Todsens pennyroyal (*Hedeoma todsenii*).

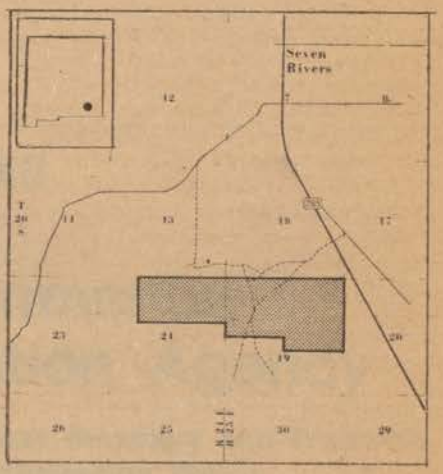
New Mexico; Sierra County; the Critical Habitat of *Hedeoma todsenii* is best defined by two one-square kilometer sections on the 1000 m^2 Universal Transverse Mercator Grid, Zone 13. The more northern critical habitat lies between 76 and 77,000 m N and 39 and 40,000 m E. The southern area lies between 74 and 75,000 m N and 40 and 41,000 m E. Gypsum limestone soils.



and,

Family Polygonaceae: gypsum wild buckwheat (*Eriogonum gypsophilum*) New Mexico; Eddy County; T20S, R25E, Section 19: N½, N½ NE¼ SE¼, N½ NW¼ SE¼; and T20S, R26E, Section 24: N½ NE¼, N½ S½ NE¼, NE¼ NW¼, N½ SE¼ NW¼; gypsum soils.

Gypsum Wild Buckwheat Eddy Co., N. Mex.



Dated: January 9, 1981.

Lynn A. Greenwalt,

Director, Fish and Wildlife Service.

[FR Doc. 81–1800 Filed 1–16–81; 8:45 am]

BILLING CODE 4310–55–M

federal register

Monday
January 19, 1981

Part XXXII

Environmental Protection Agency

Responsiveness Summary and Preamble on Public Participation Policy

ENVIRONMENTAL PROTECTION AGENCY

[AS-FRL-1688-8]

Responsiveness Summary and Preamble on Public Participation Policy

AGENCY: Environmental Protection Agency.

ACTION: Policy.

SUMMARY: This Policy is designed to provide guidance and direction to public officials who manage and conduct EPA programs on reasonable and effective means of involving the public in program decisions. The Policy applies to programs under the Clean Air Act (Pub. L. 95–95), Quiet Communities Act (Pub. L. 95–609), Resource Conservation and Recovery Act (Pub. L. 94–580), Toxic Substances Control Act (Pub. L. 94–469), Federal Insecticide, Fungicide and Rodenticide Act (Pub. L. 95–396), Safe Drinking Water Act (Pub. L. 95–190), and the Clean Water Act (Pub. L. 95–217).

The Policy establishes the objectives of public participation in EPA programs, outlines essential elements that must be incorporated in any public participation effort, discusses a number of public participation mechanisms with ground rules for their effective use, and assigns responsibility for planning, managing, funding, and carrying out public participation activities to EPA managers. The intent of the Policy is to ensure that managers plan in advance needed public involvement in their programs, that they consult with the public on issues where public comment can be truly helpful, that they use methods of consultation that will be effective both for program purposes and for the members of the public who take part, and finally that they are able to apply what they have learned from the public in their final program decisions.

The Policy provides a uniform set of guidelines and requirements applicable to all EPA programs, thus assuring a consistent base level of effort. The Policy applies to all EPA activities as well as to State and local activities funded or delegated by EPA. EPA will develop work plans as part of the annual budget development cycle, and amend program regulations as needed to incorporate the Policy. Affected programs are listed in the Appendix to the Policy.

DATES: Ths Policy is effective on January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Sharon F. Francis, Special Assistant for Public Participation, Office of the Administrator (A–100), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, telephone 202/245–3066.

SUPPLEMENTARY INFORMATION: The Policy which takes effect with this publication is the result of long and careful consideration on the part of EPA, State and local agencies, and the diverse public that is actively concerned with EPA programs. EPA already enjoys a substantial amount of involvement from an active and interested public. Indeed, to that public goes substantial credit for progress made in cleaning up environmental pollution over the last ten years. There has been recognition, however, both inside and outside the Agency, that new steps need to be taken to ensure that members of the public affected by EPA programs are given an earlier and better opportunity to be heard in EPA decisionmaking.

EPA has received a significant volume of thoughtful criticism of its performance in implementing its legally mandated public participation activities and its more general responsibility to involve the public in governmental decisions. The desire of the public to have a stronger role in shaping government programs which affect their lives, businesses, and communities, and also the growing need for governmental units at all levels to participate in the programs of other governmental entities has stimulated this criticism. Government decision-makers have become increasingly aware of the capability of the public to make constructive use of opportunities for involvement. This new awareness has been accompanied by increased practical experience in using a variety of techniques to facilitate public involvement.

For these reasons, EPA has recognized the need to improve public involvement in governmental decisions by clarifying the rights and responsibilities of potential participants and those responsible for administering public participation programs. This will lead to better decisions, more satisfactory opportunities for the public to pursue their goals through government, and greater public confidence in government because decisions will be made with participation by interested and affected members of the public.

Both EPA and members of the public have more demands on their scarce time and resources than can be filled, and need to use them where the results can be most effective. This Policy's common objectives, procedures, and emphasis on results will benefit the entire Agency, and will give the public new confirmation that EPA intends to be as responsive as possible to public questions, concerns, and preferences.

This Policy is the result of analysis and reforms instituted at the Administrator's direction by the Agency Task Force on Public Participation. The Policy was initially proposed in the **Federal Register** on April 30, 1980. In order to ensure that the proposed Policy received attention from the various sectors of the public active in EPA's programs, the Agency mailed copies of the proposal to a nationwide mailing list that included business and industry, labor organizations, professional and trade associations, news media, consumer and women's organizations, environmental and public interest groups, Black, Hispanic, and Native American organizations, scientific, public health, legal and planning societies, and State agencies.

Additionally, each of EPA's ten regional offices received copies of the Policy for distribution to their constituent lists at the regional, State and local levels. A number of regional offices wrote and distributed summaries of the proposed Policy, as well as held meetings to give members of the public opportunity to raise questions and express their views. Public meetings were held in Boston, Chicago, Columbus, Minneapolis, Denver, Seattle, Portland, Boise, Anchorage, and Washington. As a result of these outreach efforts, close to 500 members of the public took part in discussions and offered comment on the proposal.

The following analysis of the comments received, in terms of the affiliation of the person commenting, provides insight on the expectations and needs of various sectors of the public.

Written comments were received from people in forty-two States, with the largest number of comments coming from States where EPA's regional offices had also stimulated public meetings, namely Massachusetts, Connecticut, Minnesota, Ohio and Washington. Written comments were in almost every case substantive and extensive, often running many pages in length. In almost all cases, the people who wrote had been involved with EPA programs either as public participants or program managers, and their comments reflected this reservoir of practical experience.

The largest section of the public who commented were public interest groups, including environmental, consumer, and local civic groups. They provided 30% of the comments received and were closely followed by economic interests, including industries, business, and trade associations with 27%. Additionally, 15% of comment came from State agencies, 10% from citizens-at-large, 10% from

local officials, 6% from other federal agencies, and 2% from academic insititutions.

Over 420 issues were addressed, and of these, the ones that drew the greatest amount of discussion were the following: the composition of advisory groups; whether to provide financial assistance to the participating public, and under what criteria; whether to apply the Policy to State agencies carrying out EPA programs; and the content and use of Responsiveness Summaries.

Eighty-five percent of those who commented supported a final Policy as strong or stronger than the one the Agency proposed in late April, and this support came from all sectors of the public. In the case of State agencies, for example, only 7 of the 44 who commented were negative about EPA's emphasis on public participation or wanted to see it weakened. The other 37 agencies all wanted a Policy and wanted it even stronger than EPA proposed. Economic interests expressed opinions on both sides of the issue, but 20% wanted it stronger and 50% supported the Policy as proposed.

Those who opposed the proposed Policy said that EPA should not be in the business of stimulating participation. People who are really concerned, they said, will come forth and participate on their own. This assumes, however, that people on their own will know that environmental decisions are about to be made, that these decisions affect them, and that they will have enough background information to be able to contribute to what is usually a technical and complex discussion.

The Agency agrees that public participation must not be a contrived exercise, nor should it be undertaken with the purpose of manipulating the public into agreement with a governmental position. EPA recognized its responsibility to give affected sectors of the public a fair opportunity to know of forthcoming governmental decisions and to be heard when those decisions are made. Clear requirements will make public involvement more cost-effective, both for EPA management and for the various sectors of the public.

It is clear from widespread support for an effective Policy that EPA's emphasis on public participation struck a responsive chord in all sectors of the public. The public's thoughtfully reasoned statements for amplifying or strengthening aspects of the proposed Policy have convinced us of the merit of a number of changes. EPA recognizes the commitment it is now making to more open and effective consultation with the public. This Policy will provide a strong and practical framework to guide our interactions in the months and years ahead.

Summary of Response to Public Comment

The following sections respond to major points raised in comments made by the public.

1. *Objectives of EPA's Policy:* There was support from all sectors for the objectives stated in the proposed Policy, but a number of people called for additions as well. These include the role of the public in identifying and selecting among alternatives, the importance of early and continuing involvement, the significant opportunity that public participation affords for anticipating and reducing conflicts, and the need to create equal access to the regulatory process. Commentors also pointed out that objectives need to be comprehensive since they provide the yardstick for evaluation. All of these suggestions have merit, and EPA has added them to the final Policy.

2. *Application of the Policy to EPA Programs Under State Administration:* Most of the laws administered by EPA designate certain programs which can be administered by a State, instead of by EPA, if the State program meets statutory and regulatory criteria. The proposed Policy required EPA to provide for public participation in the process of deciding to approve such State programs. It also provided that, after approval, the State would assume responsibility for meeting the public participation requirements.

In the preamble to the proposed Policy, EPA drew attention to this matter, and specifically asked for comment on whether the Agency should apply the Policy to EPA programs when conducted by States. A major proportion of commenters from all categories preferred the option as proposed, on the grounds that participation is needed and beneficial to program decisions regardless of who administers the program. A much smaller number of commenters favored permitting States to achieve "substantially equivalent results" to EPA's Policy; however, none responded to EPA's request for "specific suggestions for wording and evaluation criteria" since "substantially equivalent provisions have a history of being easy to espouse but difficult to demonstrate." After reading all the comments, EPA concludes that the Policy, as proposed, has sufficient flexibility within a context of practical requirements that it will be beneficial to State program administration.

Two years ago, when EPA proposed its regulation for public participation in Clean Water, Drinking Water and Solid Waste programs (40 CFR Part 25), the question of applying the requirements to States was intensely controversial. Now, with more than a year of experience in those programs, the worst apprehensions have not materialized and public participation has begun to prove its constructive role. Most State agencies, therefore, were not troubled by the proposal. In view of the comments received and the discussion above, EPA finds no need to alter this aspect of the Policy.

3. *Consistency with Part 25 Regulations for Public Participation in Water and Waste Management Programs:* In proposing the Policy, EPA made a conscious effort to ensure compatibility between its provisions and those of the earlier Part 25 regulation for programs under the Clean Water Act, Safe Drinking Water Act, and Resource Conservation and Recovery Act. Two additions that EPA is now making to the Policy will further remove the differences between the two documents and bring the Policy into closer alignment with Part 25. One change is the requirement that EPA review and require further efforts as needed to acheive the balanced membership requirement for advisory groups. The other change is that EPA may require corrective action on the part of State program grantees to ensure compliance with the Policy. While differences in wording remain between the two documents, EPA holds that 40 CFR Part 25 fulfills the intent and requirements of the Policy in the procedural areas (Section D. of Policy) of common subject matter. If differences remain between Part 25 and the Policy, Part 25 will control. The sections of the Policy on work plans, assistance to the public, and authority and responsibility augment the requirements contained in 40 CFR Part 25, and apply to all programs of the Agency.

4. *How to Identify the Public Who Should Participate:* Many of those who commented on the Identification section of the Policy liked our emphasis on developing a contact list of interested or affected members of the public at the outset of a participation opportunity. Several pointed out, however, that contact lists need frequent updating, especially on lengthy projects. This change we are incorporating. A number of those who commented on this section requested that the Policy indicate the uses of a contact list, and we have revised the Policy to do so.

5. *Ways to Inform and Reach the Public:* The majority of comments asked for amplification of the Outreach

section. Commenters sent many valuable suggestions, many of which the final Policy incorporates. Some general areas of concern with which we agree, and have responded to in the final Policy, include the following: (1) public access to information is critical to successful public participation programs; (2) information must be translated from "technical" language into language understandable to the lay public; (3) outreach activities should be emphasized as ongoing activities so the public can be kept up to date on matters of concern; and (4) the uninterested but impacted publics' views need to be solicited in some manner.

Specific comments addressed each of the major sections of Outreach. Under *Methods,* commenters suggested further use of a variety of techniques, many of which we have added to the final version. Under *Content,* it was suggested that materials be prepared in clear, concise language to inform the public of triggering events which initiate a proposed action, and provide details on supporting research analysis and methodology. These suggestions, along with the availability of Environmental Impact Statements, were included in the final Policy. Under *Notification,* the major concerns were that notices should inform the public about the initiation of a decision-making process and that we should describe the type of media notice required. In the *Depositories* section, commenters suggested public and university libraries as appropriate locations, and that consideration ought to be given to accessibility, travel time, parking, and availability during off-work hours. We agreed with these suggestions and included them in the final Policy.

6. *Public Notification of Financial Assistance Awards:* We received complaints from the public that often they never hear about EPA funded projects that provide participation opportunities in programs of State, substate, and local governments. They suggested that we incorporate some type of requirement that notice be given either at the time EPA receives applications, or after award acceptance. After careful consideration, and with a conscious effort to keep the Policy consistent with 40 CFR Part 25 regulations, we have added a section under *Timing* that the recipient give public notice within 45 days of award acceptance.

7. *Methods to Improve Communication Between EPA and the Public:* Many commenters were dissatisfied with the *Dialogue and Hearing* section. They felt we placed too much emphasis on describing hearing requirements, and did not give enough attention to other methods of ensuring communication between EPA and the public. We responded to these concerns by amplifying the *Dialogue* section to include these suggestions and listing other methods of soliciting and using public input. These methods include review groups, workshops, conferences, personal correspondence and conversations, meetings, and citizen panels.

8. *Suggestions for Improvement of Hearing Format:* All sectors of the public responding felt that hearing procedures needed to move away from rigid rituals and be more attuned to listening and responding to the public's views. We agree that public hearings can be more successful if they are conducted in a non-intimidating manner, and if the public has been informed of the issues and has access to pertinent information prior to the hearing. Those who commented on the *Content of Notice* section stressed the importance of early and clear discussion of the issues and alternatives the public is asked to comment upon. Under *Conduct of Hearing,* many commenters asked for more informality and opportunity for questions and answers in the hearing. People also commented that hearings are often located too far from the affected area. We have revised the Policy to incorporate these ideas.

9. *45-Day Notice Prior to Hearings:* Although some commenters felt that a 45-day notice prior to the date of a hearing was a needless delay of time and would slow down the process, others felt that 45 days was much too short a time to expect individuals or groups to prepare adequately for hearings, and some said that a 60 or 90-day notice would be more appropriate for proper preparation. Approximately 30% of the respondents favored a 30-day or less notice period, with the remaining 70% favoring a 45-day or longer period. However, the bulk of the comments favored keeping the hearing notice requirement at 45 days. The major reasons for the 45-day notice period include: (1) there is little control over mail deliveries, and often the interested public receives information too late to prepare effectively for hearings; (2) many groups meet once a month and need time to meet and discuss the notice to decide on a course of action; (3) travel time over long distances is often involved to acquire and review material; and (4) the review material is often complex and requires time for research.

Additionally, we received comments concerning the discretion given to Assistant Administrators and Regional Administrators to waive the 45-day requirement to 30 days or less in emergency situations, or if the issues are not complex or controversial. Some commenters objected to the waiver saying it gives the Assistant Administrators and Regional Administrators too much discretionary power, and feared they may use the waiver more often than necessary. We feel some flexibility must be maintained here, and that the Assistant Administrators and Regional Administrators would be able to make exceptions they feel are warranted. However, we have stated that those objecting to a waiver may appeal to the Administrator of EPA.

10. *Composition of Advisory Groups:* One of the subjects most widely discussed in the proposed Policy has been the composition of advisory groups. Almost all who commented on this subject believed EPA was fair and used good judgment to prescribe a balance of backgrounds among advisory group members; however, a great many commenters believed certain categories sympathetic to their own viewpoints should be given added weight, or others of contrasting views should be prohibited.

Overall, commenters favored EPA's proposed balance of categories two-to-one, and we intend to retain this provision, with two important additions: tribal officials have been added as another category of public officials, and we have made clear that elected public officials should not be from the decision-making body the group is advising. Several people wanted "citizens with economic interests" and "organizations with economic interests" as two separate categories, but we do not agree with this proposal. We prefer to leave the citizen-at-large category unencumbered so appointing officials can have room to select a variety of individuals with potentially worthwhile contributions.

11. *Proof of Effort to Achieve Advisory Group Composition:* A number of those who commented were concerned that the balanced membership of advisory groups could be manipulated if there is not some degree of oversight by EPA. They also pointed out that the 40 CFR Part 25 regulation has a section calling for demonstration of "proof of effort," and this section has given valuable oversight to agencies with advisory groups. We agree that federal guidance may be valuable in this area and consequently have added a section that requires advice, assistance, review, and approval by EPA.

12. *Use of Advisory Group Recommendations:* A number of people

experienced with advisory groups reported their frustration with instances when the group felt their recommendations were being suppressed by the agencies they advised. Since a major purpose of this Policy is to improve openness on the part of governmental entities, we have added a short section to the Policy which makes it clear that advisory group recommendations should be publicly available.

13. *The Frequency and Use of Responsiveness Summaries:* The great majority of those who commented on the subject of Responsiveness Summaries supported EPA's requirement, and thought these summaries would provide an important addition to decision-making. A few people pointed out, however, that our emphasis should not be on documenting public views as much as it should be on using them. We agree with these comments and have added some language to reflect this emphasis. Additionally, there was a certain amount of misunderstanding that Responsiveness Summaries would be required after every hearing or meeting. This is not our intent, but rather it is that Responsiveness Summaries be prepared at "key decision points." These will be identified in public participation work plans, as well as in program regulations where they are being revised to incorporate provisions of this Policy.

14. *How Much Feedback Should Be Provided to the Public on the Results of its Participation?:* EPA's proposal that feedback be provided received strong support from all sectors of the public. A number of commenters wanted to see feedback provided within a time limit, such as 60 days, though others recognized the burden that such acknowledgements would place on the Agency's staff. Throughout the comments on this section was the desire on the part of participants to know substantively why their suggestions were or were not accepted. EPA does not have the staff resources to be able to commit itself to interim replies of a substantive nature, especially when the number of comments on many issues run into the thousands. We do, however, recognize a serious commitment to providing feedback and thus are revising the policy to state that all "participants in a particular activity (must) receive feedback," not just "have access" to it as stated in our earlier proposal.

15. *The Use of Work Plans:* In EPA's initial proposal, public participation work plans were contemplated for two reasons: first, good public participation needs to be carefully planned, and second, the resource outlays needed for public participation should be built into program operating budgets. Many members of the public, as well as State and substate officials who commented on the Policy, supported EPA's emphasis upon work plans. In fact, several said work plans should be discussed earlier in the Policy, a suggestion we have taken. Additionally, we have added some clarifying and strengthening language on the content of work plans and the timing of their preparation. Work plans will be developed at both the program and project levels, and EPA will provide guidance on the content of these documents.

16. *The Use of Public Funds to Assist the Participating Public:* To a large extent the debate over financial assistance to members of the public or public organizations focussed on the use of such funds in regulatory or adjudicatory proceedings. The debate was rendered moot by Congress in its action on EPA's 1981 appropriation which prohibited use of EPA funds for that purpose. The final Policy reflects the removal of this controversial aspect. Other types of public participation funding (e.g. travel expenses for witnesses at public hearings on hazardous waste disposal siting) proved uncontroversial and occasioned little comment. It is the Agency's intention to continue to fund such non-regulatory, non-adjudicatory participation.

17. *The Responsibility of EPA Officials for Implementing the Policy:* Many people who commented on the Policy liked the Agency's proposal which outlined the authority and responsibility of various Agency officials for ensuring the Policy's implementation. Several pointed out, however, that the language was confusing and duplicative. Therefore, we have rewritten that section with separate duties identified for Regional Administrators, Assistant Administrators, the Director of the Office of Public Awareness, and the Administrator. These sections should clarify the previous ambiguities.

18. *Ensuring Compliance with the Policy:* A large proportion of commenters wanted reassurance that this Policy is more than a collection of good intentions, and that EPA will stand behind its provisions and enforce them. They were particularly concerned with State and substate assistance recipients, and urged EPA to develop enforcement sanctions. While we hope that sanctions will not be necessary, we have amended the Policy with a section on sanctions that gives greater emphasis to Policy enforcement.

19. *Relationship Between Public Participation Policy and Environmental Impact Statement (EIS) Process:* Several people noted that the proposed Policy was silent on how the Policy fits with the Agency's EIS procedures. EIS's are undertaken primarily for grants for wastewater treatment plans, new source National Pollutant Discharge Elimination System (NPDES) permits, and certain major regulations. Many of the goals of this public participation Policy and EPA's EIS programs are similar. The requirements of the new Policy will serve to reinforce, and in some cases, supplement existing EIS procedures. In revising the Policy, we have added a number of references to EIS's to emphasize this relationship.

20. *Overall Evaluation of Effectiveness:* Several commenters from Federal or State government agencies, as well as several citizens with years of experience as active participants, drew attention to the importance of evaluating the Policy. They said this should be done both to oversee how well its provisions are being followed and to identify, where possible, the results of improved public involvement on Agency decisions and program implementation.

EPA is committed to evaluating this Policy within three years from the date of publication. This will be done under the direction of the Administrator's Special Assistant for Public Participation. This evaluation will include such matters as effectiveness of requirements, enforceability, resource expenditures, alternative public participation methods, public reaction, and reporting requirements.

Conclusion

EPA has made a number of additions and improvements to the proposed Policy on the basis of what it learned from the public during the comment period. Indeed, the revised Policy itself is a good example of how public involvement augments the Agency's work. The overwhelming proportion of statements came from people with long experience in public policy. All reflected a similar outlook: they, like EPA, want to make the system work better. Among many interesting statements, a few examples indicate the challenge of the public's expectations:

A planning board chairman from a small New England town spoke of the resentment that the public has come to feel toward the work of bureaucrats. From his experience in marshalling talent to address local problems, he suggested that EPA consider recruiting broad based citizen task forces or advisory groups to develop all the Agency's regulations and other major

policy items. They should be given a deadline, and only if they failed to produce, should EPA step in and do the work. "That would be real participation," he said.

A major national chemical manufacturer opened its statement by saying the Policy is not needed, since the company believes it duplicates existing procedures. The company continued, however, to urge substantial reform of EPA practices in order to give the public a much earlier opportunity for participation before the bureaucratic momentum becomes too great to accept any changes. They also advocated genuine responsiveness to the public, not just a "superficial consideration of comments."

A citizen group that has been working for years to reduce adverse environmental consequences from two oil refineries cited a series of disappointing interactions with EPA: delays in obtaining requested materials for review prior to hearings; difficulties in seeing pertinent materials even when they visited State offices; the high costs of reproducing documents; and a feeling that government agencies were giving substantial amounts of time and assistance to industrial applicants, but were not even willing to answer the questions of opponents, let alone assist them more substantially. The group also had the impression that EPA had its mind made up at the time of a public hearing, and the citizens felt their own efforts were wasted.

Statements such as these reveal the frustration that many members of the public have experienced when trying to work with the Agency, and they also point to the motivation and high hopes that the public continues to hold about participating in environmental protection issues. Public participation lies at the heart of the Agency's credibility with the public. It affords the best tested recipe for citizens to influence the governmental decisions that affect their lives and pocketbooks. This Policy takes an important step in defining when EPA will undertake public participation, and in saying that when we do it, we intend to do it right.

Members of the public who wish to obtain the background Compilation of Issues with their disposition and List of Commenters on this Policy may do so by contacting: Sharon F. Francis, Special Assistant for Public Participation, Office of the Administrator (A–100), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, telephone 202/245–3066.

Dated: January 13, 1981.

Douglas M. Costle,
Administrator.

Final E.P.A. Policy on Public Participation

This Policy addresses participation by the public in decision-making, rulemaking, and program implementation by the Environmental Protection Agency (EPA), and other governmental entities carrying out EPA programs. The term, "the public", as it is used here, means the people as a whole, the general population. There are a number of identifiable "segments of the public" who may have a particular interest or who may be affected one way or another by a given program or decision. In addition to private citizens, "the public" includes, among others, representatives of consumer, environmental, and minority groups; the business and industrial communities; trade, industrial, agricultural, and labor organizations; public health, scientific, and professional societies; civic associations; universities, educational, and governmental associations; and public officials, both elected and appointed.

"Public participation" is that part of the agency's decision-making process that provides opportunity and encouragement for the public to express their views to the agency, and assures that the agency will give due consideration to public concerns, values, and preferences when decisions are made.

A. Scope

The requirements and procedures contained in this Policy apply to the Environmental Protection Agency and other governmental entities carrying out EPA programs (referred to herein as "agency"). The activities covered by this Policy are:

EPA rulemaking, when regulations are classified as significant, (under terms of Executive Order 12044);

The administration of permit programs as delineated in applicable permit program regulations;

Program activites supported by EPA financial assistance (grants and cooperative agreements) to State and substate governments;

—The process leading to a determination of approval of State administration of a program in lieu of Federal administration;

—Major policy decisions, as determined by the Administrator, appropriate Assistant Administrator, Regional Administrator, or Deputy Assistant Administrator, in view of EPA's responsibility to involve the public in important decisions.

When covered activities are governed by EPA regulations or program guidance, the provisions of the Policy shall be included at appropriate points in these documents. Before those changes are made, the provisions of the existing regulations or program guidance shall govern.

B. Purpose

The purpose of this Policy is to strengthen EPA's commitment to public participation and establish uniform procedures for participation by the public in EPA's decision-making process. A strong policy and consistent procedures will make it easier for the public to become involved and affect the outcome of the agency's decisions.

This in turn will assist EPA in carrying out its mission, by giving a better understanding of the public's viewpoints, concerns, and preferences. It should also make the agency's decisions more acceptable to those who are most concerned and affected by them.

Agency officials will provide for, encourage, and assist participation by the public. Officials should strive to communicate with and listen to all sectors of the public. Where appropriate, this will require them to give extra encouragement and assistance to some sectors, such as minorities, that may have fewer opportunities or resources.

The Policy identifies those actions which are required and others that are discretionary, on the part of agency managers. The Policy assumes, however, that agency employees will strive to do more than the minimum required, and is not intended to create barriers to more substantial or more significant participation. The Policy recognizes the agency's need to set priorities for its use of resources, and emphasizes participation by the public in decisions where options are available and alternatives must be weighed, or where substantial agreement is needed from the public if a program is to be carried out.

Public participation must begin early in the decision-making process and continue throughout the process as necessary. The agency must set forth options and alternatives beforehand, and seek the public's opinion on them. Merely conferring with the public after a decision is made does not achieve this purpose.

Agency officials must avoid advocacy and precommitment to any particular alternative prior to decision-making. The role of agency officials is to plan and

conduct public participation activities that provide equal opportunity for all individuals and groups to be heard. Officials should actively seek to facilitate resolution of issues among disagreeing interests whenever possible.

Decision-makers are aware that issues which are not resolved to the satisfaction of the concerned public may ultimately face time-consuming review. If the objectives of EPA's public participation program are achieved, delays to accommodate litigation should be reduced.

C. Objectives

In establishing a policy on public participation, EPA has the following objectives:

—To use all feasible means to create early and continuing opportunity for public participation in agency decisions;

—To promote the public's involvement in implementing environmental protection laws;

—To make sure that the public understands official programs and the implications of potential alternative courses of action;

—To solicit assistance from the public in identifying alternatives to be studied, and in selecting among alternatives considered;

—To keep the public informed about significant issues and changes in proposed programs or projects, as they arise;

—To create an equal and open access for the interested and affected parties to the regulatory process;

—To make sure that the government understands public goals and concerns, and is responsive to them;

—To demonstrate that the agency consults with interested or affected segments of the public and takes public viewpoints into consideration when decisions are made;

—To anticipate conflicts and encourage early discussions of differences among affected parties;

—To foster a spirit of mutual trust, confidence, and openness between public agencies and the public.

D. General Procedures for All Programs

Each Assistant Administrator, Office Director, or Regional Administrator shall determine forthcoming decisions or activities to which this Policy should be applied, and take the steps needed to assure that adequate public participation measures are developed and implemented.

To ensure effective public participation in any decision or activity, the agency must carry out five basic functions: Identification, Outreach, Dialogue, Assimilation, and Feedback.

1. *Identification.* It is necessary to identify groups or members of the public who may be interested in, or affected by, a forthcoming action. This may be done by a variety of means: developing a contact list of persons and organizations who may have expressed an interest in, or may by the nature of their purposes or activities be affected by or have an interest in a forthcoming activity; requesting from others in the agency or from key public groups, the names of interested and affected inidividuals to include; using questionnaires or surveys to find out levels of awareness; or by other means. If EPA is required to file an Environmental Impact Statement (EIS), the scoping process can be used to identify interested parties.

The responsible official(s) shall develop a contact list for each program or project, and add to the list whenever members of the public request it. The list should be up-dated frequently, and it will be most useful if subdivided by category of interest or geographic area.

The contact list shall be used to send announcements of participation opportunities, notices of meetings, hearings, field trips and other events, notices of available reports and documents, and for identifying members of the public who may be considered for advisory group membership and other activities.

2. *Outreach.* The public can contribute effectively to agency programs only if it is provided with accurate, understandable, pertinent and timely information on issues and decisions. The agency shall make sure that adequate, timely information concerning a forthcoming action or decision reaches the public. The agency shall provide policy, program, and technical information at the earliest practical times, and at places easily accessible to interested and affected persons and organizations, so they can make informed and constructive contributions to decision-making. Information and educational programs shall be developed so that all levels of government and the public have an opportunity to become familiar with the issues and the technical data from which they emerge. Informational materials shall highlight significant issues that will be the subject of decision-making. Special efforts shall be made to summarize complex technical materials for the public.

a. *Methods.* The objective of the agency's public outreach program is to insure that the public understands the significance of the technical data so that rational public choices can be made. Outreach programs require the use of appropriate communication tools, and should be tailored to start at the public's level of familiarity with the subject.

The following, among other approaches, may be used for this purpose:

(1) publications, fact sheets, technical summaries, bibliographies;

(2) questionnaires, surveys, interviews;

(3) public service announcements, and news releases;

(4) educational activities carried out by public organizations.

b. *Content.* Outreach materials must include background information (e.g. statutory basis, rationale, or the triggering event of the action); a timetable of proposed actions; summaries of lengthy documents or technical material where relevant; a delineation of issues; alternative courses of action or tentative determinations which the agency may have made; whether an EIS is, or will be, available; specific encouragement to stimulate active participation by the public; and the name of an individual to contact for further information.

Whenever possible, the social, economic, and environmental consequences of proposed decisions and alternatives should be clearly stated in outreach material. Technical evidence and research methodoogy should be explained. Summaries of technical documents should be footnoted to refer to the original data. Fact sheets, news releases, summaries, and similar publications may be used to provide notice of availability of materials and to facilitate public understanding of more complex documents, but should not be a substitute for public access to the complete documents.

c. *Notification.* The agency must notify all parties on the contact list and the media of opportunities to participate and provide appropriate information, as described in the first paragraph of Section 2.b. above. Printed legal notices are often required by program regulations, but do not substitute for the broader notice of the media and contact list required by this section.

d. *Timing.* Notification (above) must take place well enough in advance of the agency's action to permit the public to respond. Generally, it should take place not less than 30 days before the proposed action, or 45 days in the case of public hearings (exceptions in the case of public hearings are discussed under Dialogue, below).

Where complex issues or lengthy documents are presented for public comment, the comment period should allow enough time for interested parties to conduct their review. This period

generally should be no less than 60 days. Where participation opportunities are to be provided in programs of State, substate, and local governments supported by EPA financial assistance, notice shall be given by the recipient to the public within 45 days after award acceptance.

e. *Fees for Copying.* Whenever possible, the agency should provide copies of relevant documents, free of charge. Free copies may be reserved for private citizens and public interest organizations with limited funds. Any charges must be consistent with requirements under the Freedom of Information Act as set forth in 40 CFR Part 2.

f. *Depositories.* The agency shall provide one or more central collections of documents, reports, studies, plans, etc. relating to controversial issues or significant decisions in a location or locations convenient to the public. Depository arrangements should be made when possible with public libraries and university libraries. Consideration must be given to accessibility, travel time, parking, transit, and to availability during off-work hours. Copying facilities, at reasonable charges, should be available at depositories.

3. *Dialogue.* There must be dialogue between officials responsible for the forthcoming action or decision and the interested and affected members of the public. This involves exchange of views and open exploration of issues, alternatives, and consequences.

Public consultation must be preceded by timely distribution of information and must occur sufficiently in advance of decision-making to make sure that the public's options are not foreclosed, and to permit response to public views prior to agency action. Opportunities for dialogue shall be provided at times and places which, to the maximum extent feasible, facilitate attendance or participation by the public. Whenever possible, public meetings should be held during non-work hours, such as evenings or weekends, and at locations accessible to public transportation.

Dialogue may take a variety of forms, depending upon the issues to be addressed and the public whose involvement is sought. Public hearings are the most familiar forum for dialogue and often are legally required, but their use should not serve as the only forum for citizen input. When used, hearings should be at the end of a process that has given the public earlier opportunity for becoming informed and involved. Often other techniques may serve a broader purpose:

- *Review groups* or *ad hoc committees* may confer on the development of a policy or written materials;
- *Workshops* may be used to discuss the consequences of various alternatives, or to negotiate differences among diverse parties;
- *Conferences* provide an important way to develop concensus for changing a program or the momentum to undertake new directions;
- *Task forces* can give concentrated and experienced attention to an issue;
- *Personal conversations* and *personal correspondence* give the individualized attention that some issues require;
- *Meetings* offer a good opportunity for diverse individuals and groups to express their questions or preferences;
- A *series of meetings* may be the best way to address a long and complex agenda of topics;
- *Toll-free lines* can aid dialogue, especially when many questions can be anticipated or time is short;
- A *hearing panel* composed of persons from representative public groups may be used in non-adjudicatory hearings to listen to presentations and review the hearing summary.

This list is not exhaustive, but it indicates the importance for program managers in being flexible and choosing the right techniques for the right occasions.

a. *Requirements for public hearings.* (1) Timing of Notice. Notices must be well publicized and mailed to all interested and affected parties on the contact list (see 1. above) and to the media at least 45 days prior to the date of the hearing. However, when the Assistant Administrator or Regional Administrator find that no review of substantial documents is necessary for effective participation and there are no complex or controversial matters to be addressed, the notice requirement may be reduced to no less than 30 days in advance of the hearing. Additionally, in permit programs, notice requirements will be governed by permit regulations and will be no less than 30 days. Notice for EIS's are covered by EIS regulation which calls for a 45-day review period, with an optional 15-day extension. Notice of the EIS hearing is generally contained in the Draft EIS. Hearings on EIS's are usually held before the end of the EIS review period, but no earlier than 30 days after the EIS notice. Assistant Administrators or Regional Administrators may further reduce or waive the requirement for advance notice of a hearing in emergency situations where there is imminent danger to public health and safety, or in situations where there is a legally mandated timetable. Assistant Administrators may also reduce this requirement if they determine that all affected parties would benefit from a shorter time period.

Members of the public who object to a waiver may appeal to the Administrator, stating their reasons in detail.

(2) Content of Notice. The notice must identify the matters to be discussed at the hearing and must include or be accompanied by: (a) a discussion of alternatives the public is being asked to comment upon and the agency's tentative conclusions on major issues (if any); (b) information on the availability of an EIS and bibliography of other relevant materials (if appropriate); (c) procedures and contacts for obtaining further information; and (d) information which the agency particularly solicits from the public.

(3) Provision of Information. All reports, EIS's, and other documents and data relevant to the discussions at public hearings must be available to the public on request after the notice, as soon as they become available to agency staff. Background information should be provided no later than 30 days prior to the hearing.

(4) Conduct of Hearing. The agency conducting the hearing must inform the audience of the issues involved in the decision to be made, the considerations the agency will take into account under law and regulations, the agency's tentative conclusions (if any), and the information which the agency particularly solicits from the public. Whenever possible, the hearing room should be set up informally. The agenda should allocate time for presentations, questions and answers, as well as formal commentary on the record. When needed, a pre-hearing meeting to discuss the issues should be held. Procedures must not inhibit free expression of views. When the subject of a hearing addresses conditions in a specific geographic area, the hearing itself should be held in that general area.

(5) Record of Hearing. The hearing record must be left open for at least ten days to receive additional comment, including any from those unable to attend in person, and may be kept open longer, at the discretion of the hearing officer. The agency must prepare a transcript or record of the hearing itself and add additional comments to the complete record of the proceeding. This must be available for public inspection and copying at cost at convenient locations. Alternatively, copies shall be provided free. If tapes are used, they should be available for use and copying on conventional equipment. When a

Responsiveness Summary (see Assimilation below) is prepared after a hearing, it must be provided to those who testified at or attended the hearing, as well as anyone who requests it.

b. *Requirements for advisory groups.* Formation of an advisory group is one of the methods that can be chosen to gain sustained advice from a representative group of citizens.

The primary function of an advisory group is to assist elected or appointed officials by making recommendations to them on issues which the decisionmaking body and the advisory group consider relevant. These issues may include policy development, project alternatives, financial assistance applications, work plans, major contracts, interagency agreements, budget submissions, among others. Advisory groups can provide a forum for addressing issues, promote constructive dialogue among the various interests represented on the group, and enhance community understanding of the agency's action.

(1) Requirements for Federal EPA Advisory Committees: When EPA establishes an advisory group, provisions of the Federal Advisory Committee Act (Pub. L. 92—463) and General Service Administration (GSA) Regulations on Federal Advisory Committee Management must be followed.

(2) Requirements for State and Substate and Local Advisory Committees: (Explanatory Note: The following guidelines do not apply to advisory committees, as defined by the Federal Advisory Committee Act, which are established or utilized by EPA.) In instances where regulations, program guidance, or the public participation work plans of State, substate, or local agencies, call for advisory groups, the following special requirements will apply:

(a) Composition of Advisory Groups. Agencies must try to constitute advisory groups so that the membership includes the major affected parties, reflects a balance of interests, and consists of substantially equivalent proportions of the following groups:

• Private citizens. This portion of the advisory group should not include anyone who is likely to incur a financial gain or loss greater than that of an average homeowner, taxpayer, or consumer as a result of any action that is likely to be taken by the managing agency;

• Individual citizens or representatives of organizations that have substantial economic interests in the plan or project;

• Federal, State, local, and tribal officials. These may be both elected and policy-level appointed officials, so long as the elected officials do not come from the decision-making body the group is advising;

• Representatives of public interest groups. A "public interest group" is an organization which has a general civic, social, recreational, environmental, or public health perspective in the area, and which does not directly reflect the economic interests of its membership.

Generally, where an activity has a particular geographic focus, the advisory group should be composed of persons from that geographic area, unless issues involved are of wider application.

Where problems in meeting the membership compostion arise, the agency should request advice and assistance from EPA or the State in the case of a delegated program. EPA shall review the agency's efforts to comply, and approve the advisory group composition, or, if the agency's efforts were inadequate, require additional actions.

(b) Resources for Advisory Groups. To the extent possible, agencies shall identify professional and clerical staff time which the advisory group may depend upon for assistance, and provide the advisory group with an operating budget which may be used for mailing, duplicating, technical assistance, and other purposes the advisory group and the agency have agreed upon. The agency should establish a system for reimbursing advisory group members for reasonable out-of-pocket expenses that relate to their participation on the advisory group.

(3) Advisory Group Recommendations: Recommendations, including minority reports and the minutes of all meetings of an advisory group, are matters of public information. As soon as these become available to agency staff, the agency must provide them to the public on request and distribute them to relevant public agencies. Advisory groups may communicate with EPA or the public as needed, or request EPA to perform an evaluation of the assisted agency's compliance with the requirements of this part.

4. *Assimilation.* The heart of public participation lies in the degree to which it informs and influences final agency decisions

Assimilating public viewpoints and preferences into final conclusions involves examining and analyzing public comments, considering how to incorporate them into final program decisions, and making or modifying decisions according to carefully considered public views. The agency must then demonstrate, in its decisions and actions, that it has understood and fully considered public concerns. Assimilation of public views must include the following three elements:

a. *Documentation.* The agency must briefly and clearly document consideration of the public's views in Responsiveness Summaries, regulatory preambles, EIS's or other appropriate forms. This should be done at key decision points specified in program guidance or in work for public participation.

b. *Content.* Each Responsiveness Summary (or similar document) must:

—explain briefly the type of public participation activity that was conducted;

—identify or summarize those who participated and their affiliation;

—describe the matters on which the public was consulted;

—summarize the public's views, important comments, criticisms and suggestions;

—disclose the agency's logic in developing decisions; and

—set forth the agency's specific responses, in terms of modifying the proposed action, or explaining why the agency rejected proposals made by the public.

c. *Use.* The agency must use Responsiveness Summaries in its decision-making.

In addition, final Responsiveness Summaries that are prepared by an agency receiving financial assistance from EPA must also include that agency's (and where applicable, its advisory group's) evaluation of its public participation program.

5. *Feedback.* The agency must provide feedback to participants and interested parties concerning the outcome of the public's involvement. Feedback may be in the form of personal letters or phone calls, if the number of participants is small. Alternatively, the agency may mail a Responsiveness Summary to those on the contact list, or may publish it.

a. *Content.* The feedback that the agency gives must include a statement of the action that was taken, and must indicate the effect the public's comments had on that action.

b. *Availability.* Agency officials must take the initiative in giving appropriate feedback, and must assure that all public participants in a particular activity are provided that feedback. As Responsiveness Summaries are prepared, their availability should be announced to the public. When regulations are developed, reprints of

preambles and final regulations must be provided to all who commented.

E. Work Plans

A work plan is a written document used for planning a public participation program. It may be an element of regulatory development plans or program plans. Each work plan should include the following elements: objectives, schedules, techniques, audiences and resources requirements. Work plans should be completed on both a program and project level or for each activity identified under Scope of the Policy.

Public participation work plans, undertaken by EPA or by applicants for EPA financial assistance, shall set forth, at a minimum:

1. Key decisions subject to public participation;

2. Staff contacts and budget resources to be allocated to public participation;

3. Segments of the public targeted for involvement;

4. Proposed schedule for public participation activities to impact program decisions;

5. Mechanism to apply the five basic functions—Identification, Outreach, Dialogue, Assimilation, and Feedback—outlined in Section D of this Policy.

Reasonable costs of public participation incurred by assisted agencies, including advisory group expenses, and identified in an approved public participation work plan, will be eligible for financial assistance, subject to statutory or regulatory limitations.

Assistant Administrators and Regional Administrators will ensure that program work plans are developed in a timely manner for use in the annual budget planning process. Work plans will be reviewed by the Special Assistant for Public Participation, who will work with program and regional managers to ensure that work plans adequately carry out this Policy. Work plans may be used as public information documents.

F. Assistance to the Public

EPA recognizes that responsible participation by the various elements of the public in some of the highly technical and complex issues addressed by the agency requires substantial commitments of time, study, research analysis, and discussion. While the Agency needs the perspectives and ideas that citizens bring, it cannot always expect the public to contribute its efforts on a voluntary basis.

Assistant Administrators, Office Directors, and Regional Administrators can provide funds to outside organizations and individuals for public participation activities which they, as EPA managers, deem appropriate and essential for achieving program goals, and which clearly do not involve rulemaking or adjudicative activities.

Participation Funding Criteria—Any financial assistance awarded by the Agency for non-regulatory or non-adjudicatory participation should be based on the following criteria:

(1) whether the activity proposed will further the objectives of this Policy;

(2) whether the activity proposed will result in the participation of interests not adequately represented;

(3) whether the applicant does not otherwise have adequate resources to participate; and

(4) whether the applicant is qualified to accomplish the work.

These are the primary tests for public participation financial assistance. From among those who meet these tests, the Agency will make special efforts to provide assistance to groups who may have had fewer opportunities or insufficient resources to participate.

G. Authority and Responsibility

Public participation has an integral part in the accomplishment of any program. It should routinely be included in decision-making and not be treated as an independent function. Managers shall assure that personnel are properly trained, and that funding needs are incorporated in their specific budgets.

Responsibility and accountability for the adequacy of public participation programs belongs primarily to the Regional Administrators and the Assistant Administrators, under the overall direction of the Administrator.

1. *The Administrator* maintains overall direction and responsibility for the Agency's public participation activities. Specifically, the Administrator, aided by the Special Assistant for Public Participation, will:

(a) establish policy direction and guidance for all EPA public participation programs;

(b) review public participation program work plans, including resource allocations;

(c) coordinate public participation funding to outside groups to ensure the most economical expenditures;

(d) provide technical advice and assistance as appropriate;

(e) develop guidance and training needed to ensure that program personnel are equipped to implement the Policy;

(f) provide incentives to agency personnel to ensure commitment and competence; and

(g) evaluate at least annually the adequacy of public participation activities conducted under this Policy, and the appropriateness and results of public participation expenditures.

2. *Assistant Administrators* have the following responsibilities:

(a) identify and address those activities where application of this Policy is required;

(b) identify and address those forthcoming major policy decisions where the Policy should be applied;

(c) ensure that program work plans are developed annually to provide for adequate public participation in the above decisions and activities;

(d) implement approved work plans for public information and public participation activities;

(e) ensure that, as regulations for the programs cited in the Appendix of the Policy are amended, they incorporate the Policy's provisions;

(f) evaluate the appropriateness of public participation expenditures and activities under their jurisdiction, revising and improving them as necessary;

(g) encourage coordination of public participation activities;

(h) provide guidance and assistance to support regional office activities;

(i) seek public participation in decisions to modify or develop major national policies, at their discretion;

(j) consider funding authorized pilot and/or innovative demonstration projects;

(k) consider measures to ensure Policy implementation in appropriate managers' performance standards;

(l) provide financial assistance, as appropriate and available, for authorized public participation activities at the national level.

3. *Regional Administrators* have the following responsibilities:

(a) identify and address those EPA and EPA-assisted activities where application of this Policy is required;

(b) identify and address those forthcoming EPA and EPA-assisted major policy decisions where the Policy should be applied;

(c) ensure that work plans are developed annually by their programs and recipients to provide for adaquate public participation in the above decisions and activities;

(d) implement approved work plans for public information and public participation activities;

(e) ensure that public participation is included by applicants in the development of program funding applications to EPA, and in other decisions as identified by this Policy;

(f) provide guidance and technical assistance to recipients on the conduct of public participation activities;

(g) evaluate annually public participation activities of State, substate, or local entities revising and improving them as necessary;

(h) encourage coordination of public participation activities;

(i) support and assist the public participation activities of Headquarters;

(j) ensure that Regional staff are trained, and resources allocated for public participation programs;

(k) incorporate measures to ensure Policy implementation in managers' performance standards;

(l) provide small grants to representative public groups for needed public participation work;

(m) evaluate the appropriateness of public participation expenditures and activities, revising and improving them as necessary.

4. *The Director, Office of Public Awareness* has an important role in the development and support of Agency public participation activities. The Director will:

(a) assist Headquarters and regional programs in identifying interested and affected members of the public in compiling project contact lists;

(b) support Headquarters and regional programs in development and distribution of outreach materials to inform and educate the public about environmental programs and issues, and participation opportunities;

(c) develop annual public awareness/participation support plans to complement public participation work plans and identify resource requirements.

H. Compliance

Assistant Administrators, Office Directors, and Regional Administrators are responsible for making certain that, for the activities under their jurisdiction, all those concerned comply with the public participation requirements set forth in this Policy.

Regional Administrators will evaluate compliance with public participation requirements in appropriate State and substate programs supported by EPA financial assistance. This will be done during the annual review of the States' program(s) which is required by grant provisions, and during any other program audit or review.

If the Regional Administrator is not satisfied that this Policy is being carried out, he or she should defer grant award until these conditions can be met where that course is legally permissable. A Regional Administrator may grant a waiver from specific requirements in this Policy upon a showing by the agency that proposed actions will result in substantially *greater* public participation than would be provided by the Policy.

The Administrator of EPA has final authority and responsibility for ensuring compliance. Citizens with information concerning apparent failures to comply with these public participation requirements should first notify the appropriate Regional Administrator or Assistant Administrator, and then if necessary, the Administrator. The Regional Administrator, Assistant Administrator, or Administrator will make certain that instances of alleged noncompliance are promptly investigated and that corrective action is taken where necessary.

Appendix—List of Citations Covering Program Grants, Delegations, or Permits to State and Substate Governments

The Public Participation Policy will be incorporated in program regulations that cover financial assistance or delegations of authority to State or substate governments or approval of State programs. Where consolidated awards exist under these provisions, they also will be covered. Programs under the Clean Water Act, Safe Drinking Water Act, and the Resource Conservation Recovery Act are already covered by this Policy insofar as they have been amended, or will be amended, to incorporate 40 CFR, Part, 25. Consolidated permit programs are covered by 40 CFR, Parts 122, 123, and 124. Regulations that refer to existing programs now covered by the Policy will have to be amended to incorporate its provisions. Where program regulations are not yet written, the Policy shall be incorporated.

Clean Air Act (Pub. L. 95-95)

Air Pollution Control Program Grants

Sec. 105—Grants to State and local air pollution control agencies for support of air pollution planning and control programs. (Catalogue of Federal Domestic Assistance No. 66.001.)

Sec. 106—Grants to interstate air quality agencies and commissions to develop implementation plans for interstate air quality control regions. [When funded].

Urban Mass Transportation Technical Studies Grants (DOT)

Sec. 175—Grants to organizations of local elected officials with transportation or air quality maintenance responsibilities for air quality maintenance planning. (CFDA No. 20.505.)

Sec. 210—Grants to State agencies for developing and maintaining effective vehicle emission devices and systems inspection and emission testing and control programs. [When funded].

Quiet Communities Act (Pub. L. 95-609)

Quiet Communities—State and Local Capacity Building Assistance

Sec. 14(c)—Grants to State and substate governments and regional planning agencies for planning, developing, evaluating, and demonstrating techniques for quiet communities. (CFDA No. 66.031.)

Toxic Substances Control Act (Pub. L. 94-469)

State Toxic Substances Control Projects

Sec. 28—Grants to State for establishing and operating programs to complete EPA efforts in preventing or eliminating risks to health or environment from chemicals. (CFDA No. 66.800.)

Federal Insecticide, Fungicide and Rodenticide Act (Pub. L. 95-396)

Pesticides Enforcement Program Grants

Sec. 23(a)—Funding to States/Indian tribes through cooperative agreements for enforcement and applicator training and certification. (CFDA No. 66.700.)

Resource Conservation and Recovery Act (Pub. L. 94-580)

Sec. 3005(a)—Issuance of permits for treatment, storage and disposal of hazardous waste.

Sec. 3006—Delegation of authority to administer and enforce hazardous waste program.

Sec. 4002—State Planning Guidelines.

Solid and Hazardous Waste Management Program Support Grants

Sec. 4007—Approval for State, local, and regional authorities to implement State or Regional Solid Waste Plans and be eligible for Federal assistance. (CFDA No. 66.451.)

Sec. 4008—Grants to State and substate agencies for solid waste management, resource recovery and conservation, and hazardous waste management. (CFDA No. 66.451.)

Sec. 4009—Grants to States for rural areas solid waste management facilities. (CFDA No. 66.451.)

Solid Waste Management Demonstration Grants

Sec. 8006—Grants to State, municipal, interstate or intermunicipal agency for resource recovery systems or improved solid waste disposal facilities. (CFDA No. 66.452.)

Solid Waste Management Training Grants

Sec. 7007—Grants or contracts for States, interstate agency, municipality and other organizations for training personnel in occupations related to solid waste management and resource recovery. (CFDA No. 66.453.)

Safe Drinking Water Act (Pub. L. 95-190)

Sec. 1421(b)—Issuance of permits for underground injection control programs.

State Public Water System Supervision Program Grants

Sec. 1443(a)—Grants to States for public water system supervison. (CFDA #66.432.)

State Underground Water Source Protection—Program Grants

Sec. 1443(b)—Grants to States for underground water source protection programs. (CFDA #66.433.)

Clean Water Act (Pub. L. 95-217)

Construction Grants for Wastewater Treatment Works

Sec. 201—Grants to State, municipality, or intermunicipal agencies for construction of

wastewater treatment works. (CFDA #66.418.)

Water Pollution Control—State and Interstate Program Grants

Sec. 106—Grants to State and interstate agencies for water pollution control administration. (CFDA #66.419.)

Water Pollution Control—State and Areawide Water Quality Management Planning Agency

Sec. 205(g)—Delegation of management of construction grants programs to State designated agency(ies). (CFDA #66.438.)

Sec. 208—Grants for State and areawide waste treatment management planning. (CFDA# 66.426.)

Water Pollution Control—Lake Restoration Demonstration Grants

Sec. 314—Clean Lakes Program.

Sec. 402(a)—Issuance of permits under National Pollutant Discharge Elimination System.

Sec. 404—Issuance of permits for disposal of dredge and fill materials.

Pub. L. 94–580, Sections 3005 & 3006;
Pub. L. 95–190, Sections 1421–1423;
Pub. L. 95–217, Section 402;
Pub. L. 95–217, Section 404;
Pub. L. 95–95, Section 165;
Proposed consolidated permit regulations, covering: Hazardous Waste Program under RCRA; UIC Program under SDWA, NPDES and Section 404 of the Clean Water Act, and the PSD Program under the Clean Air Act.

[FR Doc. 81–1934 Filed 1–16–81; 8:45 am]

BILLING CODE 6560–36–M

federal register

Monday
January 19, 1981

Part XXXIII

Department of Transportation

Federal Aviation Administration

Energy Conservation in the National Aviation System

DEPARTMENT OF TRANSPORTATION

Aviation Energy Conservation Policy

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final policy.

SUMMARY: The purose of this notice is to set forth the final policy of the Federal Aviation Administration with respect to energy conservation in the National Aviation System. The policy represents a comprehensive plan requiring the support of the Federal Government, aircraft owners and pilots, airport operators, and aeronautical manufacturers and suppliers. The policy consists of commitments on the part of the FAA to take specific actions while at the same time it addresses complementary actions needed by non-FAA groups to maximize aviation energy conservation.

DATE: This policy becomes effective January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia T. Zook, Energy Division (AEE–200), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; telephone (202) 426–8724.

SUPPLEMENTARY INFORMATION:

Background. The FAA issued a Notice of Proposed Policy in the September 22, 1980, **Federal Register** which made available for public comment a draft Aviation Energy Conservation Policy. The policy included a statement of the energy problem facing aviation, a brief discussion of authorities and responsibilities of the various "actors" in the National Aviation System, and a description of the Federal action plan which included 31 actions grouped into the following five program areas:

- Air Traffic Control (ATC)/Flight Operations Programs
- Upgraded ATC Systems and Procedures
- Airport Program
- Aircraft Technology Program
- Internal FAA Program

Several changes were made in the final policy as a result of further review and consideration of public comments. This section will outline the significant changes incorporated into the final policy, and the next section will address the major comments and FAA responses.

The policy document was reformatted to move the chapter entitled "Statement of the Energy Problem" to an appendix. This chapter primarily contains information about energy trends rather than policy responsibilities or actions.

The section entitled "Contribution of Air Transportation" in the appendix was modified to include the grounding of fuel-inefficient aircraft and airline purchase of more fuel-efficient aircraft as a major factor contributing to the overall increase in air carrier fuel efficiency. In the "Alternative Fuels Development" portion of the appendix, a sentence was added to mention that the Air Force could be using shale oil jet fuel in the net few years. Also, the discusssion of the hydrogen process was revised to indicated that the manufacturing process now consumes twice (not three times) as much fuel as is produced in the form of fuel.

The chapter on "Authorities and Responsibilities" was expanded to include FAA authority under Executive Order 12185 which provides for energy conservation in the FAA's financial assistance programs. In addition, the section concerning aircraft operators was modified slightly to clarify that the responsibilities listed are for the purpose of conserving energy not to comply with FAA regulations.

The introduction of the chapter entitled "Federal Action Plan" was revised to delete item (a) under the second policy principle which had stated that "The FAA will act to insure aviation's equitable share of energy, by (a) Emphasizing to the public and responsible governmental agencies the importance of aviation to society and aviation's dependence on petroleum-based fuels,..." Item (a) could be construed as promoting aviation for its own sake and not in the public interest. The two remaining items will achieve the same objective by supporting both an efficient allocation of existing petroleum fuels and the development of future aviation fuels. A paragraph was added to the introduction of this chapter to emphasize that the policy commits the FAA to the improvement of the operating environment to "encourage and promote" the use of FAA programs by system users. The policy states that the FAA prefers voluntary cooperative action with industry rather than the regulatory approach to energy conservation. The policy now states that although many of the programs described in the final document have already been jmplemented to some degree, they are included for the sake of comprehensiveness.

The description of several programs under the Federal Action Plan were revised to emphasize the FAA's commitment to improve the ATC system rather than simply putting the full responsibility on users to accept FAA programs. Quantitative examples of fuel savings were included whenever available.

A program action entitled "Expand Local Flow Traffic Management (LFTM) Program" was added to the ATC/Flight Operations Program to state the FAA's commitment to this ongoing program which minimizes arrival fuel burn.

A paragraph was added to the section on "Effective Use of Airspace" to note the FAA's support of advanced navigation systems and flight management systems. In addition, the paragraph concerning airspace separation goals was modified to clarify that composite separation rules and reduced lateral separation criteria are for oceanic procedures, and reduced vertical separation above flight level (FL) 290 involves both domestic and international airspace.

The section on simulators was revised to clarify that although the existing rule applies only to Part 121 certificate holders, the FAA is considering ways to provide for increased utilization of approved simulators for Part 135 certificate holders and the general aviation community.

The sentence in the section on aircraft maintenance which stated that the FAA would propose alternative procedures to conserve energy was deleted. The aviation industry is taking the lead in this regard, and FAA actions will focus on educating and promoting the use of these procedures; FAA regulations would not provide any additional benefit.

A paragraph was added to the section on training programs for controllers/pilots to mention that in accordance with Executive Order 12185 information will be made available to Aircraft Loan Guarantee Program applicants to encourage them to operate their aircraft in the most fuel-efficient manner. The policy makes it clear, however, that the decision to purchase one aircraft versus another will remain the responsibility of the carrier.

The discussion of the National/Dulles ground operating plan was modified to clarify that the plan will serve as an illustration (not a model) to other airport proprietors of the benefits that may be achieved by similar planning efforts at their own airports.

The section concerning educational programs for airport operators was reworded to clarify that such programs will be developed in consonance with the overall energy conservation effort in the National Aviation System. The programs will emphasize energy-efficient operation of the Nation's airports.

A paragraph was added to the discussion of new technology aircraft

and engines to suppoort the development of avionics as an additional means of conserving fuel.

The section entitled "Develop Fuel-Efficiency Goals for New Aircraft and Engines" was deleted in the final policy. The FAA intended to promote not mandate these goals; however, after consideration of the comments received, we believe such goals would not contribute meaningfully to further increases in fuel efficiency. Further increases in fuel efficiency will require new technology, and the rising price of fuel is providing more then enough incentive for airlines and manufacturers to continue work in this area.

Finally, the summary chart of all the actions has been expanded to show the status of each action, i.e., whether the program is a new initiative, in the development stage, or an ongoing program.

Other minor editorial changes were made where appropriate.

Comments. Several comments were filed in response to the proposed aviation energy conservation policy. The comments indicated widespread support for the concept of energy conservation and the policy in general, but a few comments expressed concern about specific program actions. Following is a summary of the FAA's response to the significant comments filed.

FAA Role. One commenter stated that the FAA's role as the ATC system operator is not defined in the chapter on "Authorities and Responsibilities." On the contrary, the opening paragraph under "The Federal Government" section describes FAA responsibilities in this regard.

Aircraft Operator Responsibilities. One commenter questioned the wording of the section on aircraft operator's authorities and responsibilities as possibly meaning that the operators are responsible to the FAA for the items listed. There is no intention to require the operators to be responsible to the FAA for the items mentioned; the policy was modified to indicate that *for the purpose of conserving energy,* aircraft operators have responsibilities to do their part.

Policy Emphasis. One commenter suggested that the draft policy placed too much emphasis on industry initiatives and too little emphasis on FAA actions. Several modifications were made in the final policy to clarify that for the most part, the policy commits the FAA to the improvement of the operating environment to encourage and promote the use of fuel efficient procedures and programs by aviation system users.

Program Status. One commenter suggested that a definitive schedule for implementing FAA actions be included in the policy. The document is intended to be a policy statement rather than just an action plan. Because schedules are likely to change due to various factors, an implementation timetable is inappropriate for a policy document. However, the document has been modified to include the status of each action (i.e., whether the program is a new initiative, in the development stage, or an ongoing program). Furthermore, for those actions which are ongoing and which will result in a tangible product, an estimated time of completion was added. Another commenter noted that many of the industry initiatives have already been implemented. It is true that several of the policy actions have been implemented to some degree by the FAA or the industry as indicated by the "ongoing program" status in the summary table; they are included in the policy document for the purpose of restating in one comprehensive document the FAA's support of such efforts.

Safety. One commenter noted that energy conservation actions must be predicated on the constraints of safety and the airport geographic and geometric limitations. The FAA concurs, and with regard to the safety issue, the introduction of the Federal Action Plan chapter now states that safety and system efficiency are of primary importance.

Noise Abatement Procedures. To assure that the benefits derived from established and proposed noise abatement procedures are not sacrificed in the interest of fuel conservation, one commenter recommended that the FAA require an environmental impact analysis prior to altering noise abatement procedures. The FAA already requires an environmental assessment for new or revised air traffic control procedures which routinely route air traffic over noise sensitive areas at less than 3,000 feet above the surface.

Local Flow Traffic Management (LFTM) Program. One commenter recommended adding the LFTM program to the list of policy actions. The FAA concurs, and the policy was expanded accordingly.

Fuel-Efficient Altitudes/Speeds. One commenter recommended that the FAA make fuel-efficient altitudes more readily available and consider reduced altitude separation above flight level (FL) 290. The policy provides for both the assignment of fuel-efficient altitudes and the consideration of reduced vertical separation above FL 290. The commenter also noted that there are both safety and economic reasons why a flight may operate off its minimum fuel speed and/or altitude. The FAA recognizes this fact and encourages the use of fuel-efficient procedures, but will not mandate altitudes/speeds at this time.

Effective Use of the Airspace. One commenter correctly pointed out that composite separation and reduced lateral separation are options which are being employed in oceanic operations, and reduced vertical separation above FL 290 is a valid objective for both domestic and international airspace. The final policy clarifies these points.

Tankering. One commenter recommended that the section on tankering be eliminated because there is no role for the FAA in this area. Although air carriers have the primary responsibility in this regard, the FAA can and does emphasize to carriers the fuel inefficiencies which result from tankering. Once again this action is included for the sake of stating in one document FAA's position with regard to tankering.

Aircraft Maintenance. One commenter recommended deletion of the sentence that stated that the FAA would propose alternative maintenance procedures necessary for safety which would also conserve energy. The commenter argued that such action is unnecessary because operators are already motivated to adopt the most fuel-efficient alternatives. Furthermore, alternative procedures have a cost element influenced by factors known only to the operator. The FAA believes that there is no benefit to be derived from alternative FAA regulations, and the sentence in question was deleted from the final policy.

Energy Models. One commenter stated that aircraft manufacturers should have the opportunity to comment on and participate in the development of fuel optimization models and associated data bases. The FAA fully agrees with this statement and believes that industry input is essential to the development of its energy modeling efforts. The FAA continues to coordinate with the aviation community regarding both the development and utilization of its energy models.

Another commenter noted the redundancy of the sections concerning energy models for optimum flight planning and for FAA energy assessments. The policy was revised to delete the redundant section, however, references to energy models remain in two separate areas. The first concerns a model for use by general aviation pilots; the second model will be used by the

FAA for analysis of agency procedures, etc.

Aircraft Loan Guarantee Program (ALGP). Several commenters objected to using the FAA Aircraft Loan Guarantee Progam to dictate equipment choice based on fuel consumption. The commenters agreed that airline selection of new aircraft is a function of the overall economics, not just fuel efficiency. Executive Order 12185: Conservation of Petroleum and Natural Gas requires Federal agencies which administer programs of financial assistance to take actions which maximize the efficient use of energy and conserve natural gas and petroleum in programs funded by those agencies. Accordingly, the FAA will provide information to ALGP applicants which encourages carriers to plan and operate their aircraft in a fuel-efficient manner. The FAA never intended to dictate the choice of aircraft which a carrier must purchase, and the final policy has been modified to state clearly that aircraft choice is and will remain the responsibility of each carrier.

Improved ATC System. Several commenters supported the FAA's actions to improve the efficiency of the ATC System. One commenter suggested that the FAA: (1) present sub-items 1, 2 and 3 under the Integrated Flow Management (IFM) program as objectives not accomplishments; (2) evaluate the fuel conservation potential of the six programs such as the Microwave Landing System (MLS) without endorsing them based solely on energy considerations; and (3) place greater emphasis on designing fuel-efficient departure and arrival routes and profiles. The FAA concurs with these points, and the policy was revised accordingly.

Severe Weather Avoidance System. One commenter recommended that the FAA develop a more accurate system to detect and disseminate information on severe weather. The FAA concurs as indicated by the statement in the policy supporting development of improved weather radar systems in the section on upgraded ATC systems.

Airport Ground Operating Plan. One commenter suggested that the FAA energy-efficient ground operating plan for Dulles and National should not be considered a "model" for other airports because there may be unique features at these two Federally-run airports which would not be applicable to other airports, and vice versa. The final policy was revised to clarify the FAA's intention that the operating plan will serve as an illustration to other airport proprietors of the benefits that may be achieved by similar planning efforts at their own airports.

Quotas and Slot Allocations. One commenter suggested that the FAA consider incentive programs, quotas, etc. only after FAA has taken all appropriate steps to improve the efficiency of the ATC system and reduce delays through other means. The policy already states the FAA's commitment to improving the ATC system and such allocation mechanisms will be evaluated as an additional means to reduce delay.

Another commenter suggested expanding FAR Part 93 to include a mechanism for enforcement of quotas and slot allocations at high-density airports for the purpose of assuring that the established quotas and allocations are not exceeding. FAR Part 93 states that specific quotas may be exceeded in accordance with FAR 93.129 (whenever additional aircraft may be accommodated without significant additional delay to the operations allocated for the airport) or as otherwise authorized by ATC. Controllers are concerned with the safe and expeditious handling of the aircraft operating within their areas of jurisdiction. They usually have little or no interest in the number of operations during the hour or whether or not a particular aircraft has an airport reservation. Decisions to hold or vector aircraft are based upon the air traffic or airport conditions at the moment. Any attempt to restrict hourly operations to a specific number would generate overwhelming administrative and procedural problems.

Aircraft Towing. One commenter recommended deletion of the actions regarding aircraft towing because of the unresolved problems and shortcomings. There may be substantial fuel savings from aircraft towing, and the FAA believes that further study is warranted before the option is discarded. Therefore, the final policy retains the option to continue evaluation of aircraft towing.

Energy Conservation Educational Programs for Airport Operators. One commenter objected to the sentence which discussed the airport operators' ability to use pricing policies to "smooth" peak demand periods and influence aircraft operators' fuel efficiency. The commenter argued that this would be a duplication of (or contrary to) ATC improvements or the slot allocations already mentioned. The commenter argued that educational programs should focus on energy efficient operation of airports. The FAA concurs with the last statement and the policy was revised to indicate that educational programs will emphasize energy-efficient operations and will be part of the overall energy conservation effort in the National Aviation System. However, the policy also states that the educational program may include treatment of the airport operator's ability to influence aircraft operators' fuel efficiency via pricing policies. Such policies would be in addition to ATC system improvements and supportive/consistent with slot allocations, etc.

Fuel Efficiency Goals. Several commenters objected to the establishment of fuel efficiency goals as being unnecessary, confusing, and possibly counterproductive. Rising fuel costs provide more than enough incentive to airlines and manufacturers to improve the fuel efficiency of aircraft and engines. One commenter noted that unlike the auto industry where fuel-efficiency goals may be met in large part with non-technical changes (e.g., downsizing the car and reducing capacity), further fuel efficency gains in the commercial aircraft industry will require technological improvements which cannot be mandated. Although the fuel efficiency goals were never intended to be mandatory targets, the FAA agrees that even voluntary goals are unnecessary. The section on fuel efficiency goals is deleted in the final policy.

Avionics. One commenter suggested that the Integrated Flow Management (IFM) program consider the airborne flight management system (FMS) as part of the total control system. In addition, the commenter recommended expanding the aircraft and engine technology section to include avionics. The FAA concurs, and the final policy specifically addresses avionics as a means of achieving further increases in fuel efficiency.

Air Carrier Fuel Efficiency. One commenter noted that while fuel efficiency of cargo operations is best expressed in ton-miles per gallon, available seat miles (ASM) per gallon would be better for passenger operations. The FAA believes that ASM is not as meaningful because simply flying more seats is not necessarily more efficient; ASM ignores load factors. Passenger miles per gallon would be useful because it accounts for load factors, however, it tracks very closely with ton-miles per gallon; ton-miles has the additional benefit of accounting for cargo as well as passengers.

Another commenter noted that the voluntary grounding of fuel-in-efficient aircraft and airline investment in more fuel-efficient aircraft contributed significantly to increases in air carrier fuel efficiency. The policy has been modified to include this point.

Aviation Fuel Supply Conditions. One commenter noted that the Department of Energy (DOE) fuel allocation system broke down more as a result of airline efforts to dismantle the system than as a result of the Airline Deregulation Act. Regardless of whether the airlines contributed to the breakdown of the DOE allocation system, airline deregulation became "the straw that broke the camel's back" by illuminating the problems with the existing system. The policy statement was not modified concerning this point.

The commenter also objected to the policy assertion that the impact of disclocations resulting in shortages of petroleum products is not more severe for users of aviation fuels than for any other sector of the economy. The commenter argued that ground transportation vehicles have more options than are available to aircraft operators. This reference in the policy concerns short-term supply disruptions. Historically, petroleum shortages have resulted in across-the-board decreases in consumption and except for the 1973–1974 oil embargo the grounding of flights has been rare. The policy clearly states, however, that unlike some other users, aviation is completely dependent on petroleum-based fuels. The FAA therefore supports the policy of insuring an equitable share of petroleum for aviation and other users who do not have any near-term alternatives.

Aviation's Share of Energy. Several commenters supported the FAA's policy to insure aviation's equitable share of energy. One commenter recommended that FAA work with DOE to insure "the highest standby petroleum product allocation for both air transportation and aircraft manufacturing." The final policy states that, ". . . the FAA has no authority to directly regulate the supply or allocation of aviation fuels. . . . Nevertheless, the FAA is routinely involved with the Department of Energy, the International Civil Aviation Organization and other domestic and international agencies regarding actions which impact the supply of aviation fuel . . . " The actions described in the policy are intended to insure a *fair* share of petroleum for aviation in line with national objectives.

Fuel Advisory Departure (FAD) Procedures. One commenter noted that FAD should be implemented at airports with severe delay. The policy states that FAD or similar procedures will be developed in cooperation with industry for other delay-prone airports as it becomes feasible and necessary.

Another commenter noted that FAD should be expanded only after full coordination and that the FAA should assess the performance of the system. The policy reflects both of these points.

Inflight Computers. One commenter suggested that this section be revised to indicate that the ATC system will be evaluated to find ways in which it can accommodate the improved flight operations desired by the operator equipped with the airborne computers. The FAA concurs, and the policy was modified accordingly.

Alternative Fuels Development. One commenter recommended that the discussion of hydrogen manufacturing processes be modified to reflect the potential of updated processes. The policy was revised to state that the hydrogen manufacturing process would consume about twice (instead of three times) as much energy as is delivered in the form of fuel.

Another commenter noted that the Air Force could be using shale oil jet fuel in limited quantities in about two years. The policy was revised to include this point.

Final Policy: In consideration of the foregoing, the following Aviation Energy Conservation Policy is adopted by the DOT/FAA.

DEPARTMENT OF TRANSPORTATION, UNITED STATES OF AMERICA

Aviation Energy Conservation Policy—Office of the Secretary, Federal Aviation Administration, January 19, 1981

Executive Summary

The October 1973 international oil embargo and ensuing events have highlighted the problem of a decreasing petroleum supply in the United States. Aviation is totally dependent upon petroleum, and the price and availability of petroleum products are primary concerns to the fuel-intensive aviation industry.

The Federal Aviation Administration (FAA), in conjunction with the aviation industry, has been actively engaged in developing and implementing programs to conserve aviation fuel since long before the 1973 oil embargo. As a result, aviation fuel efficiency has increased significantly since that time. Despite the improvements already achieved, the need for aviation energy conservation is as great, or greater, today than it was a few years ago. This is especially true because there are no economically viable alternatives to petroleum-based aviation fuels in the near term. As a result, the FAA will promote aviation energy conservation in both the present and future operation of the National Aviation System, and the FAA will act to insure aviation's equitable share of energy.

A comprehensive aviation energy policy will require concerted efforts by all of the "actors" in the National Aviation System including the Federal Government, aircraft operators, airport proprietors, and aeronautical manufacturers and suppliers.

The action plan spelled out in this document consists of 31 actions grouped into the following five program areas:

- Air Traffic Control (ATC)/Flight Operations Program
- Upgraded ATC Systems and Procedures
- Airport Program
- Aircraft Technology Program
- Internal FAA Program

The FAA is responsible for promoting and encouraging fuel conservation by aviation system users and providing a safe, efficient environment within which fuel conservation techniques may be practiced by those users. In this regard, actions in the first program area focus on improving the operating environment through cooperative efforts by ATC controllers and aircraft operators. These include providing/using fuel-efficient speeds, altitudes, maintenance, taxiing, training procedures, etc. to reduce fuel consumption.

The second program area contains research and development efforts and upgraded systems which increase the capacity of the airport and airway system, reduce delay, and improve airspace efficiency. Most of these systems will enhance safety, noise reduction and other FAA goals as well as promote energy efficiency.

The Airport Program includes actions which provide for energy conservation in the design, construction, and operation of airports as well as actions which increase system capacity and reduce airport delay. Airport proprietors benefit from the first kind of actions, and users of the airport and airway system benefit from the latter group.

The primary responsibility for the actions under the Aircraft Technology Program rests with the aeronautical manufacturers and Federal agencies other than the FAA. However, the FAA supports these developments and must insure that future ATC system designs are compatible with new technology aircraft and vice versa.

Finally, the Internal FAA Program includes actions to conserve energy in FAA operations, and to assess the energy impact of FAA programs and procedures on aviation system users.

Taken together these programs provide a meaningful blueprint through which energy savings may be achieved in the National Aviation System.

Table of Contents

Executive Summary
I. Introduction
II. Authorities and Responsibilities
  Federal Government
  Aircraft Operators
  Airport Proprietors
  Aeronautical Manufacturers and Suppliers
III. Federal Action Plan
  ATC/Flight Operations Program
  Upgraded ATC Systems and Procedures
  Airport Program
  Aircraft Technology Program
  Internal FAA Program
  Summary of Federal Action Plan
Appendix: Statement of the Energy Problem
  National Energy Perspective
  Aviation fuel Perspective
  Forecast of Aviation Activity
  Contribution of Air Transportation
  Aviation Fuel Supply Conditions
  Alternative Fuels Development

I. Introduction

Over the past 25 years, U.S energy consumption has more than doubled. During this period, transportation has consistently accounted for about 25 percent of total U.S. energy consumption. Transportation presently uses 53 percent of the petroleum consumed in the United States.

Total civil aviation consumes about 8 percent of the transportation share of petroleum use or 4 percent of total U.S. petroleum. All aviation energy is supplied by petroleum fuels at the present time. Research is being done to develop alternative fuels, however, alternate fuels for aviation do not appear to be economically feasible or available in large quantities in the near term. During the past ten years, the energy consumption of commercial aviation increased 25 percent. In the next ten years, fuel requirements for air transportation are expected to rise another 25 percent.

The October 1973 oil embargo by the Organization of Petroleum Exporting Countries (OPEC) and ensuing events have highlighted the problem of a decreasing petroleum supply. The price and availability of petroleum products are primary concerns to the fuel-intensive aviation industry especially the commercial air carrier sector. Air carrier fuel consumption increased 4.7 percent between 1973 and 1979; fuel prices rose 331 percent during the same period. Fuel costs account for 30 percent of operating costs in the aviation industry. Thus, the continuing development of fuel-efficient aircraft and air traffic control operating techniques and technological improvements to aircraft and the air traffic control system are of paramount importance to the health of the industry.

The Federal Aviation Administration (FAA) has long recognized the need for energy conservation in aviation, and FAA energy conservation efforts predate the OPEC embargo. In March 1972, the need for energy efficient aircraft was stressed in the FAA's National Aviation System Policy Summary. The FAA Administrator followed up by calling a Consultative Planning Conference entitled "The Energy Outlook for Aviation" which convened in October 1973.

As a result of prior planning, the aviation community was able to respond immediately when the OPEC embargo was announced on October 19, 1973. The FAA implemented a seven-point jet fuel conservation plan on November 20, which was designed to save almost 4 percent of the total amount of jet fuel consumed by the domestic airlines. The FAA, working closely with the aviation industry, has continued to pursue a dedicated program to conserve fuel in the operation of the Nation's airport and airway system.

The Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, signed by the President on December 22, 1975, was designed to promote energy conservation in all national sectors. One of the mandates of the *EPCA* was a 10 percent improvement in energy conservation over 1972 preembargo levels. As a result of the prior commitment of the FAA and the aviation community to energy conservation, domestic commercial aviation fuel efficiency, measured in Revenue Ton-Miles Per Gallon (RTM/G), had already improved 16 percent when the *EPCA* became law. This trend has continued as evidenced by the 35 percent increase in RTM/G from 1972 to 1979.

Despite the improvements already achieved, the need for aviation energy conservation is as great, or greater, today than it was a few years ago. The Department of Transportation is responsible for promoting the most efficient means of transporting people and goods be it by air, rail, ship, or highway. Consistent with the Departmental mission, the FAA is committed to the development of the most efficient aviation system possible, both to contribute to the national goal of saving energy and to provide efficient and competitive service. Therefore, the FAA has developed a comprehensive policy on aviation energy which includes a list of options which are directly within the purview of the Federal Government. Additionally, this document spells out specific actions which should be pursued by the aviation industry including the air carriers and general aviation, airport proprietors, and aeronautical manufacturers and suppliers. The full benefit of a Federal plan of action will be realized only when complementary action is taken by all participants.

The next section of this document, Chapter II, briefly outlines the authorites and responsibilities of the various "actors" in the National Aviation System. Chapter III describes the Federal action plan in detail ending with a summary table of all the programs. The Appendix provides in greater detail an understanding of the energy problem facing aviation including an overview of historical, current, and future trends of U.S. energy consumption with particular emphasis on the U.S. civil aviation industry. In addition, the importance of aviation to the national economy, the prospects for the aviation fuel supply, and the feasibility of using alternate fuels for aviation are discussed.

President Carter in his November 8, 1977, energy message to the Nation, stated, "This energy plan is a good insurance policy for the future, in which relatively small premiums that we pay today will protect us in the years ahead. But if we fail to act boldly today, then we will surely face a greater series of crises tomorrow—energy shortages, environmental damage, even more massive government bureaucracy and regulations, and ill-considered last-minute crash programs." The President was talking specifically about his energy plan for the Nation, however, his comments also pertain to energy conservation programs within the National Aviation System. This document is intended to be an insurance policy which will contribute to the health and viability of the U.S. air transportation system.

II. Authorities and Responsibilities

The Federal Government is responsible for promoting and encouraging fuel conservation by aviation system users and providing a safe, efficient environment within which fuel conservation techniques may be practiced by those users. This responsibility belongs primarily to the Federal Aviation Administration which installs, operates, and maintains the components of the National Airspace System and ensures the safe and expeditious flow of air traffic through the system. The FAA has the authority to regulate the safety of aircraft operating procedures, revise and expand the air traffic control system, provide

financial support through the Airprt and Airway Trust Fund to airport operators, and support the research, engineering, and development of new technology related to air traffic control systems and aircraft. In additon, the FAA operates two Federally-owned airports, Washington National and Dulles International. These reponsibilities provide a variety of opportunities for affecting aviation fuel conservation.

Existing legislation gives the Secretary of Transportation and the FAA Administator discretionary authority to issue certain kinds of rules and regulations in forms that may conserve fuel and other resources. However, the FAA has no specific authority to directly regulate the production, allocation or consumption of fuel at this time. For example, Section 103 of the Fedral Aviation Act of 1958 empowers and directs the Secretary and the Administrator to regulate civil and military operators in the interest of safety and efficiency, and Section 307(a) explicitly mandates the development of plans and the formation of policy to insure the efficient use of navigable airspace. In certain cases, the attainment of efficiency objectives may result in substantial fuel savings.

The Department of Transportation Act in Section 2(a) describes the policy objective as the development of national transportation programs conducive to efficient and convenient transportation consistent with "the efficient utilization and conservation of the Nation's resources." Additionally, the National Environmental Policy Act in Sections 101(b)(5) and 105 authorizes every Federal agency to develop and improve its programs so as to "achieve a balance between population and resource use."

Executive Order 12185, Conservation of Petroleum and Natural Gas, which implements section 403(b) of the Powerplant and Industrial Fuel Use Act of 1979 requires Federal agencies which administer programs of financial assistance to take actions which maximize the efficient use of energy and conserve natural gas and petroleum in programs funded by those agencies. In this regard, DOT/FAA has the authority to encourage energy conservation in the Airport Development Aid Program (ADAP)[1] and the Aircraft Loan Guarantee Program, both administered by the FAA.

Beyond these legislative mandates, the President's energy message of June 29, 1973, directed all departments and agencies to work closely with the Energy Office to develop long-term conservation plans. The Secretary of Transportation was specifically directed to work with the FAA, the Nation's airlines, and the Civil Aeronautics Board to conserve fuel. Furthermore, the mandated role of the FAA in aviation energy conservation policymaking is consistent with the current Administration's emphasis on energy conservation, and it requires the FAA to provide leadership in a national effort to reduce aviation fuel consumption and improve aviation energy efficiency.

Other agencies which impact aviation system users include the Department of Energy (DOE), the Civil Aeronautics Board (CAB), the National Aeronautics and Space Administration (NASA), the Department of Defense (DOD), the Federal Highway Administration (FHWA), and the Urban Mass Transportation Administration (UMTA). The latter two agencies are interested in the promotion of energy-efficient landside access to airports.

Prior to the Airline Deregulation Act of 1978, the CAB regulated fares and route structures for the air carrier industry. Load factors and route structures can have a significant impact on an airline's energy efficiency. Although airline deregulation has granted the carriers greater flexibility in setting fares and selecting routes, the CAB still retains some regulatory authority in these areas. The evidence thus far seems to indicate that airline deregulation is conducive to air carrier fuel conservation since the 1979 level of fuel efficiency (RTM/G) has continued to rise under that system. Deregulation allows air carriers to rationalize their route structures and to employ their aircraft fleet more efficiently.

NASA, in cooperation with industry, is primarily responsible for Federally-funded research in the development of alternative aviation fuels and new technology aircraft, aircraft systems, and engines. Because of the significant progress already achieved from improved operating procedures, new technology aircraft engines will provide the greatest potential for further gains in aviation energy efficiency. DOD is also working in the area of alternative aviation fuels especially with regard to military jet aircraft.

Aircraft Operators, including the air carriers and general aviation, are the primary users of the airport and airway system. For purposes of conserving energy, their responsibilities include the efficient utilization of existing aircraft and fuel resources through effective scheduling, optimum flight planning, and use of safe fuel-conserving operating procedures. Furthermore, as soon as it becomes economically feasible, aircraft operators and management should replace older, fuel-inefficient aircraft with new technology aircraft which improve the overall fuel efficiency of their fleet. Rising fuel prices provide a strong incentive for all users of the system to reduce fuel consumption and to pursue self-initiated actions complementary to Federal actions in overall aviation energy conservation.

Airport Proprietors are responsible for the energy efficient design and operation of airport facilities. Airport delays result in excess fuel consumption by users of the system. Therefore, airport operators can also impact the fuel consumption of airport users by installing facilities which maintain or expand system capacity at otherwise congested airports.

Aeronautical Manufacturers and Suppliers are responsible for the research, development, and manufacture of more fuel-efficient engines, airframes, and avionics equipment. NASA studies estimate that future aircraft and aircraft engine designs could be as much as 50 percent more fuel-efficient than current high bypass ratio engines and will generate substantial fuel savings for the aviation industry when they are utilized.

III. Federal Action Plan

Department of Transportation/Federal Aviation Administration (DOT/FAA) policy supports the use of the most efficient means of transporting people and goods be it by air, rail, ship or highway. The improved efficiency of all those modes is a common objective.

Consistent with the need for an aviation energy policy and the FAA's responsibility to provide leadership in this area, this chapter describes FAA actions concerning aviation energy. The following two policy principles provide the basis for action in this regard.

1. The FAA will promote aviation energy conservation in both the present and future operation of the National Aviation System, by

(a) Supporting development and use of energy-efficient aircraft and aircraft operating techniques;

(b) Promoting the energy-efficient operation of the airport and airspace system; and

(c) Conserving energy in the design, installation and operation of FAA system facilities and aircraft.

2. The FAA will act to insure aviation's equitable share of energy, by

(a) Supporting the short-term development and use of alternative fuels in other areas whenever possible in an effort to free petroleum-based fuels for aviation, and other users, which are

[1] The authority to obligate funds under ADAP expired on September 30, 1980. However, for purposes of this policy document, it is assumed that some form of airports grant program will be enacted by the Congress in the future.

vital to the Nation and for which there are no economically viable alternatives in the near term; and

(b) Supporting longer-term R&D efforts for development of future alternative aviation energy fuels.

As stated in the previous chapter on authorities and responsibilities, the FAA has no authority to directly regulate the supply or allocation of aviation fuels. Instead, FAA actions primarily impact users of aviation fuels. As a result most of the actions discussed in this chapter implement the first policy principle which emphasizes conservation and improved efficiency rather than expanding the supply of aviation fuel. Nevertheless, the FAA is routinely involved with the Department of Energy, the International Civil Aviation Organization, and other domestic and international agencies regarding actions which impact the supply of aviation fuel consistent with the second policy principle.

The actions outlined below include a mix of voluntary, incentive, and mandatory programs to be pursued by the Federal Government as well as the aviation community. For the most part, the policy commits the FAA to the improvement of the operating environment to "encourage and promote" the use of energy conserving procedures and programs on the part of aviation system users. The FAA prefers voluntary, cooperative action with industry whenever possible rather than the regulatory approach to energy conservation. In addition, many of these actions have already been implemented to some extent by the FAA or the industry, but are included for the purpose of restating in one comprehensive document the FAA's support of such efforts.

The specific actions are grouped into the following five program areas which together result in a comprehensive energy conservation effort:

- Air Traffic Control (ATC)/Flight Operations Programs
- Upgraded ATC Systems and Procedures
- Airport Progam
- Aircraft Technology Program
- Internal FAA Program

The programs do not fall neatly within the purview of any single participant. For example, the FAA can implement many or all of the options in the ATC/Flight Operations Program, however, the success of these options depends on the extent to which aircraft operators cooperate to conserve fuel. Futhermore, the Federal Government can support measures which fall into the Aircraft Tehnology Program, but the decision to purchase new aircraft will be made by the air carriers or other aircraft operators with possible influence from Federal action. One final caveat is that as mentioned earlier, the FAA is responsible for insuring the *safe, expeditious* flow of air traffic; the energy conservation programs outlined below will, of course, be implemented only after considering, as a minimum, their impact on safety and system efficiency.

A. ATC/Flight Operations Program

The FAA is responsible for promoting and encouraging fuel conservation by aviation system users and providing a safe, efficient environment within which fuel conservation techniques may be practiced by those users. Studies suggest that the greatest source of improved aviation fuel efficiency under the direct control of the FAA is in the optimization of the airport and airway system. The aviation fuel inefficiencies resulting from system delay alone can offset many of the benefits of improved scheduling, flight planning, operations, and fleet optimization achieved by system users. The FAA recognizes this fact, and many of the following program elements describe existing and planned FAA actions which are designed to improve the efficiency of the airport and airway system. To supplement these FAA actions this program also includes actions which require the cooperative efforts of ATC controllers and aircraft operators. In some instances, tradeoffs exist between fuel conservation and noise reduction. Accordingly, FAA noise abatement initiatives and flight procedures will be implemented only after consideration of their impact on aviation energy conservation goals. Specific program elements falling under the ATC/Flight Operations Program include the following:

Refine and Expand Fuel Advisory Departure (FAD) Procedures

FAD procedures are designed primarily as a fuel savings effort during extended periods of arrival delays. FAD transfers airborne delay to ground delay (thereby saving fuel) by altering actual aircraft departure times at the departure airports consistent with acceptance rates at the arrival airport. For example, a B727 uses 19 gallons per minute in cruise, 8.3 gallons per minute on the ground (idling), and 1.7 gallons per minute at the gate (with auxiliary power unit (APU)). FAD procedures are used at Chicago and Denver, and a similar program is scheduled for the New York metropolitan area.

Aircraft operators currently elect to accept FAD and gate hold procedures when there are excessive delays in the system, however, they are not required to do so. The FAA will continue to improve the accuracy of its delay estimates under FAD in an effort to promote greater use of the system. In addition, the FAA will develop a monitoring system to assess the performance of the system at both FAD and non-FAD airports to determine the efficiency of the procedures. Similar procedures will be developed in cooperation with industry for other delay-prone airports as it becomes feasible and necessary.

Promote Gate Hold Procedures

Similar to FAD procedures, the objective of gate hold procedures is to eliminate nonproductive fuel use by holding aircraft at the airport loading gate with engines off when departure delays exceed 5 minutes. Again, a B727, holding with engines on consumes 8.3 gallons per minute versus 1.7 gallons per minute with the APU. The FAA will continue to promote the use of gate hold procedures. Programs such as gate hold procedures, which conserve aviation fuel in groundside operations, may also reduce aircraft noise and pollutants around airports.

Expand Local Flow Traffic Management (LFTM) Program

With the assistance of representatives from pilot and industry groups, the LFTM program was introduced by the FAA to minimize arrival fuel burn. The success of the LFTM program lies in the metering of traffic into the terminal environment at a specific airport acceptance rate commensurate with capacity and the maximum application of fuel efficient descents and approach procedures from cruising altitude/flight level to the approach gate. The procedure is designed to absorb any necessary delays at or beyond the metering fixes using altitudes at flight level 200 and above rather than at low altitudes. These delays may be absorbed by vectoring, speed adjustments, or holding. Distribution of delays are more equitable as a result of these techniques. The LFTM program has been implemented at approximately 188 major airports throughout the United States. The LFTM program will be implemented to the maximum extent possible at all airports that serve turbojet or large turboprop aircraft.

Promote Fuel-Efficient Altitudes/Speeds

The fuel consumption of an aircraft depends on several factors including cruise altitude, speed and weight. FAA policy concerning assignment of aircraft altitudes presently states that whenever possible the requested altitudes will be

approved. Similar to the current situation with regard to altitude assignments, aircraft operators select their own cruise speeds. The following example illustrates the impact of speed on aircraft fuel burn. At 25,000 feet, a reduction in cruise speed of a medium weight B727 from .82 Mach to .8 Mach reduces fuel consumption by 1.3 percent; further reduction to .78 Mach decreases fuel consumption an additional 1.1 percent.

Each model of aircraft has its own fuel-efficient parameters of altitude and speed depending on several variables including weight, temperature, winds aloft, etc. It would be difficult to develop regulations that could cover all types of aircraft yet be specific enough to enforce. Also, all controllers would have to be aware of each airplane's fuel-efficient altitude/speed which would add to their current responsibilities. As a result, agency actions will emphasize to pilots the importance of fuel-efficient altitudes/speeds but will not propose regulations in this area. Furthermore, the FAA will emphasize to controllers the need whenever possible to assign the most fuel-efficient altitude when requested.

Promote Effective Use of the Airspace

The FAA supports the development and use of advanced navigation systems and flight management systems as a means of achieving significant fuel conservation. These systems allow users to fly optimal routes through, for example, area navigation (RNAV) and use more fuel-efficient climb and descent procedures.

In another area, users are often required to accept fuel use penalties to maintain separation minima in the interest of safety in the airspace. The penalties are incurred when the aircraft is assigned a non-Optimum track or altitude because of potential conflicting traffic. The adjustment of the configuration of routes or reduction of separation standards is a complex process involving detailed studies and extensive coordination. There is, however, evidence based on recent improvements in specific areas that beneficial changes can be realized. The FAA intends to continue work in this area within budgetary restrictions with specific goals to include:

(1) establishment of general rules for application of composite separation in accordance with International Civil Aviation Organization (ICAO) rules for oceanic procedures;

(2) development of reduced lateral separation criteria for operations where users show compliance with improved minimum navigation performance requirements for oceanic procedures; and,

(3) the reduction of vertical separation above flight level (FL) 290 to 1,000 feet for both domestic and international airspace.

Promote Reduced Tankering

Because of differing prices and availability of fuel at various airports, aircraft operators sometimes carry more fuel than that needed for a particular flight. "Tankering" is fuel-inefficient because more fuel is burned in flight due to the added weight of the tankered fuel. For example, for a specific set of values for speed, altitude, weight, etc., a B727 uses 3,400 gallons of fuel on a 824 mile trip. With other things being equal, that same aircraft would consume an additional 428 gallons of fuel (13 percent more) to tanker an additional 3,400 gallons of fuel. Accordingly, the FAA encourages air carriers to avoid carrying excessive quantities of fuel unless dictated by availability. In addition, the FAA will encourage all carriers to establish and maintain an airline fuel logistics program aimed at the elimination of the need for tankering.

Expand Use of Simulators

The increasing size, complexity, and operating costs of the modern turbojet transport in its operating environment emphasizes the need for greater use of the advanced technology now available in aircraft simulators. In response to this need, the FAA issued the rule, effective July 30, 1980, entitled "Advance Simulation." The rule, which amended Parts 61 and 121 of the Federal Aviation Regulations, provides guidelines and a means for achieving total flightcrew training, checking, and certification in advanced simulators. It is estimated that 32,000,000 gallons of fuel could be saved per year if air carriers use advanced flight training simulators in lieu of aircraft for transition and upgrade training. Over 73,000,000 gallons could be saved per year if the advanced simulation plan is fully implemented. Although the rule applies only to Part 121 certificate holders, the FAA is considering ways which would provide for increased utilization of approved simulators for Part 135 certificate holders and the general aviation community. The major considerations for the individual small operator or pilot school regarding the feasibility of incorporating an FAA-approved simulator in its training program would be the degree of simulator sophistication required for approval, the initial cost of the simulator, and the resultant economic benefits based on the reduced number of flight-hours derived from use of the simulator.

Promote Fuel-Efficient Taxi Procedures

In many instances, certain aircraft operating on the ground do not need to use all of the engines on the aircraft. Fuel can be saved by shutting down one or more engines for taxiing. This practice is currently used by all users to some extent. The FAA encourages greater use of fuel-efficient taxi procedures where these procedures are shown to increase system efficiency. In addition, the FAA will encourage airport proprietors to design their runways and taxiways in such a way as to provide for the greatest fuel conservation potential given the constraints of safety, etc.

Promote Maintenance of Aircraft for Optimum Fuel Efficiency

The way an aircraft is maintained can have an impact on its fuel efficiency. Many of the carriers are already taking advantage of maintenance programs to conserve fuel, and FAA actions will focus on educating all users to the benefits of such programs.

Promote Use of Inflight Computers

A computer on-board the aircraft optimizes fuel utilization by permitting optimum flight planning, monitoring aircraft health, and performing other functions which result in fuel-efficient performance of the aircraft. The FAA will evaluate the ATC system to determine how best to accommodate the improved flight operations desired by operators equipped with airborne computers.

Develop Energy Model for Optimum Flight Planning

The FAA is developing a fuel burn model suitable for application in a programmable, hand-held calculator for use by general aviation pilots. The calculator will enable pilots to plan their flights and make inflight revisions for minimum fuel consumption.

Expand/Promote Energy Training Programs for Controllers/Pilots

The FAA will revise its air traffic control training programs to include a greater emphasis on fuel conservation measures for system users which are impacted by ATC procedures and programs. In addition, the FAA will require that controllers implement specific energy conservation programs and procedures at particular locations and/or systemwide consistent with safety, efficiency and environmental considerations. This will ensure that the latest innovations in fuel-conserving

techniques are available to system users.

The FAA is developing a compendium of fuel burn curves based on information provided by aircraft and engine manufacturers that depict the fuel efficiencies of various aircraft at specific speed, altitude, and weight configurations. This information, which will show the most energy efficient set of operating curves by aircraft type, will be updated and expanded to include additional aircraft types as such information becomes available. These data will be made available to aircraft operators to assist them in their energy planning.

In this regard, Executive Order 12185, Conservation of Petroleum and Natural Gas, directs Federal agencies to conserve energy in the application of financial assistance programs. Accordingly, the FAA encourages applicants under the Aircraft Loan Guarantee Program to operate their aircraft in the most fuel efficient manner utilizing such information as the fuel efficient operating curves mentioned above. These data will be made available to carriers for their information; however, the decision to purchase one aircraft versus another will, of course, remain the responsibility of each carrier.

The FAA will continue to encourage the development of fuel conservation programs by air carriers and general aviation operators and pilots. A number of procedures and techniques developed in coordination between GAMA (General Aviation Manufacturers' Association) and the FAA are now being made available to the aviation consumer public by the various news media and through aviation education programs in connection with the FAA's Accident Prevention Program. FAA approved pilot training schools and certificated flight instructors are being encouraged to emphasize fuel conservation measures where such measures can be safely utilized. In this context, new ideas will be explored and acted upon where feasible and practicable.

By promoting energy conservation educational programs for air traffic controllers and aircraft operators, the FAA ensures that all "actors" in the National Airspace System are aware of the most fuel-efficient programs and procedures.

B. Upgraded ATC Systems and Procedures

The FAA has recently initiated the Integrated Flow Management (IFM) program whose function is to define requirements for, and assure functional integration of, engineering and development (E&D) activities impacting traffic flow. While the IFM program is primarily related to E&D activities, it takes cognizance of other on-going programs within the agency which can potentially impact traffic flow. The objectives of the IFM program are to assure that:

(1) Existing airport/airspace resources are best used under the physical constraints of aspects such as runway capacity, spacing restrictions and weather.

(2) Aircraft delays are mimimized and necessary delays are absorbed as fuel efficiently as possible.

(3) Best overall use is made by ATC system users of sophisticated avionics (such as Flight Managment Systems) on many air carrier, commuter and business aircraft.

The basic premises inherent in the IFM program are:

(1) Aircraft operators will increasingly urge the FAA to make optimum use of procedures and equipment which provide for aircraft fuel conservation.

(2) The ATC system will continuously be required to efficiently handle a wide mix of aircraft in terms of performance, size, weight, and speed.

(3) The introduction of sophisticated flight managment computers (FMC) will rapidly redefine the airbone environment in terms of what profiles aircraft operators desire, and will be able, to fly.

(4) Improved automation aids for planning and execution of ATC operations will significantly improve traffic flow management. Availablility of these aids will become increasingly more advantageous as more variables are introduced into the decisionmaking process, satellite airports are upgraded, and expanded use is made of special purpose runways at major hubs.

(5) Changes to procedures and airspace structures will best take place if the users, designers (including airframe manufacturers), and operators of the system are involved in the development process and if such changes are proven to have merit and be workable.

In addition to and in conjunction with the IFM program the FAA will evaluate the potential fuel conservation benefits of ATC facilities and systems such as:

Wake Vortex Advisory System (WVAS)

Tower Automated Ground Surveillance (TAGS)

Advanced Automation (Enroute Radar Automation)

Microwave Landing System (MLS)

Discrete Address Beacon System (DABS) and its data link

Redundant Critical NAS Elements

Most of these upgraded systems will enhance safety, noise reduction, and other FAA goals as well as promote energy efficiency.

Severe weather accounts for a significant amount of the delay at our Nation's airports. The FAA will support development of improved weather radar systems to define more accurately areas of hazardous weather. This will mimimize aircraft diversions and reduce weather-related delays thereby conserving fuel.

The FAA will ensure that departure and arrival routes and profiles in the terminal area are designed to mimimize fuel burn within the constraints of safety and noise abatement. Further capability in this area will be provided by development of state-of-the-art automation aids, procedures, and aircraft equipment. The design and development of these profiles will be carried out under the umbrella of the IFM program.

C. Airport program

The Airport Program includes actions which provide for energy conservation in the design, construction, and operation of airports as well as actions which increase system capacity and reduce airport delay. Airport proprietors benefit from the first kind of actions, and users of the airport and airway system benefit from the latter group. Specific program elements falling under the Airport Program include the following:

Require Energy Assessments for ADAP Projects

The Airport Development Aid Program (ADAP) is a Federal financial assistance program which provides a means for promoting energy efficiency and conservation. This opportunity to promote conservation was underscored by Executive Order 12185: Conservation of Petroleum and Natural Gas, dated December 17, 1979, which directed Federal agencies to institute rules designed to achieve energy conservation through the implementation of financial assistance programs. The FAA has adopted a rule which requires recipients of ADAP funds to perform an energy assessment for each Federally-assisted building construction or major building modification which exceeds $200,000 in construction cost. The rule also requires airport sponsors to utilize energy conservation practices in the operation and maintenance of the airport. The regulation allows for the consideration of energy factors during the planning process, i.e., an element of a systems plan or master plan covering energy

impacts would be eligible for Federal assistance when it is found to be a reasonable and necessary part of the plan. Such planning is not required under this regulation, but is encouraged by the FAA.

As a result of this rule, energy efficiency in the design, planning, and operation of airports is included as a criterion for ADAP funding. Airport operators/owners will benefit from the reduced energy consumption of the airport facilities. To promote further conservation the FAA is developing technical guidance which will be available in the spring of 1981 to help airport operators comply with the rule. In addition, the FAA encourages energy conservation in the design and operation of hangars and other airport facilities for which the air carriers or other users are responsibile.

Develop Energy-Efficient Ground Operating Plan for Washington National and Dulles International Airports

The Federal Government owns and operates Washington National and Dulles International Airports. The FAA has underway a study to evaluate the energy conservation potential at these two airports of actions that fall within the purview of the airport proprietor (e.g., airport access, operation of ground vehicles, location of facilities, etc.). Based on the findings of this study, the FAA intends to develop an energy efficient ground operating plan for these airports. Additionally, the operating plan will serve as an illustration to other airport proprietors of the benefits that may be achieved by similar planning efforts at their own airports. The agency will also establish a monitoring system to measure the fuel savings which result from specific techniques at National and Dulles.

Promote Snow/Ice Removal Systems

The time required to open runways after a snowfall is highly variable, depending upon the intensity of the snowfall and the availability of snow-ice removal equipment. In 1979, 22.6 percent of delays of 30 minutes or more was due to snow and ice problems. The FAA encourages airport operators to purchase snow/ice removal equipment and such equipment is eligible for Federal funding under ADAP.

Evaluate Incentive Programs, Quotes and Slot Allocation Mechanisms for Reducing Airport Delays

One of the primary causes of fuel inefficiency in the National Aviation System is delay. The FAA is committed to improving the ATC system, and many of the options already mentioned are designed to expand capacity and reduce delay. However, another way to minimize or eliminate delay problems is through incentive programs which reduce demand or better utilize existing capacity. For example, by improving its delay estimates, the FAA will encourage users to use FAD procedures. The FAA could also issue delay projections that are specific to a facility at a congested airport. For instance, there may be significant delays on one runway, but another shorter runway at the same airport may be available without any delay. Aircraft operators with the appropriate equipment may be able to land on the second runway without any adverse effect on the primary facility thus expanding system capacity. Facility-specific delay projections may encourage more aircraft operators to purchase equipment which can operate on secondary runways at congested airports. The FAA will evaluate the feasibility of using such incentive-type programs and procedures to reduce demand or expand capacity.

There are currently four airports at which the FAA has established a reservation system to relieve excessive congestion. The four airports are Washington National, J.F. Kennedy, LaGuardia, and Chicago O'Hare Airports. The agency has imposed an hourly limit on IFR operations (arrivals and departures) by class of users. The FAA will evaluate the potential for reducing system delay and conserving fuel by expanding hourly quotas to other congested airports.

The FAA is evaluating several potential slot allocation mechanisms for use at Washington National Airport. The results of this analysis may be used at other delay-prone airports which have substantial peak demand patterns.

Continue the Airport Improvement Program to Reduce Congestion and Delays

In 1977, the FAA established the Airport Improvement Program in an effort to reduce aircraft delays at the Nation's 25 busiest airports. This program was patterned after a comprehensive delay study conducted at Chicago O'Hare International Airport in the mid-1970's. Since 1977, Airport Improvement Working Groups have been established at nine other major airports. The Airport Improvement Program is structured to bring local expertise to bear on the problems at each airport, while at the same time coordinating these local efforts in a national program to reduce congestion and delays throughout the National Airspace System. The program is jointly sponsored by the FAA and the Air Transport Association, and has been publicly endorsed by the Administrator and Deputy Administrator.

Promote Satellite Airports and Separate General Aviation Facilities at Congested Airports

The FAA promotes the use of satellite airports and the construction and/or dedication of separate general aviation runways, where possible, at congested airports. Currently, the mix of aircraft in terminal areas requires complex separation standards to avoid the wake vortex problem. To the extent that traffic can be separated by aircraft type, aircraft spacing can be decreased and airport capacity increased. The resulting delay reduction may conserve significant amounts of fuel. On August 7, 1979, the FAA anounced a major new program to upgrade air safety in 56 metropolitan areas by improving airport facilities at 86 satellite fields. Eventually as many as 236 satellite airports in 75 metropolitan areas could be affected.

Evaluate Aircraft Towing

Another area which requires further analysis is the potential fuel conservation benefits and costs of extended towing of aircraft in the terminal area. The Department of Energy and the FAA are evaluating this option which involves technical and operation feasibility and safety questions that need to be solved. The FAA will continue to evaluate this alternative as well as promote other measures to decrease groundside fuel use such as taxiing on fewer engines whenever safety permits.

Develop Energy Conservation Educational Programs for Airport Operators

Educational programs for airport operators will be developed and distributed nationwide in consonance with the overall energy conservation effort in the National Aviation System. The programs will emphasize energy-efficient operation of the Nation's airports. The FAA will also publish, in conjunction with the ADAP requirement mentioned earlier, technical guidance concerning the energy-efficient design, construction and operation of ariports.

In a different vein, the program may include treatment of the airport operator's ability to impact the fuel efficiency of airport system users through the use of pricing policies which "smooth" the otherwise peak demand for slots at congested airports.

Promote Energy-Efficient Airport Access Systems

The Federal Highway Administration and the Urban Mass Transportation Administration are involved in landside access to airports in conjunction with State or local governments. To support their efforts, the FAA encourages the use of mass transit and other energy efficient transportation modes for airport access, including access to Washington National and Dulles International Airports. This may include the use of vanpools by airport employees, etc.

D. Aircraft Technology Program

The primary responsibility for the actions under this program rests with the aeronautical manufacturers and Federal agencies other than the FAA. However, the FAA supports these developments and must insure that future ATC system designs are compatible with new technology aircraft and vice versa. Specific program elements falling under the Aircraft Technology Program include the following:

Promote Development of New Technology Aircraft, Engines, and Aircraft Systems

As a result of the 1973/1974 oil embargo and the rapidly rising price of aviation fuel, aircraft operators have taken advantage of capacity and operating changes which conserve fuel. Therefore, significant increases in fuel efficiency for the future will require technological improvements in aircraft, aircraft engines, avionics, and the ATC system. New technology aircraft and aircraft engines will, in fact, generate the greatest savings in fuel in the long term.

NASA has the primary responsibility for developing future airframe and engine designs. One response to this responsibility is NASA's Aircraft Energy Efficiency Program which focuses on developing basic improvements in technology to enhance the energy efficiency of existing and future aircraft. This program has several phases. The Engine Component Improvement Program is directed towards existing engines such as the JT9D, CF6, and JT8D. This program is geared towards detailed improvements to engine components and also includes a diagnostic effort aimed at identifying and eliminating the major causes of performance degradation over the engine lifetime. The purpose of the Energy Efficient Engine Program is to provide an advanced technology base for a generation of fuel-efficient turbofan engines for commercial transports. Additionally, NASA's advanced turboprop project is directed at establishing the feasibility of radically improved propellor propulsion systems. The propfan may be able to combine the fuel efficiency of a propellor with the speed capability of current turbofan-powered transports. In still another area, NASA is working on aerodynamic and structural technology improvements which have a direct application to future fuel-efficient aircraft. Finally, the FAA is working with NASA to reduce wake vortices at their source through aircraft modifications. This would permit reduced separation standards thereby increasing system capacity. The FAA will support these developments and insure that future ATC system designs are compatible with new technology aircraft, and vice versa.

Aircraft and avionics manufacturers and NASA are developing avionics such as the Flight Management System (FMS) for fuel-efficient flight operations in the ATC system. The FAA supports this research and the IFM program described in section B, above, includes defining an environment which allows users to take full advantage of sophisticated avionics.

Promote New Aircraft Designs with Extended Towing Capabilities

If studies concerning aircraft towing prove successful, the FAA will promote the design of new aircraft or modifications to existing aircraft to permit safe and efficient extended towing capabilities. As noted earlier, extended towing of aircraft in the terminal area could reduce groundside fuel consumption, but there are safety and operational issues which first need to be resolved.

Support Development of Alternative Fuels

The discussion of alternative fuels contained in the Appendix concludes that there are no economically viable alternatives to conventional petroleum-based aviation fuel in the near term. The stability of an aviation fuel supply will require the development of new fuels in the future. NASA, DOD, and DOE have the primary responsibility in this area. NASA's work is in the area of developing technology to accommodate alternative fuels for future commercial and general aviation aircraft. DOD is performing R&D on utilization and defining fuel specifications for use in military turbine aircraft. DOE's role with regard to alternative fuels is primarily oriented to R&D on extraction, upgrading, and refining, and commercialization of alternative fuels. The FAA will monitor the progress in alternative fuels developent in the interest of maintaining an effective air transportation system. The FAA also has underway studies to determine the feasibility of using automotive gas in lieu of aviation gas for general aviation and, to a lesser extent, air carrier operations.

Consistent with one of the policy principles states at the beginning of this chapter, the FAA will promote the use of alternative fuels whenever possible in an effort to free petroleum-based fuels for aviation, and other users, which are vital to the Nation and for which there are no economically viable alternatives in the near term.

E. Internal FAA Program

Specific program elements falling under the Internal FAA Program include the following:

Promote Efficient Use of Energy in FAA Operations

The FAA will adopt standards, policies and internal operating procedures which accomplish the following:

- Improve the efficiency of "process" facility electrical use through solid-state equipment technology.
- Improve the efficiency of motor gasoline use in maintenance and other day-to-day operations.
- Improve the efficiency of jet fuel and aviation gas use in FAA aircraft fleet operations.
- Improve the efficiency of heating and cooling energy use in both manned and unmanned FAA facilities.

Develop Energy Contingency Plan

The FAA is developing an appendix to its agency Order 1900.1C, FAA Emergency Operations Plan. The appendix provides for energy contingency planning to ensure to the maximum extent possible a continuing support capability of FAA facilities and installations during periods of energy supply deficiencies or short-term outages.

The FAA will also work towards the development of a mechanism which provides for contingency planning for the aviation industry in the event of a serious fuel crisis. The FAA will support the national objective of maintaining an effective air transportation system to the extent necessary for national security.

Promote Energy Efficiency in ATC Facilities

The FAA will review its establishment criteria for en route and terminal facilities (funded under the facilities and equipment program) to

ensure that energy efficiency is given proper emphasis.

Require Energy Assessment for Agency Actions

On December 11, 1980, the FAA issued an order revising its internal regulatory procedures to require an energy assessment for those FAA actions which involve by design, construction, installation or operation the significant use of energy in their function or implementation. In general, energy assessments will be performed for the following areas: (1) establishment of buildings, including those used for navigation equipment, (2) changes to air traffic control regulations, policies, or procedures which would clearly cause a significant increase in aircraft fuel consumption, (3) airport layouts or changes to an airport layout, and (4) aircraft modifications. The FAA's operating regulations are included in (2) above, and as a result this requirement will ensure that the energy impact of FAA noise abatement procedures as well as other agency actions and decisions are considered before implementation. Energy conservation will not take precedence over the safety mandates of the FAA, but whenever possible, safety-oriented actions will be consistent with the agency's energy conservation activities.

Develop Energy Models for Use in Energy Assessments

The FAA is developing several analytical tools and data bases which will improve agency capabilities in performing energy assessments. One such tool is an aircraft fuel burn simulation model which assesses aircraft-specific fuel consumption characteristics of complex flight patterns en route and in terminal areas around airports. The model, which will be available in the summer of 1981, will facilitate the energy impact analysis of: (1) proposed changes to operating procedures, (2) airport delay effects. and (3) regulatory changes.

Furthermore, this model will be linked to the FAA's noise model to ensure that analyses of noise abatement programs consider the impact of those programs on aviation energy conservation goals.

Monitor ATC Energy Conservation Programs

The FAA will establish a monitoring program to measure the impacts of various ATC programs on energy use. This will provide information on the effectiveness of existing energy conservation programs and provide the basis for future planning in the area of energy. This is a complex issue since many FAA programs are interrelated and it is impossible to identfy the actual energy savings which result from any single program. Also, there are many participants involved in the decisionmaking process—air traffic controllers, aircraft operators, airline managements, etc. For this reason, inplementation of a monitoring system will require the coordinated efforts of all participants to identify those programs which feasibly can be measured and to design the most appropriate monitoring mechanism for each program. For those programs where the resource commitment necessary to monitor agency programs is too large to justify a monitoring system, the FAA will use fuel savings estimates based on analytical models.

Summary

The FAA Aviation Energy Conservation Policy represents a comprehensive plan requiring the support of the Federal Government, aircraft owners and pilots, airport operators, and aeronautical manufactureres and suppliers. It consists of commitments on the part of the FAA to take specific actions while at the same time it addresses complementary actions needed by non-FAA groups to maximize aviation energy conservation.

The following chart lists all of the actions contained in this policy document. In addition, the chart identifies the various groups, Federal and private, which are responsible for the actions and the status of each.

BILLING CODE 4910-13-M

PROGRAM/ACTION	RESPONSIBLE GROUPS	New Initiatives	Development Stage	Ongoing Program
A. ATC/Flight Operations Program				
1. Expand and Refine Fuel Advisory Departure (FAD) Procedures	FAA, Aircraft Operators, Airport Operators			X
2. Promote Gate Hold Procedures	FAA, Aircraft Operators, Airport Operators			X
3. Expand Local Flow Traffic Management (LFTM) Program	FAA, Aircraft Operators, Airport Operators			X
4. Promote Fuel-Efficient Altitudes/Speeds	FAA, Aircraft Operators			X
5. Promote Effective Use of the Airspace	FAA, Aircraft Operators		X	X
6. Promote Reduced Tankering	FAA, Aircraft Operators			X
7. Expand Use of Simulators	FAA, Aircraft Operators		X	X
8. Promote Fuel-Efficient Taxi Procedures	FAA, Aircraft Operators, Airport Operators			X
9. Promote Maintenance of Aircraft for Optimum Fuel Efficiency	FAA, Aircraft Operators			X
10. Promote Use of Inflight Computers	FAA, Aircraft Operators			X
11. Develop Energy Model for Optimum Flight Planning	FAA, Aircraft Operators, Aeronautical Manufacturers		X	X
12. Expand/Promote Energy Training Programs for Controllers/Aircraft Operators	FAA, Aircraft Operators	X		

PROGRAM/ACTION	RESPONSIBLE GROUPS	New Initiatives	Development Stage	Ongoing Program
B. Upgraded ATC Systems and Procedures	FAA, Aircraft Operators, Airport Operators, Aeronautical Manufacturers		X	X
C. Airport Program				
1. Require Energy Assessments for ADAP Projects	FAA, Airport Operators	X		
2. Develop Energy-Efficient Ground Operating Plan for Washington National and Dulles International Airports	FAA	X		
3. Promote Snow/Ice Removal Systems	FAA, Airport Operators			X
4. Evaluate Incentive Programs, Quotas and Slot Allocation Mechanisms for Reducing Airport Delays	FAA, Airport Operators, Aircraft Operators		X	X
5. Continue the Airport Improvement Program to Reduce Congestion and Delays	FAA, Airport Operators, Aircraft Opeators			X
6. Promote Satellite Airports and Separate GA Facilities at Congested Airports	FAA, Airport Operators, Aircraft Operators			X
7. Evaluate Aircraft Towing	FAA, Airport Operators, Aircraft Operators, Aeronautical Manufacturers		X	X
8. Develop Energy Conservation Education Programs for Airport Operators	FAA, Airport Operators	X		
9. Promote Energy-Efficient Airport Access Systems	FAA, UMTA, FHWA, Airport Operators			X

PROGRAM/ACTION	RESPONSIBLE GROUPS	New Initiatives	Development Stage	Ongoing Program
D. Aircraft Technology Program				
1. Promote Development of New Technology Aircraft Engines, and Aircraft Systems	FAA, NASA, Aeronautical Manufacturers, Aircraft Operators		X	X
2. Promote New Aircraft Designs with Extended Towing Capabilities	FAA, Aeronautical Manufacturers, Aircraft Operators, Airport Operators		X	X
3. Support Development of Alternative Fuels	FAA, DOE, NASA, DOD		X	X
E. Internal FAA Program				
1. Promote Efficient Use of Energy in FAA Operations	FAA			X
2. Develop Energy Contingency Plan	FAA	X		
3. Promote Energy Efficiency in ATC Facilities	FAA			X
4. Require Energy Assessment for ATC Facilities and Procedures	FAA	X		
5. Develop Energy Models for Use in Energy Assessments	FAA, Aircraft Operators, Aeronautical Manufacturers		X	X
6. Monitor ATC Energy Conservation Programs	FAA	X		

BILLING CODE 4910-13-C

Appendix: Statement of the Energy Problem

In the United States, 87 percent of transportation energy is derived from petroleum. Aviation is totally dependent on petroleum which is becoming an increasingly scarce resource in the United States. As a result, the United States has become dependent on imported petroleum, and therefore, is more vulnerable to uncertainties in both the domestic and international marketplace.

This section provides an overview of historical, current, and future trends of U.S. energy consumption with particular emphasis on the U.S civil aviation community. In addition, the importance of aviation to the national economy, the prospects for the aviation fuel supply, and finally, the feasibility of using alternate fuels for aviation are discussed briefly. These facts will clarify the need for a comprehensive aviation energy conservation effort by the Federal Government and the aviation industry.

National Energy Perspective

Figure 1 illustrates the breakdown of U.S. energy consumption by type of energy. U.S. energy consumption has more than doubled over the past 25 years, and transportation has consistently accounted for approximately 25 percent of all energy consumed. Transportation presently uses 53 percent of the petroleum consumed in the United States.

Although domestic petroleum production is 8.7 million barrels per day or 23 percent of total energy use, it is far exceeded by the demand for petroleum products which is 17.6 million barrels per day. The result is an over-dependence on imported petroleum products. Focusing directly on petroleum, Figure 2 shows petroleum consumption by major sectors of the economy, and Figure 3 shows the transportation share by mode. As is evident from these statistics, transportation is very vulnerable to fluctuations in petroleum supplies.

Aviation Fuel Perspective

Total civil aviation consumes about 8 percent of the transportation share of petroleum use or 4 percent of total U.S. petroleum. The table below shows the estimated fuel consumption for domestic civil aviation for FY–1980.

FIGURE 1

Total U.S. Energy Consumption By Type of Energy
1979 Percentages

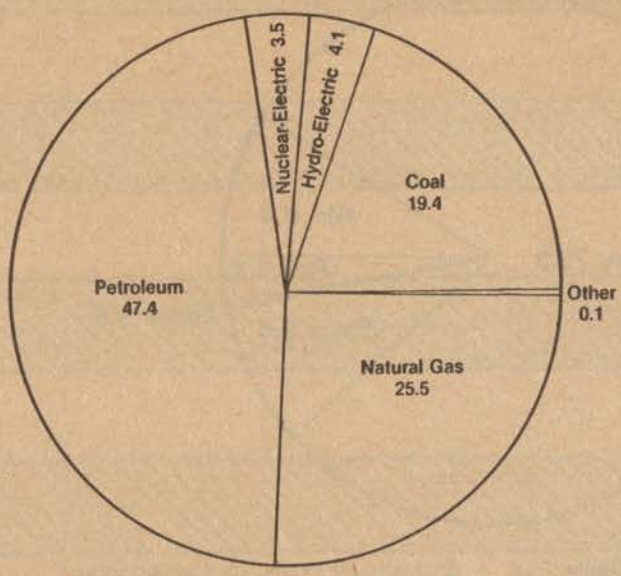


FIGURE 2

Use of Petroleum Products By Major Sectors of the Economy
1979 Estimated Data by Percent

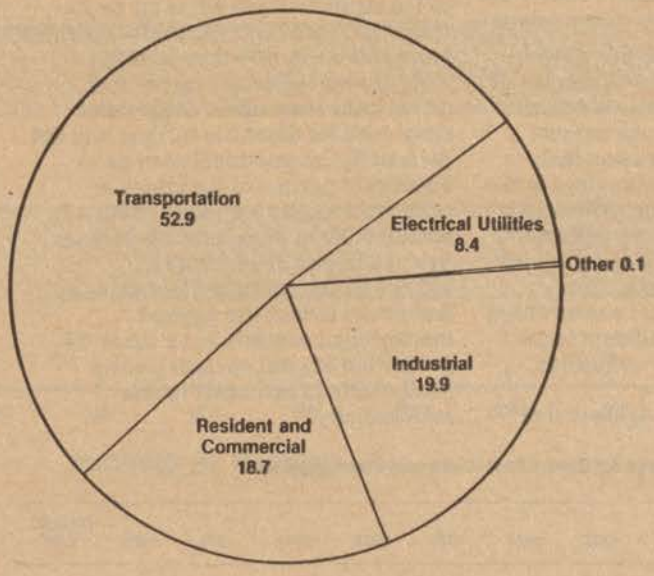
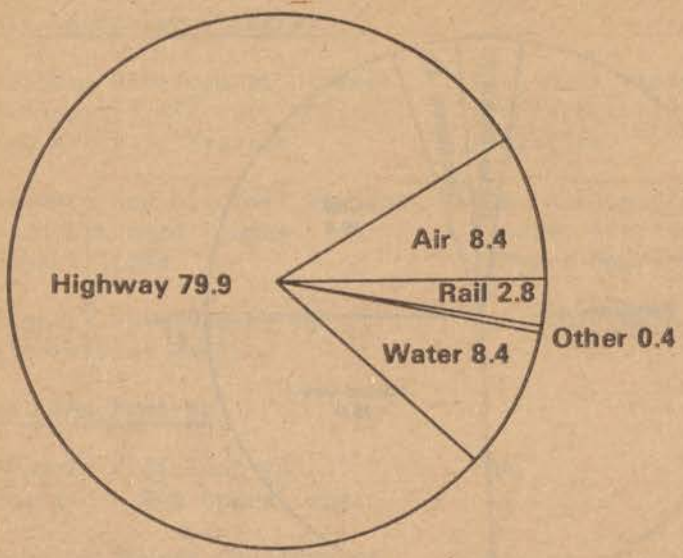


FIGURE 3

Transportation Petroleum Consumption By Mode

1980 Estimated Data by Percent



Estimated U.S. Domestic Civil Aviation Fuel Consumption—FY 1980

[Millions of Gallons]

	Air carriers	General aviation	Total
Jet fuel	10,370	909	11,279
Aviation gas	13	522	535
Total aviation fuel	10,383	1,431	11,814

Air carriers consume 88 percent and general aviation consumes 12 percent of domestic civil aviation fuel. At current levels of consumption, a one percent savings in commercial aviation fuel would yield a total annual savings to the Nation of about 100 million gallons. At an average price of $1.00 per gallon, this would translate into a savings of about $100M a year to the airlines. This indicates that effective fuel conservation programs can have a significant impact on national consumption and airline profitability.

Historical data (Figure 4) show that domestic air carrier fuel consumption dropped significantly after the oil embargo of 1973 which forced airlines to cut back their flight frequency to conserve fuel. Fewer gallons consumed coupled with an increasing level of revenue ton-miles resulted in improved fuel efficiency (see Figure 5). Current fuel consumption has risen in response to the significant growth in air carrier traffic (air carriers consumed 4.7 percent more gallons in 1979 than in 1973).

As shown below, air carrier fuel prices have risen about 546 percent since 1973 for domestic carriers and 654 percent for international carriers. A significant portion of the increase occurred in 1974 as a result of the oil embargo. Even though the air carriers have exhibited increasing fuel efficiency, the continued increases in fuel prices (which are beyond management control), have cause the proportion of total operating costs attributable to fuel costs to rise substantially.

Average Air Carrier Fuel Prices and Operating Costs

	1973	1974	1975	1976	1977	1978	1979	(1st half) 1980
Domestic operations:								
Price (cents per gallon)	13	22	27	30	35	39	56	84
Percent of total operating costs	11	15	18	18	20	20	24	30
International operations:								
Price (cents per gallon)	13	34	36	37	40	42	64	98
Percent of total operating costs	12	21	21	20	20	19	25	32

BILLING CODE 4910-13-M

FIGURE 4

Domestic Air Carrier Fuel Consumption

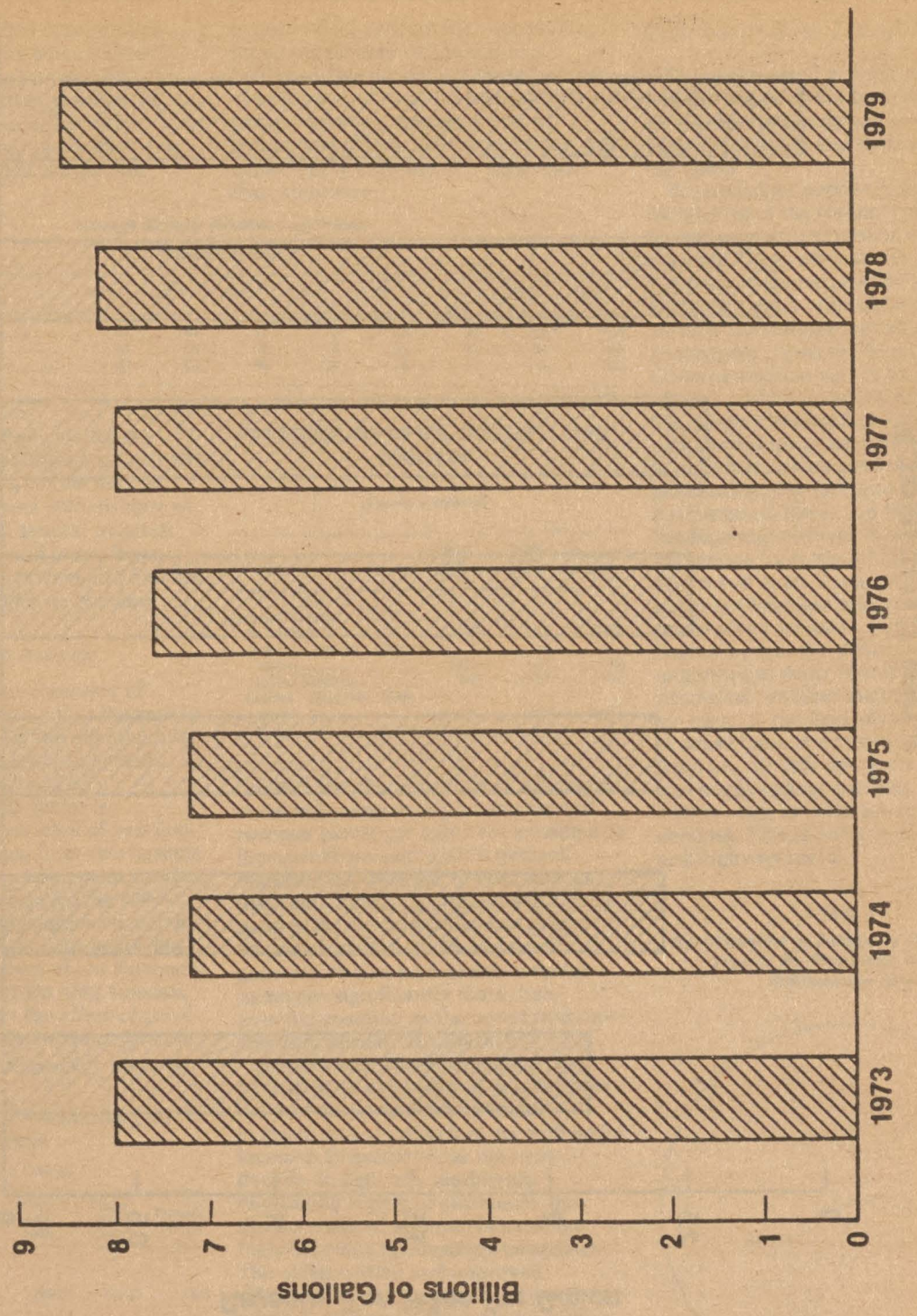
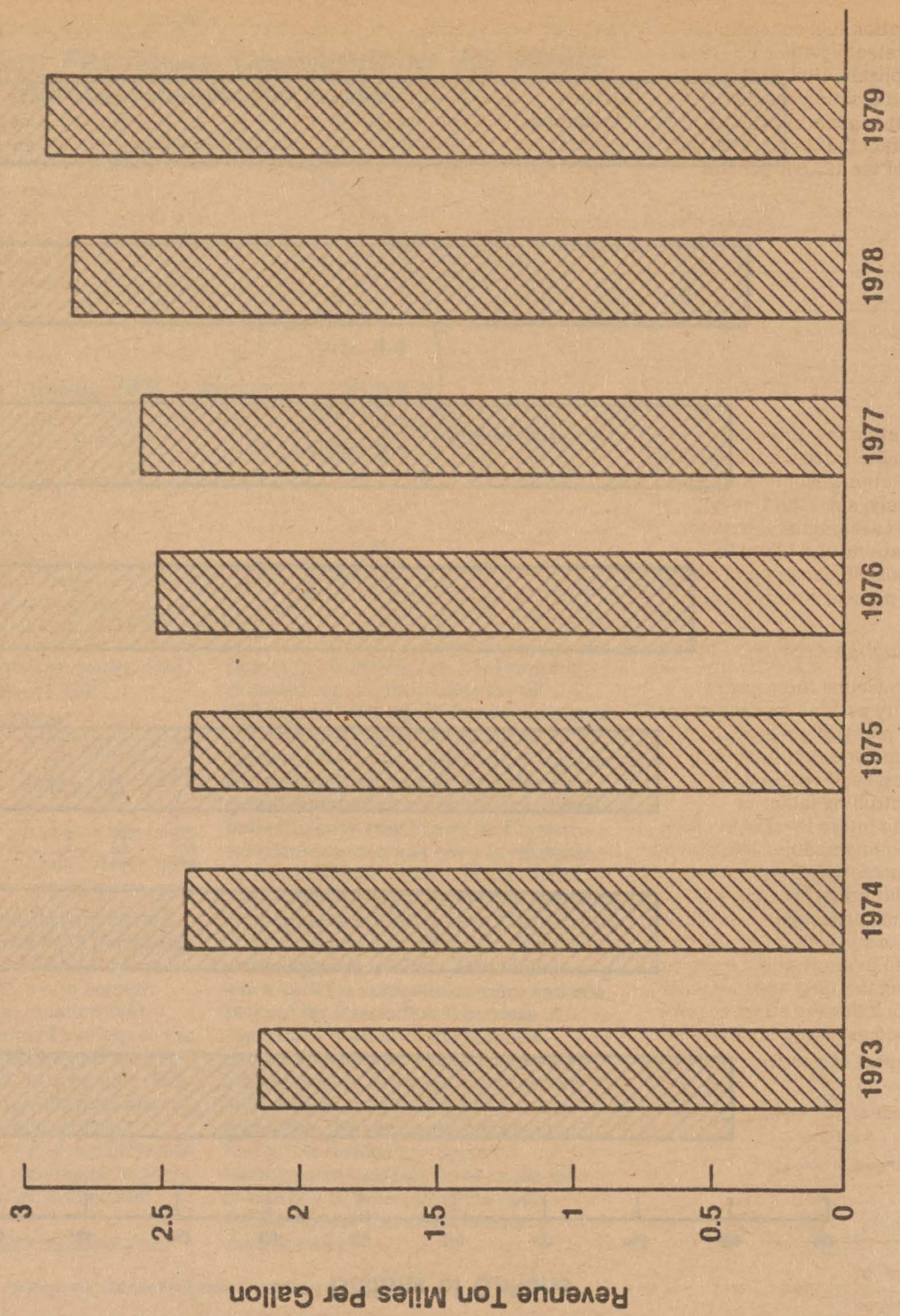


FIGURE 5

Domestic Air Carrier Fuel Efficiency



BILLING CODE 4910-13-C

General aviation fuel consumption has increased steadily since FY–1973 with jet fuel consumption growing at a faster rate than aviation gasoline. Of special interest to general aviation activity is the fact that in FY–1980 only 6,000 aircraft of the 193,000 general aviation fleet used jet fuel, accounting for only 8 percent of hours flown. However, this accounted for 64 percent of total general aviation fuel used. As general aviation operators turn to greater use of jets, fuel consumption will undoubtedly increase at a faster rate than otherwise.

Average General Aviation Fuel Prices

(Cents per Gallon)

Fuel	1973	1974	1975	1976	1977	1978	1979	1980
80/87	47	64	69	75	82	89	128	154
100/130	49	66	73	76	84	91	130	161
Jet Type A	50	62	66	69	76	79	136	143

General aviation fuel prices have risen approximately 228 percent and 186 percent for aviation gasoline and jet fuel, respectively, since 1973. In spite of these cost increases, general aviation itinerant operations and hours flown increased almost 46 percent and fuel use increased 100 percent over the same period.

Forecast of Aviation Activity

The FAA's baseline forecasts of aviation activity assume that the supply of energy and fuel will not significantly inhibit economic or aviation growth. Fuel prices, however, will be a significant controlling factor in determining the future level of aviation activity. The following forecasts assume a 22 percent increase in oil prices and an 11 percent inflation rate for the 1980–1981 period. Fuel price increases will be less dramatic in subsequent years, but are expected to average about 9 percent annually during the 1980–1992 forecast period. This includes the effect of price increases in domestic and imported oil, but not the impact of possible taxes on aviation fuels.

FAA Forecast of U.S. Domestic Civil Aviation

[Figures in millions]

	Fiscal year 1980	Fiscal year 1992	Percent change
Air Carriers:			
Revenue passenger enplanements	290.5	481.1	+66
Revenue passenger miles*	201.9	352.7	+75
Itinerant aircraft operations	10.3	12.5	+21
Jet fuel (gallons)	10,370	12,658	+22

*Note: Revenue Passenger Miles expressed in billions.

FAA FORECAST OF U.S. DOMESTIC CIVIL AVIATION

[Figures in millions]

	Fiscal year 1980	Fiscal year 1992	Percent change
General aviation:			
Hours Flown	42.1	64.3	+53
Itinerant Aircraft Operations	29.4	43.9	+49
Jet Fuel (Gallons)	909	1,851	+104
Aviation Gasoline (Gallons)	522	790	+51

Given the above estimates, air carrier revenue passenger enplanements and revenue passenger miles are expected to increase 66 percent and 75 percent, respectively, over the 12-year forecast. Itinerant aircraft operations will rise 21 percent for air carriers and 49 percent for general aviation. As expected, general aviation jet fuel consumption increases significantly more than aviation gasoline as the use of turbine-powered aircraft increases.

As noted earlier, civil aviation fuel consumption increased 25 percent over the past 10 years. FAA forecasts indicate that aviation fuel use will again increase 25 percent over the next decade. In light of a worldwide decreasing supply of petroleum, the development of alternative aviation fuels becomes increasingly important. The conservation and improved efficiency of existing fuels is also of primary concern to the viability of the aviation industry.

Contribution of Air Transportation

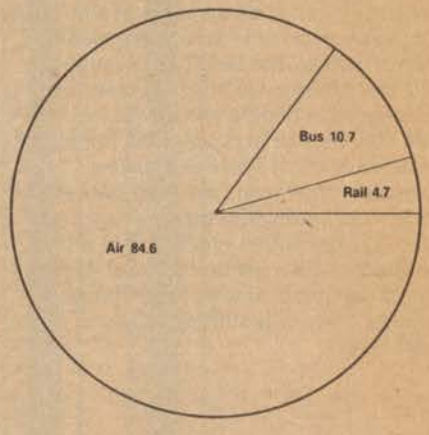
The airlines and general aviation together make up the Nation's balanced air transportation network—the safest, most dependable and most efficient in the world.

Scheduled air service is the foundation of the Nation's public intercity passenger system as shown in Figure 6. The system serves a comprehensive national network of 58,000 city pairs with 12,500 daily flights. In 1979, the airlines moved 284 million passengers a year at 735 airports. General aviation serves these airports plus an additional 14,000 airports around the country linking these cities with vital commercial air transportation. Air service has enviable records for safety, punctuality, comfort, and cleanliness. Furthermore, lower trip time is a fundamental element that differentiates air service from ground transportation. The speed of air transportation improves business opportunity and productivity which in turn benefits the Nation's economy. Also, speed is important in many family travel situations. Another major advantage of air travel is the flexibility which occurs because there is no need for right of way, i.e., aircraft operators can quickly and easily change markets, capacity, service, etc., in response to consumer demand. This is not true of rail, water and highway travel.

FIGURE 6

Distribution of Intercity Passenger Travel By Common Carrier

1979 Passenger Miles



A healthy aviation industry also assists the foreign trade balance of payments. Airline competition in the United States has fostered a manufacturing industry whose products dominate world air transportation. In 1979, over 70 percent of the active free-world turbine-powered air carrier fleet were of U.S. manufacture. General aviation also contributes significantly to the U.S. balance of payments. Approximately 90 percent of the world's general aviation fleet were built in the United States.

The private automobile dominates short distance intercity transportation. The only substantial public service challenge is from air transportation on medium and longer distance trips. While a fully loaded automobile is generally fuel efficient, low occupancy automobile travel is neither cost effective nor fuel efficient. Since 87 percent of air passengers travel singly or in parties of two, energy may not be conserved if fuel allocations disrupt air service and the auto is used as an alternative mode.

The following table shows relative fuel efficiencies for the various modes based on the actual number of passenger-miles traveled in 1978. As noted earlier, speed is a fundamental element that differentiates air service from the ground modes. Passenger miles per gallon fails to reflect the value of a passenger's time in its measure of efficiency. While a bus is by far the most fuel-efficient mode, its passengers are limited to shorter distances than air travelers when time is important. Numerous studies have been done to develop a more satisfactory measure of efficiency, however, to date, there is no generally accepted measure of the value of passengers' time across the modes. Nevertheless, the DeOT/FAA supports the use of the most efficient means of transporting people and goods be it by air, rail, ship or highway. The improved efficiency of all those modes is a common objective. One final note is that when evaluating the total energy costs of a transportation mode, direct and indirect costs must be included. Indirect costs comprise, among other things, the energy costs of installing rails and highways.

Passenger Miles Per Gallon*

[Intercity travel, 1978]

Class I Bus	119.00
Rail	45.04
Automobile	43.32
Scheduled Air Carriers	23.87

*The equivalent level of BTU's was used to determine the "Passenger Miles Per Gallon" figure for rail.

The U.S. airlines have established an outstanding energy conservation record since the 1973 oil embargo. In 1979, the scheduled airlines used 4.7 percent more fuel than in 1973, but carried 91 million more passengers (a 47.3 percent increase). Domestic revenue ton-miles per gallon (RTM/G), a widely used measure of air carrier fuel efficiency, increased 35 percent from 1973 to 1979.

The substantial improvements in air carrier fuel efficiency to date have resulted primarily from reducing the number of flights as a result of the oil embargo (thus increasing load factors); the voluntary grounding of fuel-inefficient aircraft and airline investment in new, more fuel-efficient aircraft; and the efforts by the Federal Government and the industry to improve air traffic control and aircraft operating procedures. The rapidly escalating price of fuel has provided the incentive for continued efforts in these areas. In this regard, it is important to note that many people criticize the airlines for flying with empty seats. Actually, the domestic scheduled airlines have consistently recorded the highest load factor of all intercity public transportation modes (see Figure 7). In the future, there is a practical limit to raising seating density and to increasing load factors. Further improvement in aviation fuel efficiency, therefore, will require dedicated efforts by all segments of the industry.

Although there is no comparable measure of general aviation fuel efficiency (revenue ton-miles are meaningless for general aviation), this segment of the aviation industry has also implemented numerous programs to conserve energy. Most of these programs have focused on educating pilots in the most fuel-efficient operating techniques such as proper leaning procedures, engine maintenance, etc. FAA will continue to support these efforts wherever possible. General aviation serves an important function by providing direct origin-destination travel to non-airline markets or at non-airline times. In addition, general aviation provides ambulance, agricultural, firefighting, aerial surveying, banking and postal services as well as numerous other functions for the Nation's economy.

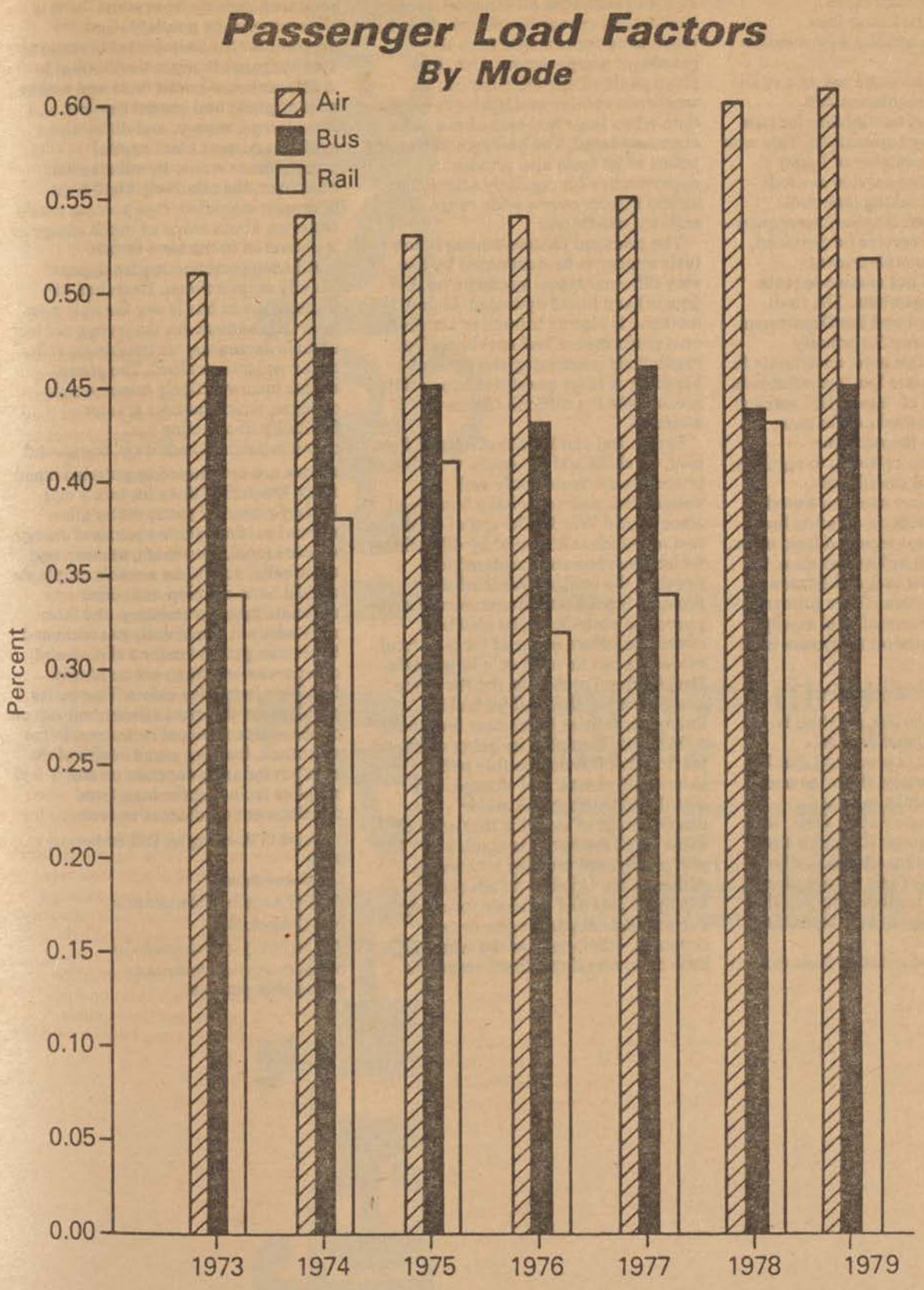
Aviation Fuel Supply Conditions

In the past, aviation fuels were subject to mandatory price and allocation regulations (administered by the Department of Energy). The allocation program regulated producers, distributors, and sellers of petroleum products with respect to the volumes of each regulated petroleum product they could provide to various consumers or classes of consumers. The pricing program was more complex due to the varying treatment of different classifications of crude oil by the producers. This pricing problem did not occur for aviation fuels because very few nonproduct costs were involved. As long-term, fixed price fuel contracts expired, they were replaced by contracts of shorter duration without fixed prices. The aviation fuel allocation system also worked well as long as demand patterns remained stable. As a result of the Airline Deregulation Act of 1978, numerous requests for route changes were filed and the allocation system broke down. The airlines' allocation problem was relieved when the price and allocation regulations for aviation fuels were repealed.

On February 26, 1979, the mandatory price and allocation regulations were revoked for kerojet fuel and aviation gasoline. Naptha jet fuel (use primarily by the military) was decontrolled on October 1, 1976. The current status, therefore, is a free market situation regarding price for all aviation fuels which will remain in effect unless standby regulations are fully or partially activated.

BILLING CODE 4910-13-M

FIGURE 7



BILLING CODE 4910-13-C

Agency (EPA) requirements, unleaded motor gas will become more predominant in the future thus exacerbating the conflict with aviation gasoline.

A problem which surfaced as a result of the Airline Deregulation Act concerned the fuel availability for new carriers (primarily commuters). This was precipitated by a number of larger carriers terminating service to small communities and taking their fuel supplies with them. Regulations require that replacement service be provided, but in some cases replacement commuters could not make adequate fuel supply arrangements. The Civil Aeronautics Board and the Department of Energy, who have the primary responsibility in this area, coordinate to ensure that adequate fuel is available to guarantee a level of "essential" service; otherwise, the original carrier must continue to serve the market.

The FAA has no authority to regulate fuel producition or distribution, however, the agency has coordinted informally with DOE on aviation fuel problems or request received from users. DOE maintains an airline fuel desk to handle requests for fuel and related problems. FAA actions focus primarily on monitoring the overall fuel supply and price conditions on a systemwide basis.

Alternative Fuels Development

As mentioned earlier, aviation is currently totally dependent on petroleum fuels. It is predicted that by the turn of the century, the price and availability of petroleum-based products, including aviation fuels, will be at the critical stage. Research has been done to develop alternative fuels, however, alternate fuels for aviation do not appear to be economically feasible or available in large quantities in the near term.

Petroleum-based aviation fuels exhibit characteristics which are amenable to safe and economic air tansport. Jet fuel density and energy properties allow fuel tanks to be far removed from the passenger compartment. Also, for a given payload, the airframe can be smaller in volume and lighter in weight than when large fuel tanks have to be accommodated. The boiling and freezing points of jet fuels also provide opportunities for regularly scheduled airline service over a wide range of ambient conditions.

The practical choices among future fuels appear to be dominated by two very different types: synthetic Jet A (synjet) and liquid hydrogen. Liquid methane is also an attractive possibility on a performance and cost basis, but restrictions concerning storage and handling of large quantities in populated areas make it a difficult choice for aircraft.

Synjet fuel can be manufactured from coal, oil shale and tar sands. Coal-based processes are reasonably well understood, and some have been used since World War II. The use of oil shale and tar sands is hindered by difficulties which have been encountered in exacting the usable hydrocarbon product. Significant environmental and economic obstacles must also be overcome before either of these natural resources can be used on a large scale. Despite these problems, the Air Force could be using shale oil jet fuel in limited quantities in the next few years.

The chief incentive for using synthetic Jet A is that it is compatible with existing airplanes, fuel storage, and distribution systems. A major disadvantage of synjet is that none of these fossil resources is available universally, nor are they renewable. Although the U.S. has an adequate supply of coal and oil shale to satisfy our domestic needs for one or two centuries, other areas of the world have little or no remaining fossil resources.

On the other hand, hydrogen can be produced directly from water, so it is both universally available and renewable. The major disadvantage is that hydrogen is not interchangeable with petroleum-based fuels and requires new airplane and engine designs, and fuel storage, supply, and distribution systems. Airport plant capital requirements would be substantial. Moreover, the relatively inefficient hydrogen manufacturing process would consume about twice as much energy as is delivered in the form of fuel.

All transportation modes depend heavily on petroleum. However, air transportation has fewer feasible near-term alternatives. As the energy content of fuels decreases, air transports suffer major weight penalties. The ground modes incur relatively minor weight changes, which permits greater flexibility in selecting fuel characteristics. In addition, the ground modes are not limited to portable liquid fuels. Electrified lines for trains and bettery-powered automobiles allow several exchangeable choices of energy sources (coal, petroleum, nuclear, and eventually, solar). As a result, emphasis should be to develop and refine alternate fuels for industry and those uses where it is currently practical and to reserve petroleum for aviation and other areas where no economically feasible alternative exists. This policy provides for the most efficient allocation of our scarce national resources. In the meantime, the long range health of the aviation industry depends on stable fuel supplies including the long-term development of alternative fuels.

Issued in Washington, D.C. on January 13, 1981.

Langhorne Bond,

Federal Aviation Administrator.

Neil Goldschmidt,

The Secretary of Transportation

[FR Doc. 81-1827 Filed 1-16-81; 8:45 am]

BILLING CODE 4910-13-M

federal register

Monday
January 19, 1981

Part XXXIV

Department of the Interior

Bureau of Land Management

Leases, Permits, and Easements; Land Use Authorizations Under the Federal Land Policy and Management Act

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 9 and 2920

[Circular No. 2483]

Leases, Permits, and Easements; Land Use Authorizations Under the Federal Land Policy and Management Act

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: Section 302 of the Federal Land Policy and Management Act of 1976 authorizes the Secretary of the Interior to regulate through easements, permits, leases or other instruments, the use, occupancy and development of the public lands. This final rulemaking provides the procedures under which that authority will be exercised.

EFFECTIVE DATE: February 18, 1981.

ADDRESS: Any suggestions or inquiries should be sent to: Director (320), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Ralph Conrad, (202) 343–8693, or Robert C. Bruce, (202) 343–8735.

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published in the **Federal Register** on May 12, 1980 (45 FR 31284). Comments were invited for 60 days. Comments were received from 31 different sources, 17 from Federal agencies, 8 from business interests, 3 from associations, 2 from individuals and 1 from an environmental group.

The general comments expressed the view that the proposed rulemaking was good and reflected a real effort to take full advantage of the possibilities for flexible land use authorization provided in section 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732). Three or four comments were of the opinion that the proposed rulemaking was overly complicated and needed to be less specific. One of the comments suggested that there should be three sets of regulations developed, one for leases, one for permits and one for easements. This suggested process would, the comment felt, allow for a differentiation to be made in the requirements for each of the types of use authorization. The proposed rulemaking was designed to allow the flexibility afforded by section 302 of the Federal Land Policy and Management Act and to require the minimum amount of information needed to determine if a requested land use should or should not be permitted on the Federal lands. The final rulemaking continues this concept. It provides a process of availability of the public lands for approved uses of those lands, and a simplified process for public-initiated short term permits for uses that have minimum impact on the public lands.

The bulk of the comments on the proposed rulemaking were directed at specific provisions. Each of the sections that received comments will be discussed.

Purpose

A new section has been added to the final rulemaking to establish the purpose of the rulemaking. It makes clear that procedural and informational requirements will vary in relation to the nature of the anticipated use, thus permitting expedited issuance of permits.

Definitions

The term "authorized officer" drew several comments. One comment requested that the authority to issue land use authorizations not be delegated any lower than to the District Manager. As stated in the preamble to the proposed rulemaking, the authorized officer will be the District Manager in nearly every case. There may be some instances where an Area Manager will be the authorized officer, but those will not be the normal situations. Other comments on this term were concerned about the authority granted the authorized officer by the rulemaking and suggested that the rulemaking should set out the qualifications of the authorized officer. Nearly all of the regulations of the Bureau of Land Management place authority at the point where the granting action takes place, the issuance of a land use authorization in this case. It is the Bureau's concept that the people on the ground are closest to the conditions and have the most knowledge of the situation. This being the case, the authority to make decisions and put them in effect is properly placed at the point of the greatest knowledge. In the event an authorized officer improperly carries out his duties, the appeal system gives the wronged individual an avenue for correcting the wrong. No change has been made in the term "authorized officer".

Some of the comments questioned whether access to a lease, permit or easement would be handled as part of the land use authorization or would be obtained by the filing of an application under the provisions of the right-of-way regulations. As a result of a careful review of this question, it was decided that the final rulemaking would not be changed and access would be handled in the manner set forth in the proposed rulemaking. If an applicant for a land use authorization needs access across public lands, that access will be obtained through a request for a right-of-way under the provision of Part 2800 of this title.

The term "casual use" has been added to the definition section along with a new paragraph in § 2920.1 to make it clear that land use authorizations under this rulemaking are not required for short-term activities such as hunting, fishing and other individual activities. These additions have been added to clarify the intent of the rulemaking.

Several of the comments made the observation that the term "land use authorization" appeared several times in the rulemaking, but was not defined. The comments felt that defining this term would clarify the rulemaking. The suggestion has been adopted and the term "land use authorization" has been added to the definition section.

Policy

A comment raised a question about the process used for the determination of the fair market value of lands covered by a land use authorization. Fair market value will be determined by an appraisal performed by a Federal or independent appraiser, as determined by the authorized officer, using the principles contained in the *Uniform Appraisal Standards for Federal Land Acquisitions*. This system is used by Federal agencies for determining fair market value and will be used for that purpose in connection with this rulemaking.

Another comment expressed the view that the rulemaking should make some exceptions to the requirement that fair market value be received for land use authorizations issued under this rulemaking. The Congress, in section 102(a)(9) of the Federal Land Policy and Management Act, declared that it was their policy that the United States receive fair market value for the use of the public lands and their resources unless otherwise provided by statute. There is no statutory authority for issuing land use authorizations under section 302 of the Federal Land Policy and Management Act at less than fair market value. The Bureau of Land Management has other programs for granting public lands at less than fair market value and these will be used for special situations if the uses qualify. The appraisal should not unduly delay the issuance of land use authorizations.

A new paragraph has been added to this section to clarify the policy with regard to the informational and procedural requirements for the three

types of land use authorizations which may be issued under this rulemaking.

Uses Authorized

Several comments raised the point that this rulemaking could be the basis for authorizing uses such as certain right-of-way grants that can be authorized under the regulations implementing title V of the Federal Land Policy and Mangement Act of 1976. The comments were of the opinion that non-linear right-of-way grants could be handled as leases under this rulemaking. As stated in the rulemaking, this rulemaking will be used only for those uses that cannot be granted under title V of the Federal Land Policy and Mangement Act, section 28 of the Mineral Leasing Act or some other statutory provision. Right-of-way grants, both linear and non-linear, as well as grants for facilities closely related to a right-of-way grant will be handled under the regulations implementing title V of the Federal Land Policy and Management Act and section 28 of the Mineral Leasing Law. This suggestion has not been adopted.

A large number of the comments objected to the 30-year limitation placed on leases and the 1-year term placed on permits by the proposed rulemaking. The comments pointed out that the provisions of the Federal Land Policy and Management Act did not limit the term of a lease or permit and that the limitation imposed was not soundly based. The comments stated that the 30-year limitation could impact the ability of the land user to finance a project. After studying the question, the section has been changed to remove the 30-year limitation on leases, leaving the term to the discretion of the authorized officer, and to increase the term for permits from 1 to 3 years.

Another issue raised with regard to this section was the question of time limits on the term of an easement. The proposed rulemaking set no term. The final rulemaking has been changed to make it clear that the term of an easement will be determined by the authorized officer. A related comment on easements asked if the compatibility required by the rulemaking is to be with adjacent Federal lands or non-Federal lands. The intent of the rulemaking is that the easement will be used to assure compatibility with uses on adjacent lands, both Federal and non-Federal.

Proposal Procedures

As stated in the preamble to the proposed rulemaking, this final rulemaking provides two methods under which a land use authorization can come into being. The Bureau of Land Management can offer public lands for a non-Federal use on it own motion as a result of a determination through the land use planning process that public lands are available for a non-Federal use. The other process is initiated by an individual making a suggestion to the Bureau for a non-Federal use of a portion of the public lands.

The captions of the sections of the regulations relating to these processes have been changed to more clearly reflect the procedural requirements for public and Bureau of Land Mangement initiated land use proposals. Section 2920.2 has been retitled to "Proposal procedures for public-initiated land use proposals". A new § 2920.2–2 entitled "Minimum Impact Permits" has been added to provide for expedited short-term permits for uses that will cause no appreciable harm to the public lands, their resources or improvements and are consistent with Bureau plans, programs and policies for the use of the land. The previous § 2920.2–2 has been re-numbered 2920.3 and titled "Bureau of Land Management initiated land use proposals" to distinguish such proposals from public-initiated land use proposals.

Proposal Content

Comments on this section and a later section of the proposed rulemaking were concerned about the scale of the map that would be required and pointed out that the proposed rulemaking set no standards for the required maps. To clarify this provision, the sections calling for furnishing a map have been amended to require that the map be of sufficient scale to allow all of the required information to be legibly shown.

In a related comment, the thought was expressed that the legal description required in this and other sections of the proposed rulemaking was for a survey. It was not the intent of the rulemaking that a survey be required for the legal description. All that is required is a description that is sufficient to allow the project to be located on the ground with reasonable certainty and to tie the map to the description.

Some concern was expressed in the comments about the amount of information required for a simple permit. This objection should be resolved by the new language in § 2920.2–2 of the final rulemaking that allows the authorized officer to issue permits for uses having minimum impact on the public lands after discussion of a proposal and submission of a short form application.

Proposal Review

A few comments were concerned about the planning process and the determination of consistency required by the proposed rulemaking. In order to bring the language of this rulemaking in line with the terminology used in the land use planning regulations, the word "consistency" has been changed to "conformance". The change in wording has not changed the basic requirement of the rulemaking that a proposed land use must conform to the multiple uses designated for the area under the land use planning process before it can be authorized. This conformance can be determined in a very short time for minor projects, but will be one part of the longer clearance process required for substantial projects. Another change made in the rulemaking was to make it clear that the authorization must be in conformance with "an existing" land use plan. The addition of the words "an existing" when describing land use plans clarifies the rulemaking.

One comment requested that the section be amended to require the authorized officer to consider a proposal that is found to not conform to an existing land use plan as an application to amend or revise the plan rather than leaving it to the authorized officer's discretion as the proposed rulemaking does. This change has not been adopted. There will be instances where the land use proponent, once the non-conformance is explained, will not want to go any further with the matter. In nearly every instance, the authorized officer will discuss whether or not the proposal should be considered a request to amend or revise an existing land use plan with the proponent before proceeding. The amendment-revision process is a complicated procedure and the land use proponent may not want to spend the time and effort to complete the process. The suggested change has not been adopted.

Notice of Realty Action

A few of the comments expressed the view that the notice of realty action should be deleted, with one comment being of the opinion that the Federal Land Policy and Management Act intended that the Federal Government exercise little control over proposed uses, but process all proposals and allow the use. Section 302 of the Federal Land Policy and Management Act requires the Secretary of the Interior to regulate the use of the public lands. This rulemaking provides the procedure for determining the appropriateness of a proposed use, as well as the identification of lands for non-Federal uses. The notice of realty action is a device to inform the public that a determination has been made that lands are available for a non-Federal use. The

notice of realty action is not intended to nor will it prevent the public from initiating proposals for non-Federal uses of the public lands. The issuance and publication of a notice of realty action is required except in those instances where the authorized officer determines, as provided in § 2920.2–2, that a publicly initiated proposed use can be allowed under a permit because it will not cause appreciable damage to the public lands and their resources and is in compliance with Bureau of Land Management policies and programs. This authority is permitted only for permits, which are short term revocable authorizations, but not for leases and easements, which are authorizations for longer terms and give greater rights to the holder. The notice of realty action has been retained as part of the procedure in the final rulemaking.

A couple of comments on this section wanted language included that would specify that adjoining landowners and current and past users of the lands covered by the proposal would be interested parties who would be required to receive the notice of realty action. This suggestion has been adopted and appropriate language added to this section of the final rulemaking.

Finally, one comment pointed out that paragraph (d) of the section did not allow for those instances when the notice of realty action has been waived. The provisions concerning waiver of the notice of realty action have been clarified to take care of this comment.

Application content

The several comments on this section expressed the opinion that the requirements were too detailed and should be reduced. The information required by the rulemaking at the application stage was carefully analyzed before the publication of the proposed rulemaking and again as a result of the comments received on the proposed rulemaking. The information required is the minimum needed to enable the authorized officer to make a decision on the granting of a land use authorization.

Another change in this section of the final rulemaking is deletion of the citizenship requirement that appeared in the proposed rulemaking. Also deleted are the paragraphs containing requirements for documents to be furnished by corporations, partnerships, associations and other incorporated entities and State and local entities. This deletion will further simplify the final rulemaking.

Further, much of the information can be supplied on a one-time basis and a reference made to the case number containing the information if it has not changed since it was furnished. The new provision in the final rulemaking for quick issuance of a permit or a short form should alleviate much of the concern about the information required for a land use authorization. No significant change has been made in this section in response to these comments.

One comment wanted a change in the paragraph dealing with the discretion of the authorized officer to require evidence of financial and technical capability prior to initiation of construction on the project covered by the land use authorization. The authority has been left unchanged, but the manual sections that will be issued as guidance for the field on how to carry out this rulemaking will strongly suggest that the authorized officer require such evidence only for major projects or projects that involve extensive costs or technical capability.

One change was made in paragraph (b)(1) of the section to make clear that the authorized officer can require the applicant or applicants not only to perform needed studies, but to pay for those studies if it is decided that it would be in everyone's best interest to have the Bureau of Land Management either perform the studies or contract for their performance. This amendment does not increase the burden on an applicant; it just makes it clear that the matter can be resolved in more than one way.

Application Review

The comment on this section recommended that a time frame be imposed on the authorized officer to act on proposals or applications. This suggestion has not been adopted. However, every effort will be made to act on all proposals and applications in the shortest possible time. The procedure for discussion of a proposal should, if instituted by a proponent early enough in the process, shorten the processing of a proposal or application, and result in the issuance of short term permits without further paperwork.

The section has been amended to make it clear that the authorized officer has the option to deny an application, as well as to point out the deficiencies in an application. This change clarifies the section.

Competitive or Noncompetitive Bids

The only comment received on this section was a request that the section be amended to set fair market value as the maximum bid that could be accepted under competitive bidding procedures.

The rulemaking requires that the Secretary of the Interior receive at least fair market value for the use of the public lands. It does not limit bidding in a highly competitive situation to only fair market value. There is no reason to deprive the public of the return the market place affords by limiting the return to no more than fair market value. The suggested change has not been adopted.

Application Processing

The language of subsection (b) of this section has been changed to require that the selected land use applicant shall supply any additional information that the authorized officer considers necessary to process the application.

Reimbursement of Costs

This section was the focus of more comments than any other section of the proposed rulemaking. All of the comments were opposed to the concept of reimbursement of costs, with some suggesting that the Secretary of the Interior lacked the authority to impose such a condition. Others argued that the environmental analysis process was in the public interest and should not be charged to the proponent or applicant. A provision has been added to this section that exempts from the cost reimbursement requirements those land use authorizations whose total rental is less than $250. This will exempt most short term permits.

Section 304 of the Federal Land Policy and Management Act of 1976 specifically gives the Bureau of Land Management the authority to recover "reasonable" costs, including the costs of special studies and environmental reports, with respect to applications relating to the public lands. By Secretarial Order 3011 (42 FR 55280) the Secretary of the Interior established that costs of special studies and environmental reports legally necessary for the processing of applications are reasonable costs.

Since the issuance of that order, two court decisions have upheld the authority of the Federal Government to recover reasonable costs, including the costs of preparing an environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.). In *Mississippi Power and Light Co.* v. *Nuclear Regulatory Commission*, 601 F. 2d 223 (5th Cir. 1979), the court held that the Nuclear Regulatory Commission could, under the Independent Offices Appropriation Act, charge an applicant for a nuclear reactor license the full cost of expenses incurred by the Commission in processing the license application, including the cost of an environmental impact statement. Furthermore, the court

specifically stated that it was not necessary to segregate the costs of the private and public benefits of an environmental impact statement, holding that the Commission may recover the full cost of providing a service (i.e. application processing) to an identifiable recipient (i.e. the applicant), regardless of the incidental public benefits flowing from that service. The court virtually ignored the contrary holding in *Public Services of Colorado v. Andrus*, 433 F. Supp. 144 (D. Colo. 1977).

It is more appropriate to follow the interpretation given the Independent Offices Appropriation Act by the court of appeals than that of the district court. The rulemaking reflects that position.

In *Alumet v. Andrus*, 607 F. 2d 911 (10th Cir 1979), the court of appeals overturned the ruling of the lower court that section 304 of the Federal Land Policy and Management Act did not authorize the Secretary of the Interior to seek reimbursement from an applicant for any part of the cost of preparing an environmental impact statement. The decision of the district court below was substantially based on the analysis provided in *Public Services of Colorado v. Andrus*. The reversal of the *Alumet* district court decision cast further doubt on the holding of the district court in the *Public Services* case. While the court of appeals in the *Alumet* case left unanswered the question whether full costs of an environmental impact statement can be recovered, when *Alumet* is read together with *Mississippi Power and Light*, one can draw the conclusion that it is within the constitutional and statutory authority of the Secretary of the Interior to impose upon an applicant for a land use authorization the full costs of an environmental impact statement necessary to process the application. The comments on the proposed rulemaking suggest that because the authority of the Secretary of the Interior to seek reimbursement is discretionary, cost reimbursement should be eliminated or that certain organizations, presumably acting in the public interest, should be exempted from cost reimbursement altogether. It is clear that the language of section 304 of the Act is discretionary. Nevertheless, the Secretary's ability to reduce or eliminate cost reimbursement is severely restricted by the Congress in the exercise of its authority over appropriations.

Moneys paid by applicants for processing applications are placed in a revolving account at the Department of the Treasury:

> The moneys received for reasonable costs under this subsection shall be deposited with the Treasury in a special account and are hereby authorized to be appropriated and made available until expended * * *. 43 U.S.C. 1734(b) (1976).

On July 26, 1977, Congress implemented this revolving account through the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1978, Pub. L. 95–74, 91 Stat. 285, by authorizing the expenditure of moneys collected under sections 304(a), 304(b), 305(a) and 504(g) of the Federal Land Policy and Management Act. At the same time, Congress appropriated no other funds for processing right-of-way applications. The Senate in its report on the bill which became Pub. L. 95–74 states:

> This self-sustaining account, established under authority of the Federal Land Policy and Management Act, permits the Bureau of Land Management to finance required environmental study costs for rights-of-way applications, using fees assessed against the applicants * * *. S. Rep No. 276, 95th Cong., 1st Sess. 9 (1977).

The House in its report stated:

> This account uses the revenue collected under specified sections of the Federal Land Policy and Management Act of 1976. These include the collection of reasonable administrative and other costs, including environmental impact statement preparation costs in connection with right-of-way applications from the private sector. This includes such programs as the Trans-Alaska pipeline, and other energy casework functions where the costs of projects will be provided in advance by the applicant before the BLM initiates any work on the application. H.R. Rep. No. 392, 95th Cong., 1st Sess. 20–21 (1977).

This revolving account has been continued on the same basis by Congress through fiscal year 1980. Since at the present time no money for preparation of environmental impact statements is provided by Congress, all funds for such work must be provided by the applicant.

A new paragraph (a) has been added to this section to make it clear that when there are two or more applications for a land use authorization on the same parcel of land, each applicant is liable for the identifiable cost of processing his/her application. Further, each applicant is also liable for an equal share of the unseparable cost of processing multiple applications up to the selection of a successful applicant. The remanining paragraphs of this section have been relettered to acommodate this new paragraph.

A few comments objected to the requirement for cost reimbursement when an application is denied and recommended that the requirement be dropped. The provision has been left in the final rulemaking. Even when an application is denied or withdrawn, the Bureau of Land Management will have expended manhours and money in connection with that application—money and manhours that it is entitled to recover. As stated above, the only funds available for processing applications are those recovered through this provision. Failure to recover the cost involved with applications that are denied or withdrawn would have an adverse impact on the total program and cannot be permitted.

Another comment on this section wanted to be certain that an accounting of the expenditure of cost reimbursement funds could be obtained from the Bureau of Land Management by a proponent or applicant. The rulemaking provides for such a statement upon request.

Another comment wanted the section to be amended to require that any unexpended funds be refunded to the proponent or applicant. The rulemaking gives the authorized officer the authority to either refund the unexpended funds or to credit them to any payments that may remain due or payable for services performed. It is not reasonable to require a refund of money that will have to be billed at a later time. None of the suggested changes were adopted and no substantive changes have been made in the reimbursement of costs section.

Terms and Conditions

Several of the comments were troubled by the provisions of paragraph (a) as it relates to provisions in the land use authorization that would permit use of the lands by the general public. Some felt that the provision should be deleted as a requirement of a land use authorization, while one comment was of the view that the holder of the land use authorization should have the right to close areas to public use. Another comment stated that there should be a term or condition guaranteeing the holder of a land use authorization certain rights in the lands. All of the comments appear to have overlooked the requirement that the public use be compatible or consistent with the authorized land use. This would mean that a land use authorization would close the area to public use if public use would interfere with the use the land use authorization allowed. If the land use would not preclude use of the lands by the public, public access would be made a term of the land use authorization. The terms and conditions of a land use authorization will be the subject of discussion between the authorized officer and the applicant

prior to the issuance of a land use authorization. If the applicant finds the terms and conditions of a land authorization are too stringent, the applicant can attempt to renegotiate them or not accept the authorization. No change has been made in this area of the proposed rulemaking.

One comment suggested deleting the language requiring holders of a land use authorization to keep open the roads or trails commonly in use on the public lands on the basis that the language was not needed. The language has been retained to prevent the closure of public roads and trails within an area covered by a land use authorization.

Another comment on this section suggested that the paragraph dealing with the removal of mineral or vegetive materials should be amended to allow the holder of the land use authorization to receive one-half of the proceeds of the sale of the mineral or vegetative materials from the lands covered by the land use authorization. The statutory authority covering removal of mineral and vegetative materials does not authorize such disposition of receipts, nor is there any logical reason for giving the holder of a land use authorization any of the proceeds of the sale of such material. The suggested change has not been adopted.

Several of the comments requested that the liability provisions of the terms and conditions section be deleted or amended to lessen their requirements. One of the areas of strong comment was the requirement that the holder of a land use authorization and its agents pay the United States for injuries or damages caused by it or its agents. There was also objection to the provision requiring such holders to pay for injuries or damages suffered by a third party as a result of action of a holder or its agents. The other area of concern was the imposition of strict liability for activities on an area covered by a land use authorization that the Secretary of the Interior determines to present a foreseeable hazard of risk of danger to the public lands or property of the United States. One comment questioned the authority of the Department to impose strict liability.

The liability provisions are in the rulemaking to protect the United States and users of the public lands from the negligent actions of a holder of a land use authorization and the holder's agents. This provision is designed to protect the taxpayers from the actions of a person authorized to use the public lands and assure that the United States will not have to bear the costs of the negligence of a user. The strict liability provision is a condition that the Secretary of the Interior imposes as a condition for using the public lands for an activity that has been determined to present a foreseeable hazard of risk of danger to the public lands or property of the United States. There is no express authority for imposing this standard in section 302 as there is in title V of the Federal Land Policy and Management Act. Neither is there a provision denying the Secretary of the Interior the authority to impose the standard as a condition of the use of the public lands. The provision is designed to protect the United States from those activities that present a hazard or risk to its lands or property. No change has been made in the liability provisions of the final rulemaking.

One comment requested that the bonding provision be deleted on the basis that the requirement was unrealistic and because bonds could not be obtained for activities authorized by the Federal Land Policy and Management Act of 1976. The bonding requirement will only be used to assure the authorized officer that the terms and conditions of a land use authorization will be carried out. The bonding provision will be used rarely since the holder will, in most instances, have the clearly demonstrated financial and technical ability to carry out the terms and conditions of the land use authorization. Further, there has been no indication of refusal of a bonding company to issue a bond for an activity just because it was authorized under the provisions of the Federal Land Policy and Management Act. No change has been made in the bonding section.

Fees

A few comments objected to the provision that permits the adjustment of the rental fees on leases and easements every five years. The comments wanted the provision removed, expressing the feeling that the fee should be set for the life of the land use authorization, with one suggesting incremental increases set at the time the land use authorization is granted. The adjustment provision is included in the rulemaking to allow the Secretary of the Interior to carry out the policy of Congress to obtain fair market value for the use of the public lands. If the rental fee could not be adjusted, the rental fee could become outmoded over the term of the authorization, costing the United States the income it is entitled to for the use of the public lands. There has been no change in the provisions of the final rulemaking as they relate to the rental fee.

One comment made the point that the processing fee for renewal should be extended to transfers and assignments of land use authorizations. The Bureau of Land Management is required to act on all three of these documents for the benefit of the parties and should be reimbursed for that action. The suggestion has been adopted and language added to the paragraph to include transfers and assignments.

Construction Phase

One comment objected to the provision in this section that allows the authorized officer to inspect and monitor construction on a land use authorization area as necessary to assure compliance with the terms and conditions of the authorization. The comment felt the authority could be abused, that the frequency of inspection should be set by the rulemaking or set by agreement in the authorization. It is essential, in the fulfillment of the Bureau's responsibility to protect the public lands that the authorized officer and his/her staff inspect and monitor the project grounds to be certain that all terms and conditions are being met. In addition if violations are reported to the authorized officer, the authorized officer is bound by his/her position or responsibility to check them out to ascertain if appropriate action is being taken by the holder. For these reasons, the section has been changed to direct the authorized officer to inspect and monitor. However, just as with the right of access to the area, there is no intention to "spy" on the holder of an authorization. Visits will normally be during regular business hours after contact by personnel of the Bureau of Land Management.

Termination and Suspension

A large number of comments were concerned with various provisions of this section. The first concern was with the provision making a 2-year non-use or failure to construct a presumption of abandonment and termination. The presumption is rebuttable by a showing of a sufficient reason for such failure, i.e., inability to obtain financing because of tight money, etc., or other reasons. If a two year period of non-activity occurs, the authorized officer will discuss the matter with the holder, letting the holder give his reasons for the non-activity prior to issuing a termination order. No change has been made in this paragraph.

A few comments misunderstood the paragraph allowing termination of a permit if the lands are needed for another purpose. One comment suggested that, if the provision is not deleted from the rulemaking, provision be made for compensation if a permit is revoked. The authority granted by this

paragraph is to be used only when the lands are needed for another purpose that would interfere with the permitted use, such as sale or exchange of the lands. Finally, the definition of permit makes it revocable at will. This paragraph is consistent with that definition and the rights of a holder of a permit under that definition. No change has been made in this paragraph.

One comment questioned the ability of the authorized officer and staff to make the determination that a noncompliance was adversely affecting the health, safety and welfare of the public or the environment. The Bureau of Land Management has the trained personnel to make this determination, but they are also able to obtain the assistance of State and local officials in arriving at this determination. The provision has been retained because it is needed to protect the public and the environment in those rare instances where such violations may occur.

A couple of comments expressed dissatisfaction with the appeal process for suspensions and terminations, with one comment suggesting that a jury of some type be used in a hearing on the suspension or termination rather than an administrative law judge. The appeal provision has not been changed. The use of administrative law judges on appeals is a process that is well recognized in administrative law and used throughout the Federal Government. The administrative law judge renders a fair hearing and finds against the action of the Federal Government where appropriate. Further, the decision of the administrative law judge is subject to review.

One comment wanted the language covering the action of the authorized officer on a request to resume activities amended to state that the action is granted if not acted on in 5 days rather than denied as stated in the proposed rulemaking. The suggestion has not been accepted because to do so could create a situation where the regulations would permit an activity that endangered the public or the environment to proceed where the authorized officer had not acted because of some administrative oversight. This is a dangerous precedent and the existing language gives the holder of the authorization the opportunity to appeal the denial and obtain action if the denial is improper. Finally, a few comments expressed the view that the 60 day period allowed for removing structures and reclaiming the site of the land use authorization was too short for most land use authorizations, since they will involve major improvements on the public lands. The provision has not been changed because the language of the paragraph authorizes the authorized officer to agree to a longer term if needed or if the land use authorization includes in its terms and conditions a longer period in recognition of the additional time needed to remove major improvements.

Editorial changes and corrections have been made as necessary.

The principal author of this final rulemaking is Ralph Conrad of the Division of Land Resources and Realty, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a significant regulatory action requiring the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Under the authority of section 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732), Subtitle A and Group 2900, subchapter B, Chapter II, Title 43 of the Code of Federal Regulations are amended as set forth below.

Guy R. Martin,

Assistant Secretary of the Interior.

January 14, 1981.

PART 9—LEASES, PERMITS, AND EASEMENTS FOR PUBLIC WORKS [REMOVED]

1. Subtitle A is revised by removing Part 9 in its entirety.

2. Group 2900 is amended by revising Part 2920 as follows:

Part 2920—LEASES, PERMITS AND EASEMENTS

Subpart 2920—Leases, Permits and Easements—General Provisions

Sec.

2920.0–1 Purpose.
2920.0–3 Authority.
2920.0–5 Definitions.
2920.0–6 Policy.
2920.1 Uses authorized.
2920.2 Procedures for public-initiated land use proposals.
2920.2–1 Discussion of proposals.
2920.2–2 Minimum impact permits.
2920.2–3 Other land use proposals.
2920.2–4 Proposal content.
2920.2–5 Proposal review.
2920.3 Bureau of Land Management initiated land use proposals.
2920.4 Notice of realty action.
2920.5 Application procedure.
2920.5–1 Filing of applications for land use authorizations.
2920.5–2 Application content.
2920.5–3 Application review.
2920.5–4 Competitive or non-competitive bias.
2920.5–5 Application processing.
2920.6 Reimbursement of costs.

Sec.

2920.7 Terms and conditions.
2920.8 Fees.
2920.9 Supervision of the land use authorization.
2920.9–1 Construction phase.
2920.9–2 Operation and maintenance.
2920.9–3 Termination and suspension.

Authority: Sec. 302, Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732).

PART 2920—LEASES, PERMITS, AND EASEMENTS

Subpart 2920—General Provisions

§ 2920.0–1 Purpose.

The purpose of the regulatons in this part is to establish procedures for the orderly and timely processing of proposals for non-Federal use of the public lands. The procedural and informational requirements set by these regulations vary in relation to the nature of the anticipated use.

§ 2920.0–3 Authority.

Sections 302 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1740), authorize the Secretary of the Interior to issue regulations providing for the use, occupancy and development of the public lands through leases, permits and easements.

§ 2920.0–5 Definitions.

As used in this part, the term:

(a) "Authorized officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this part.

(b) "Easement" means an authorization for a non-possessory, non-exclusive interest in lands which specifies the rights of the holder and the obligation of the Bureau of Land Management to use and manage the lands in a manner consistent with the terms of the easement.

(c) "Lease" means an authorization to possess and use public lands for a fixed period of time.

(d) "Permit" means a short-term revocable authorization to use public lands for specified purposes.

(e) "Land use proposal" means an informal statement, in writing, from any person to the authorized officer requesting consideration of a specified use of the public lands.

(f) "Land use plan" means resource management plans or management framework plans prepared by the Bureau of Land Management pursuant to its land use planning system.

(g) "Public lands" means lands or interests in lands administered by the Bureau of Land Management, except lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts and Eskimos.

(h) "Person" means any person or entity legally capable of conveying and holding lands or interests therein, under the laws of the State within which the lands or interests therein are located, who is a citizen of the United States, or in the case of a corporation, is subject to the laws of any State or of the United States.

(i) "Proponent" means any person who submits a land use proposal, either on his/her own initiative or in response to a notice for submission of such proposals.

(j) "Applicant" means any person who submits an application for a land use authorization under this part.

(k) "Casual use" means any short term non-commercial activity which does not cause appreciable damage or disturbance to the public lands, their resources or improvements, and which is not prohibited by closure of the lands to such activities.

(l) "Land use authorization" means any authorization to use the public lands issued under this part.

§ 2920.0-6 Policy.

(a) Land use authorizations shall be issued only at fair market value and only for those uses that conform with Bureau of Land Management plans, policy, objectives and resource management programs. Conformance with land use authorizations will be determined through the planning process and procedures provided in Part 1600 of this title.

(b) In determining the informational and procedural requirements, the authorized officer will consider the duration of the anticipated use, its impact on the public lands and resources and the investment required by the anticipated use.

§ 2920.1 Uses authorized.

Uses not specifically authorized under other laws or regulations and not specifically forbidden by law may be authorized; under this part. Uses which may be authorized include residential, agricultural, industrial and commercial uses, and uses which cannot be authorized under title V of the Federal Land Policy and Management Act or section 28 of the Mineral Leasing Act. Land use authorizations shall be granted under the following categories:

(a) Leases shall be used to authorize uses of public lands involving substantial construction, development or land improvement and the investment of large amounts of capital which are to be amortized over time. A lease conveys a possessory interest and is revocable only in accordance with its terms and the provisions of § 2920.9-3 of this title. Leases shall be issued for a term, determined by the authorized officer, that is consistent with the time required to amortize the capital investment.

(b) Permits shall be used to authorize uses of public lands for not to exceed 3 years that involve either little or no land improvement, construction or investment, or investment which can be amortized within the term of the permit. A permit conveys no possessory interest. It is renewable at the discretion of the authorized officer and may be revoked in accordance with its terms and the provisions of § 2920.9-3 of this title. Permits shall be issued on a form approved by the Director, Bureau of Land Management that has been filed by the applicant with the appropriate Bureau of Land Management office.

(c) Easements may be used to assure that uses of public lands are compatible with non-Federal uses occurring on adjacent or nearby land. The term of the easement shall be determined by the authorized officer. An easement granted under this part may only be for purposes not authorized under title V of the Federal Land Policy and Management Act or section 28 of the Mineral Leasing Act.

(d) No land use authorization is required under the regulations of this part for casual use of the public lands.

§ 2920.2 Procedures for public initiated land use proposals.

§ 2920.2-1 Discussion of proposals.

(a) *Suggestions by land use proponent.* Any person who seeks to use public lands may contact the Bureau of Land Management office having jurisdiction over the public lands in question and discuss the land use proposal. This contact should be made as early as possible so that administrative requirements and potential conflicts with other land uses can be identified.

(b) *Response by the authorized officer.* The authorized officer will discuss with the land use proponent whether the requested land use, suitability or non-suitability of the requested land use based on a preliminary examination of existing land use plans, where available, is or is not in conformance with Bureau of Land Management policies and programs for the lands, local zoning ordinances and any other pertinent information. The authorized officer will discuss administrative requirements for the type of land use authorization which may be granted (lease, permit or easement), including, but not limited to: additional information which may be required; qualifications; cost reimbursement requirements; associated clearances, other permits or licenses which may be required; environmental and management considerations; and special requirements such as competitive bidding and identification of on-the-ground investigations which may be required in order to issue a land use authorization.

§ 2920.2-2 Minimum impact permits.

The authorized officer may, without publication of a notice of realty action, issue a permit for a land use authorization upon a determination that the proposed use is in conformance with Bureau of Land Management plans, policies and programs, local zoning ordinances and any other requirements and will not cause appreciable damage or disturbance to the public lands, their resources or improvements.

§ 2920.2-3 Other land use proposals.

(a) A proposal for a land use authorization, including permits not covered by § 2920.2-2 of this title, shall be submitted in writing to the Bureau of Land Management office having jurisdiction over the public lands covered by the proposal.

(b) The submission of a proposal gives no right to use the public lands.

§ 2920.2-4 Proposal content.

(a) Proposals for a land use authorization shall include a description of the proposed land use in sufficient detail to enable the authorized officer to evaluate the feasibility of the proposed land use, the impacts if any, on the environment, the public or other benefits from the proposed land use, the approximate cost of the proposal, any threat to the public health and safety posed by the proposal and whether the proposal is, in the proponent's opinion, in conformance with Bureau of Land Management plans, programs and policies for the public lands covered by the proposal. The description shall include, but not be limited to:

(1) Details of the proposed uses and activities;

(2) A description of all facilities for which authorization is sought, access needs and special types of easements that may be needed;

(3) A map of sufficient scale to allow all of the required information to be legible and a legal description of primary and alternative project locations; and

(4) A schedule for construction of any facilities.

(b) The proposal shall include the name, legal mailing address and telephone number of the land use proponent.

§ 2920.2-5 Proposal review.

(a) A land use proposal shall, upon submission, be reviewed to determine if the public lands covered by the proposal are appropriate for the proposed land use and if the proposal is otherwise legal.

(b) If the proposal is found to be appropriate for further consideration, the authorized officer shall examine the proposal and make one of the following determinations:

(1) The proposed land use is in conformance with the appropriate land use plan and can be approved;

(2) The proposed land use has not been addressed in an existing land use plan and shall be addressed in accordance with the procedure in Part 1600 of this title;

(3) The proposed land use is in an area not covered in an existing land use plan and shall be processed in accordance with the procedure in § 1601.8 of this title; or

(4) The proposed land use is not in conformance with the approved land use plan. This determination may be appealed under 43 CFR 4.400 for review of the question of conformance with the land use plan.

(c)(1) If a proposed land use does not meet the requirements of this subpart or is found not to be in conformance with the land use plan, the authorized officer shall so advise the proponent and shall provide a written explanation of the reasons the proposed use does not meet the requirements of this subpart and/or is not in conformance with an existing land use plan.

(2) Where a proposed land use is determined not to be in conformance with an approved land use plan, with the land use plan, the authorized officer may consider the proposal for land use as an application to amend or revise the existing land use plan under part 1600 of this title.

§ 2920.3 Bureau of Land Management initiated land use proposals.

Where, as a result of the land use planning process, the desirability of allowing use of the public lands or providing increased service to the public from such use of the public lands is demonstrated, the authorized officer may identify a use for the public land and notify the public that proposals for utilizing the land through a lease, permit or easement will be considered.

§ 2920.4 Notice of realty action.

(a) A notice of realty action indicating the availability of public lands for non-Federal uses through lease, permit or easement shall be issued, published and sent to parties of interest by the authorized officer, including, but not limited to, adjoining land owners and current or past land users, when a determination has been made that such public lands are available for a particular use either through the submission of a public initiated proposal or through the land use planning process.

(b) The notice shall include the use proposed for the public lands and shall notify the public that applications for a lease, permit or easement shall be considered. The notice shall specify the form of negotiation, whether by competitive or non-competitive bidding, under which the land use authorization shall be issued. A notice of realty action is not a specific action implementing a resource management plan or amendment.

(c) The notice of realty action shall be published once in the **Federal Register** and once a week for 3 weeks thereafter in a newspaper of general circulation in the vicinity of the public lands included in the land use proposal.

(d) An application submitted before a notice of realty action is published shall not be processed and shall be returned to the person who submitted it. Return of an application shall not be subject to appeal or protest.

§ 2920.5 Application procedure.

§ 2920.5-1 Filing of applications for land use authorizations.

(a) Only after publication of a notice of realty action shall an application for a land use authorization be filed with the Bureau of Land Management office having jurisdiction over the public lands covered by the application.

(b) The filing of an application gives no right to use the public lands.

§ 2920.5-2 Application content.

(a) Applications for land use authorizations shall include a reference to the notice of realty action under which the application is filed and a description of the proposed land use in sufficient detail to enable the authorized officer to evaluate the feasibility of the proposed land use, the impacts, if any, on the environment, the public or other benefits from the land use, the approximate cost of the proposed land use, any threat to the public health and safety posed by the proposed use and whether the proposed use is, in the opinion of the applicant, in conformance with the Bureau of Land Management plans, programs and policies for the public lands covered by the proposed use. The description shall include, but not be limited to:

(1) Details of the proposed uses and activities;

(2) A description of all facilities for which authorization is sought, access needs and special types of easements that may be needed;

(3) A map of sufficient scale to allow all of the required information to be legible and a legal description of primary and alternative project locations; and

(4) A schedule for construction of any facilities.

(b) Additional information:

(1) After review of the project description, the authorized officer may require the applicant(s) to fund or to perform additional studies or submit additional environmental data, or both, so as to enable the Bureau of Land Management to prepare an environmental analysis in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and comply with the requirements of the National Historic Preservation Act of 1966 (16 U.S.C. 470); The Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 et seq.); Executive Order 11593, "Protection and Enhancement of the Cultural Environment" of May 13, 1971 (36 FR 8921); "Procedures for the Protection of Historic and Cultural Properties (36 CFR Part 300); and other laws and regulations as applicable.

(2) An application for the use of public lands may require additional private, State, local or other Federal agency licenses, permits, easements, certificates or other approval documents. The authorized officer may require the applicant to furnish such documents, or proof of application for such documents, as part of the application.

(3) The authorized officer may require evidence that the applicant has, or prior to commencement of construction will have, the technical and financial capability to construct, operate, maintain and terminate the authorized land use.

(c) The application shall include the name and legal mailing address of the applicant.

(d) *Business Associations.* If the applicant is other than an individual, the application shall include the name and address of an agent authorized to receive notice of actions pertaining to the application.

(e) *Federal departments and agencies.* Federal departments and agencies are

not qualified to hold land use authorizations under this authority.

(f) If any of the information required in this section has already been submitted as part of a land use proposal submitted under § 2920.2 of this title, the application need only refer to that proposal by filing date, office and case number. The applicant shall certify that there have been no changes in any of the information.

§ 2920.5–3 Application review.

Every application shall be reviewed to determine if it conforms to the notice of realty action. If the application does not meet the requirements of this subpart, the application may be denied, and the applicant shall be so advised in writing, with an explanation.

§ 2920.5–4 Competitive or non-competitive bids.

(a) *Competitive.* Land use authorizations may be offered on a competitive basis if, in the judgment of the authorized officer, a competitive interest exists or if no equities, such as prior use of the lands, warrant non-competitive land use authorization. Land use authorizations shall be awarded on the basis of the public benefit to be provided, the financial and technical capability of the bidder to undertake the project and the bid offered. A bid at less than fair market value shall not be considered. Each bidder shall submit information required by the notice of realty action.

(b) *Non-competitive.* Land use authorizations may be offered on a negotiated, non-competitive basis, when, in the judgement of the authorized officer equities, such as prior use of the lands, exist, no competitive interest exists or where competitive bidding would represent unfair competitive and economic disadvantage to the originator of the unique land use concept. The non-competitive bid shall not be for less than fair market value.

§ 2920.5–5 Application processing.

(a) After review of applications filed, the authorized officer shall select one application for further processing in accordance with the notice of realty action. The authorized officer shall provide public notice of the selection of an applicant and notify the selected applicant, in writing, of the selection. All other applications shall be rejected and returned to the applicants.

(b) The selected land use applicant shall submit any additional information that the authorized officer considers necessary to process the land use authorization.

§ 2920.6 Reimbursement of costs.

(a) When two or more applications are submitted for a land use authorization, each applicant shall be liable for the identifiable costs of processing his (or her) application. Where the costs of processing two or more applications cannot be readily identified with particular applications, all applicants shall be liable for such costs, to be divided equally among them.

(b) The selected land use applicant shall reimburse the United States for reasonable administrative and other costs incurred by the United States in processing a land use authorization application and in monitoring construction, operation, maintenance and rehabilitation of facilities authorized under this part, including preparation of reports and statements required by the National Environmental Policy Act of 1969 (43 U.S.C. 4321 et seq.). The reimbursement of costs shall be in accordance with the provisions of § 2803.1–1 of this title, except that any permit whose total rental is less than $250 shall be exempt from reimbursement of costs requirements.

(c) The authorized officer may, before beginning any processing of a land use authorization application, require payment, as may be needed, to cover the estimated costs of processing the application. Before granting a land use authorization, the authorized officer shall assess and collect the actual costs of processing after furnishing the applicant with a statement of costs. This payment shall be determined in accordance with the provisions of § 2803 of this title.

(d) A selected applicant who withdraws, in writing, a land use application before a final decision is reached on the authorization is responsible for all costs incurred by the United States in processing the application up to the day that the authorized officer receives notice of the withdrawal and for costs subsequently incurred by the United States in terminating the proposed land use authorization process. Reimbursement of such costs shall be paid within 30 days of receipt of notice from the authorized officer of the amount due.

(e) Advance payments based on a schedule of rates developed by the authorized officer, are required for monitoring of operations and maintenance during the term of the land use authorization, which amount shall be paid simultaneously with the rental payment required by § 2920.8(a) of this title.

(f) The selected applicant shall, before a land use authorization is issued, submit a payment based on a schedule of rates developed by the Director, Bureau of Land Management, for monitoring rehabilitation or restoration of the lands upon expiration of the land use authorization.

(g) If payment, as required by paragraphs (b), (d) and (e) of this section, exceeds actual costs to the United States, refund may be made by the authorized officer from applicable funds under authority of 43 U.S.C. 1734, or the authorized officer may adjust the next billing to reflect the overpayment. Neither an applicant nor a holder of land use authorization shall set off or otherwise deduct any debt due to or any sum claimed to be owed them by the United States without the prior written approval of the authorized officer.

(h) The authorized officer shall, on request, give a selected applicant an estimate, based on the best available cost information, of the costs, which may be incurred by the United States in processing the proposed land use authorization. However, reimbursement shall not be limited to the estimate of the authorized officer if actual costs exceed the projected estimate.

(i) When through partnership, joint venture or other business arrangement, more than one person, partnership, corporation, association or other entity jointly make application for a land use authorization, each such party shall be jointly and severally liable for the costs under this section.

(j) Requests for modification of or addition to the land use authorization or reconstruction or relocation of any authorized facilities shall be treated as a new application for cost recovery purposes and are subject to the cost requirements of this section.

§ 2920.7 Terms and conditions.

(a) In all land use authorizations the United States reserves the right to use the public lands or to authorize the use of the public lands by the general public in any way compatible or consistent with the authorized land use and such reservations shall be included as a part of all land use authorizations. Authorized representatives of the Department of the Interior, other Federal agencies and State and local law enforcement personnel shall at all times have the right to enter the premises on official business. Holders shall not close or otherwise obstruct the use of roads or trails commonly in public use.

(b) Each land use authorization shall contain terms and conditions which shall:

(1) Carry out the purposes of applicable law and regulations issued thereunder;

(2) Minimize damage to scenic, cultural and aesthetic values, fish and wildlife habitat and otherwise protect the environment;

(3) Require compliance with air and water quality standards established pursuant to applicable Federal or State law; and

(4) Require compliance with State standards for public health and safety, environmental protection, siting, construction, operation and maintenance of, or for, such use if those standards are more stringent than applicable Federal standards.

(c) Land use authorizations shall also contain such other terms and conditions as the authorized officer considers necessary to:

(1) Protect Federal property and economic interests;

(2) Manage efficiently the public lands which are subject to the use or adjacent to or occupied by such use;

(3) Protect lives and property;

(4) Protect the interests of individuals living in the general area of the use who rely on the fish, wildlife and other biotic resources of the area for subsistence purposes;

(5) Require the use to be located in an area which shall cause least damage to the environment, taking into consideration feasibility and other relevant factors; and

(6) Otherwise protect the public interest.

(d) A holder shall be required to secure authorization under applicable law to pay in advance the fair market value, as determined by the authorized officer, of any mineral, vegetative materials (including timber) to be cut, removed, used or destroyed on public lands.

(e) A holder shall not use the public lands for any purposes other than those specified in the land use authorization without the approval of the authorized officer.

(f) Liability provisions:

(1) Holders of a land use authorization and all owners of any interest in, and all affiliates or subsidiaries of any holder of a land use authorization issued under these regulations shall pay the United States the full value for all injuries or damage to public lands or other property of the United States caused by the holder or by its employees, agents or servants, or by a contractor, its employees, agents or servants, except holders shall be held to standards of strict liability where the Secretary of the Interior determines that the activities taking place on the area covered by the land use authorization present a foreseeable hazard or risk of danger to public lands or other property of the United States. Strict liability shall not be applied where such damages or injuries result from acts of war or negligence of the United States.

(2) Holders of a land use authorization and all owners of any interest in, and affiliates or subsidiaries of any holder of a land use authorization issued under these regulations shall pay third parties the full value of all injuries or damage to life, person or property caused by the holder, its employees, agents or servants or by a contractor, its employees, agents or servants.

(3) Holders of a land use authorization shall indemnify or hold harmless the United States against any liability for damages to life, person or property arising from the authorized occupancy or use of the public lands under the land use authorization. Where a land use authorization is issued to a State or local government or any agency or instrumentality thereof, which has no legal power to assume such liability with respect to damages caused by it to lands or property, such State or local government or agency in lieu thereof shall be required to repair all damages.

(g) The authorized officer may require a bond or other security satisfactory to him/her to insure the fulfillment of the terms and conditions of the land use authorization.

(h) Any land use authorization existing on the effective date of this regulation is not affected by this regulation and shall continue to be administered under the statutory authority under which it was issued. However, by filing a proposal for amendment or renewal, the holder of a land use authorization shall be considered to have agreed to convert the entire authorization to the current statutory authority and the regulations in effect at the time of approval of the amendment or renewal.

(i) The holder of a land use authorization who has complied with the provisions thereof, shall, upon the filing of a request for renewal, be the preferred user for a new land use authorization provided that the public lands are not needed for another use. Renewal, if granted, shall be subject to new terms and conditions. If so specified in the terms of a permit, the permit may be automatically renewable upon payment of the annual rental unless the authorized officer notifies the permittee within 60 days of the expiration date of the permit that the permit shall not be renewed.

(j) Land use authorizations may be transferred in whole or in part but only under the following conditions:

(1) the transferee shall comply with the provisions of § 2920.2–3 of this title;

(2) the authorized officer may modify the terms and conditions of the land use authorization and the transferee shall agree, in writing, to comply with and be bound by the terms and conditions of the authorization as modified; and

(3) transfers shall not take effect until approved by the authorized officer.

(k) If public lands included in a lease or easement are to be disposed of, the conveyance shall be made subject to the lease or easement. Permits shall be revoked prior to disposal of the public lands.

§ 2920.8 Fees.

(a) *Rental.* (1) Holders of a land use authorization shall pay annually or otherwise as determined by the authorized officer, in advance, a rental as determined by the authorized officer. The rental shall be based either upon the fair market value of the rights authorized in the land use authorization or as determined by competitive bidding. In no case shall the rental be less than fair market value.

(2) Rental fees for leases and easements may be adjusted every 5 years or earlier, as determined by the authorized officer, to reflect current fair market value.

(3) The rental fees required by this section are payable when due, and a late charge of 1 percent per month of the unpaid amount or $15 per month, whichever is greater, shall be assessed if subsequent billings are required. Failure to pay the rental fee in a timely manner is cause for termination of the land use authorization.

(b) *Processing Fee.* Each request for renewal, transfer or assignment of a lease or easement shall be accompanied by a non-refundable processing fee of $25. The authorized officer may waive or reduce this fee for requests for permit renewals which can be processed with a minimal amount of work.

§ 2920.9 Supervision of the land use authorization.

§ 2920.9–1 Construction phase.

(a) Unless otherwise stated in the land use authorization, construction may proceed immediately upon receipt and acceptance of the land use authorization by the selected applicant.

(b) Where an authorization to use public lands provides that no construction shall occur until specific permission to begin construction is granted, no construction shall occur until an appropriate Notice to Proceed has been issued by the authorized officer, following the submission and approval of required plans or documents.

(c) The authorized officer shall inspect and monitor construction as necessary, to assure compliance with approved plans and protection of the resources, the environment and the public health, safety and welfare.

(d) The holder of a land use authorization may be required to designate a field representative who can accept and act on guidance and instructions from the authorized officer.

(e) The holder of a land use authorization may be required to provide proof of construction to the approved plan and required standards. Thereafter, operation of the authorized facilities may begin.

§ 2920.9–2 Operation and maintenance.

The authorized officer shall inspect and monitor the operation and maintenance of the land use authorization area, its facilities and improvements to assure compliance with the plan of management and protection of the resources, the environment and the public health, safety and welfare, and the holder of the land use authorization shall take corrective action as required by the authorized officer.

§ 2920.9–3 Termination and suspension.

(a) Land use authorizations may be terminated under the following circumstances:

(1) If a land use authorization provides by its terms that it shall terminate on the occurrence of a fixed or agreed-upon event, the land use authorization shall thereupon automatically terminate by operation of law upon the occurrence of such event.

(2) Noncompliance with applicable law, regulations or terms and conditions of the land use authorization.

(3) Failure of the holder to use the land use authorization for the purpose for which it was authorized. Failure to construct or nonuse for any continuous 2-year period shall constitute a presumption of abandonment and termination.

(4) Mutual agreement that the land use authorization should be terminated.

(5) Nonpayment of rent for 2 consecutive months, following notice of payment due.

(6) So that the public lands covered by the permit can be disposed of or used for any other purpose.

(b)(1) Upon determination that there is noncompliance with the terms and conditions of a land use authorization which adversely affects the public health, safety or welfare or the environment, the authorized officer shall issue an immediate temporary suspension.

(2) The authorized officer may give an immediate temporary susension order orally or in writing at the site of the activity to the holder or a contractor or subcontractor of the holder, or to any representative, agent, employee or contractor of any of them, and the suspended activity shall cease at that time. As soon as practicable, the authorized officer shall confirm the order by a written notice to the holder addressed to the holder or the holder's designated agent. The authorized officer may also take such action considered necessary to require correction of such defects prior to an administrative proceeding.

(3) The authorized officer may order immediate temporary suspension of an activity regardless of any action that has been or is being taken by another Federal agency or a State agency.

(4) An order of temporary suspension of activities shall remain effective until the authorized officer issues an order permitting resumption of activities.

(5) Any time after an order of suspension has been issued, the holder may file with the authorized officer a request for permission to resume. The request shall be in writing and shall contain a statement of the facts supporting the request.

(6) The authorized officer may render an order to either grant or deny the request to resume within 5 working days of the date the request is filed. If the authorized officer does not render an order on the request within 5 working days, the request shall be considered denied, the holder shall have the same right to appeal the denial as if an order denying the request had been issued.

(c) Process for termination or suspension other than temporary immediate suspension.

(1) Prior to commencing any proceeding to suspend or terminate a land use authorization, the authorized officer shall give written notice to the holder of the legal grounds for such action and shall give the holder a reasonable time to correct any noncompliance.

(2) After due notice of termination or suspension to the holder of a land use authorization, if noncompliance still exists after a reasonable time, the authorized officer shall give written notice to the holder and refer the matter to the Office of Hearings and Appeals for a hearing before an Administrative Law Judge pursuant to 43 CFR 4.420–4.439. The authorized officer shall suspend or revoke the land use authorization if the Administrative Law Judge determines that grounds for suspension or revocation exists and that such action is justified.

(3) The authorized officer shall terminate a suspension order when the authorized officer determines that the violation causing such suspension has been rectified.

(d) Upon termination, revocation or cancellation of a land use authorization, the holder shall remove all structures and improvements except those owned by the United States within 60 days of the notice of termination, revocation or cancellation and shall restore the site to its pre-use condition, unless otherwise agreed upon in writing or in the land use authorization. If the holder fails to remove all such structures or improvements within a reasonable period, they shall become the property of the United States, but that shall not relieve the holder of liability for the cost of their removal and restoration of the site.

[FR Doc. 81–1937 Filed 1–16–81; 8:45 am]

BILLING CODE 4310–84–M

federal register

Monday
January 19, 1981

Part XXXV

Department of the Interior

Bureau of Land Management

Grazing Administration and Trespass on Public Lands; Amendments to Grazing Regulations

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

[Circular No. 2485]

Grazing Administration and Trespass on Public Lands; Amendments to Grazing Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking updates the policy for making grazing use adjustments and makes editorial amendments to and clarifies the intent of the present regulations. These changes are a result of consultation with all affected interests and experience gained from working with the existing regulations for two and one-half years. The intended effect of these regulations is to improve the management of the public rangelands for all multiple use values.

EFFECTIVE DATE: January 19, 1981.

ADDRESS: Any suggestions or inquiries should be addressed to: Director (220), Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Paul Leonard, (202) 343–5841.

SUPPLEMENTARY INFORMATION: The amendments to the regulations are part of a continued effort by the Bureau of Land Management to clarify and reform the policies and procedures by which it manages the Nation's public rangelands.

The first step in this process was the publication in November 1979 of a draft statement of rangeland management policy for public review. The document, the first such comprehensive statement of rangeland management in 20 years, was designed to set in motion a series of public discussions to explore procedures for more effectively and equitably managing public rangelands. The urgency of this policy review was underscored by the fact that the Bureau is preparing 144 Environmental Impact Statements (EIS's) on livestock grazing, covering 170 million acres of public land, pursuant to the National Environmental Policy Act and the agreement resulting from the *Natural Resources Defense Council* v. *Morton*, 388 F. Supp. 829, suit. Meetings and workshops were held with livestock operators, environmental and conservation groups, State officials, and other concerned individuals in an effort to design policies and procedures for adjusting livestock use that both ensure protection for the basic soil-vegetation resource and provide for the interests and needs of livestock operators and other users of rangeland resources. One of the principal results of these discussions was a general recognition that the Bureau's regulations for adjusting livestock use in accordance with changes in available forage needed to be revised to (1) provide for more meaningful consultation with affected operators and other interested parties; (2) phase decisions into effect over a period of time sufficient to permit monitoring; (3) provide for modification of such decisions on the basis of the results of monitoring studies; and (4) ensure more complete and effective public involvement.

The current regulations on grazing administration were published as final rulemaking on July 5, 1978 (43 FR 29058). They were amended in July and August 1980 to (1) provide for the consultation and cooperation required by the Public Rangelands Improvement Act of 1978, (2) provide for the placement of reductions in grazing use in suspended preference, and (3) expand the conditions under which exchange-of-use grazing agreements are authorized.

The amendments are the result of intensive public involvement in the refinement of a policy for adjusting livestock use on the public rangelands. They are designed to ensure that future decisions on livestock use are made in a manner that is fair and equitable to all users of the public rangelands, that ensures a maximum degree of public involvement and review, that provides for decisions to be based on the best scientific information available at the time of each decision, and that furthers the Nation's overall objective of increasing the productivity of the public rangelands. The changes made here also bring the procedures for grazing administration by the Bureau of Land Management more closely in line with those of the U.S. Forest Service.

Other changes included in this rulemaking reflect a need, after over 2 years of operating experience with the current regulations, to clarify intent or eliminate gaps or weaknesses.

Proposed rulemaking was published on October 15, 1980 (45 FR 68506). The comment period, which included extensions, totaled 84 days ending January 9, 1981. Approximately 150 different comments were received with most focusing on the process for making adjustments in livestock grazing, including the requirements for consultation, decisions, and monitoring. The following discussion summarizes the comments received on the proposal and the changes being made.

Definitions

A number of comments objected to the proposed definition of range improvement, particularly the reference to wild horses and burros and the statement that this definition includes the term "range betterment." Several commenters pointed out that wild horses and burros were not specifically included in the discussion of range improvements in section 401(b) of the Federal Land Policy and Management Act of 1976 (FLPMA). Other comments supported the inclusion of wild horses and burros in the definition. FLPMA does not exclude wild horse and burro habitat from the recognized benefits of range improvements and, where they existed prior to 1971, wild horses and burros are an integral part of the rangeland ecosystem.

The second concern relating to range betterment reflects a feeling that there must be a clear distinction between "range improvement" and "range betterment." Range improvement is the more general term applying to all types of treatments or projects that improve the rangeland ecosystem. Range betterment then is used only to identify a specific source of funding for range improvements, i.e., the monies derived from fifty percent of the grazing fee. The proposed definition would not change the manner in which the range betterment fund may be used for range improvements (see section 4120.6–1(d) of the current regulations). However, to prevent confusion on the possible difference between the meaning of the two terms, reference to range betterment has been removed from the definition of range improvement.

Many commenters opposed the use of the term "suspended preference" and suggested that "suspended nonuse" by substituted. They believed that negative economic impact would result if the term "suspended preference" were used because of the way lending institutions perceive that term when determining the collateral value of ranching properties. The final amendments continue to use the term "suspended preference" because it is more descriptive of the actual situation, i.e., a portion of the preference for public land grazing use is suspended. Any possible negative economic impact would not be significantly greater than would occur with use of the term "suspended nonuse" once the lending institutions become familiar with the adopted terminology.

Several comments suggested that the word "permanently" be removed from the phrase "until forage is permanently available" in the definition of suspended

preference. This has been done, but an additional phrase has been added to ensure that it is understood that the forage must be available on a sustained yield basis.

Some comments objected to the proposed definition of "suspension" and suggested that the definition in the current regulations is adequate. The definition has been changed to be more similar to the current regulations, except that the phrase "grazing authorized under" has been added to indicate more accurately that it is grazing use that is suspended rather than the grazing permit or lease.

Several comments recommended including additional definitions for "monitoring", "consultation", "affected interests", and "carrying capacity". New definitions have been added for "monitoring" and "affected interests". "Carrying capacity" is defined in the current regulations under the term "livestock grazing capacity".

Transfer of Grazing Preference

Almost all comments supported the proposed amendment. However, one comment suggested that a transfer of ownership would be an opportune time to make any needed reductions in grazing use. No change has been made from the proposal because any adjustments in grazing use should be tied to resource conditions and needs rather than ownership of properties.

Changes in Available Forage

Almost all comments addressed this section of the proposal. Concerns included those related to consultation on decisions, the process for allocating forage to livestock or determining the grazing capacity, the timing and number of decisions to implement a phased reduction, requirements for monitoring, the data requirements for determining grazing capacity or changing decisions, and specific provisions such as the exceptions to a five-year phase-in period.

Pursuant to the requirements of the National Environmental Policy Act and the Federal Land Policy and Management Act, the Bureau will provide full, formal, and regular opportunities for public participation by all affected interests throughout the decisionmaking process—in inventory, planning, impact assessment, and implementation.

The draft land use plan and EIS published by the Bureau will include proposed allocations of forage among uses and proposed determinations of livestock capacity. The final landuse plan and EIS will include final decisions on the allocation of forage and livestock grazing capacity.

Formal opportunities for consultation, cooperation, and coordination will be provided, pursuant to Section 8 of the Public Rangelands Improvement Act, in steps leading toward the development of allotment management plans following land use planning decisions.

In practice, additional opportunities for consultation, cooperation and coordination will be afforded lessees, permittees, intermingled landowners and others at other critical stages of the planning and decisionmaking process, such as design of rangeland inventory, determination of present and future grazing capacities, allocation of forage among uses, and scheduling and responsibilities for rangeland improvements. Because EIS's and land use plans are currently in various stages of preparation, the requirements of these regulations will apply only to those prepared in the future, but will be used to the extent practical in on-going processes.

Decisions on increases and decreases in livestock grazing use will normally become effective at the beginning of the second grazing season following completion of the EIS. Adjustments in grazing use will normally be phased in three increments over a 5-year period and the initial increment of any reduction, in combination with other planned management actions, will be sufficient to achieve significant progress toward the vegetation objectives set forth in the land use plan for the 5-year period. Livestock grazing decisions that are based upon the 3-year phasing provided in the current regulations may be converted to the 5-year phasing process when the next grazing adjustment is taken, unless one of the exceptions to the 5-year process specified in section 4110.3–2(d) applies. However, the total phase-in period will not exceed 5 years from the effective date of the original decision.

These amendments provide for adjustments to be completed in less than 5 years under one of three conditions. The period may be reduced if the authorized officer, the operator, and other affected interests agree to a shorter timetable. It may be reduced if, in the language of the 1981 Interior Appropriations Act, such a reduction is needed "to sustain resource productivity"—that is, if the authorized officer determines that failure to implement the decision in less than 5 years would cause significant and long-term resource damage. And finally, the adjustment may be taken in less than 5 years if it is 15 percent or less.

The authorized officer will have the authority to issue a new decision if monitoring information indicates rangeland conditions are not improving at the anticipated rate—or that they are improving faster than anticipated—and that the original decision should be adjusted accordingly. However, if a decision is modified based on monitoring, the authorized livestock grazing use will be brought into balance with the updated allocation of forage for livestock by the conclusion of the 5-year period specified in the original decision.

The BLM District Manager will, shortly after release of the final EIS on the grazing program, issue a Rangeland Program Summary (RPS) previously referred to in the supplementary information for the proposed rulemaking as the Rangeland Management Program Document. The RPS will summarize the land use planning objectives and proposed decisions for all rangeland uses, set forth those planning decisions that affect livestock grazing (including the allocation of forage for livestock), describe the relationship of these decisions to the alternatives analyzed in the EIS, identify the costs and benefits of the program, and summarize the monitoring program for the area. The RPS will also describe the procedures and time available for all affected interests to express their views or take action on decisions set forth in the document.

After the RPS is published, the Bureau will consult with all affected interests on the allotment-specific actions needed to implement the land use planning divisions. Consultation at this point will focus on steps leading toward the development of allotment management plans and other actions needed to implement a grazing management program based upon the forage allocation and livestock grazing capacity decision made in the land use plan, including rangeland improvements, grazing systems, a program of monitoring, and schedules for phasing in livestock use adjustments in accordance with the plan.

In addition to prior consultation, formal procedures under Section 8 of the Public Rangelands Improvement Act will be conducted during the consultation period following the issuance of the Rangeland Program Summary.

Following consultation with all interested parties, but before adjustment decisions are issued, the District Manager will publish an RPS update describing the actions determined through consultation to achieve the objectives and to implement the decisions of the land use plan and the

monitoring program designed for the area. Subsequent RPS updates will summarize, by allotment, the progress made toward achieving these objectives and implementing these decisions and will identify any proposals by the Bureau to modify scheduled adjustments in livestock grazing use.

The purpose of the RPS update is to provide a vital assurance to all interested parties that adjustment decisions being made are based on the current condition of the rangeland. It will enable all interested parties to examine the decisions reached at the areawide EIS level, rather than forcing them to follow individual allotment by allotment decisions, and will provide a clear public record for which the Bureau and users can be held accountable.

The objective of those amendments is to bring livestock grazing and other uses into line with capacity through a package of management actions by the fifth year after the decision schedule is established and to do so in the fairest manner possible. The process provides an opportunity for appeals before both the first- and third-year adjustments become effective. Appeals at these points suspend implementation of the decision while the appeal is being heard. However, grazing use must be brought into line with capacity by the fifth year, so appeals of the last incremental adjustment, if it is still required, will not stay implementation of the original decision. In addition, the process provides for an automatic review of available information prior to each scheduled adjustment and, if monitoring data indicates that the full reduction is not required, the scheduled adjustment will be modified by a new decision. The Bureau also recognizes that there are conditions under which a significant amount of forage may become temporarily available because of unusually high production of annual forage or for other reasons. Therefore, the current authority for authorizing temporary increases will be used, within the constraints of the land use plan, to adjust grazing use on a short-term basis. Temporary increases in livestock grazing use above the amount scheduled in the decision will be authorized under section 4130.4–2 as nonrenewable use which does not affect the grazing preference and will not require a change to the original decision.

Other Terms and Conditions

Several comments supported the proposal. However, a number believed that this section should be eliminated in favor of the provisions of the current regulations. Several comments objected to the reference to "achieving objectives identified in land-use plans, provide for proper range management, or assist in the orderly administration of the public rangelands." Other comments questioned one or more of the specific examples listed, such as class or breed of livestock or placement of supplemental feed. However, no changes have been made in the final amendments.

Several comments suggested that the provision for livestock grazing to be temporarily delayed or discontinued was unnecessarily negative. Therefore, the word "modified" has been inserted to permit greater flexibility to adjust to local conditions. Other minor wording changes have been made to clarify the intent of this provision.

Temporary Modifications and Closures to Livestock Use

Several comments questioned the use of the term "emergency". Therefore, the heading has been changed to read "Temporary modifications and closures to livestock use" and the term "emergency" has been removed from the descriptions of the conditions that might justify temporary modifications or closures.

The phrase "require temporary protection" has been inserted to more accurately describe the intent to use this authority only for short-term adjustments. If long-term adjustments are necessary, the authority of section 4110.3–2(b) will be used.

Several comments suggested that any closure should be made only after consultation with all affected interests. This requirement has been included.

Conditions for Range Improvements

Most comments supported this paragraph, but several comments suggested it was not needed. The intent is to clarify that a range improvement permit or cooperative agreement is an authorization to place improvements on the public lands, but does not convey to the permittee or cooperator any ownership of publicly-owned lands or resources. Therefore, no change from the proposal has been made.

Range Improvement Permits

In response to comments, a provision has been added to clarify that livestock use of such improvements authorized by a range improvement permit (Section 4, Taylor Grazing Act) shall be controlled by the permittees. There were some comments that there may be disagreements over which range improvements are "removable" and which, in effect, become a part of the land. The intent is to use range improvement permits where the improvements, such as corrals, fences, or loading chutes, could reasonably be removed if the range improvement permits were terminated. Improvements on the public lands such as seedings, wells, and reservoirs (except in water base areas) would be authorized under cooperative agreements with title to the improvement being held by the United States.

Grazing Permits and Leases

Most of the comments expressed concern with section 4130.2(e)(4) which provides that grazing lessees holding expiring leases shall be given first priority for receipt of a new lease if the base property offered by the lessee is contiguous to the public lands to be grazed. This provision applies only to grazing leases authorized under section 15 of the Taylor Grazing Act which gives first priority for grazing leases to those owning or controlling lands contiguous to the public lands to be grazed. A further provision has been added to the amendment to make clear that present lessees with non-contiguous base property will continue to have priority for renewal provided no conflicting application is filed by an applicant owning or controlling lands which qualify as base property and which are contiguous to the public lands to be grazed. These provisions do not apply to grazing permits administered under section 3 of the Taylor Grazing Act.

The only additional changes from the current regulations are the inclusion of a reference to grazing leases where the current regulations erroneously refer only to grazing permits and to include the term "suspended" in section 4130.2(d)(3) to be consistent with the provisions for suspensions under the section on decreases in forage.

Payment of Fees

A number of commenters recommended that the phrase "or its equivalent" or "approved grazing program" be inserted in the sentence which provides that fees must be paid in full prior to grazing use except where there is an Allotment Management Plan (AMP). The comments included a concern that development of AMP's in some areas will be delayed for several years until grazing EIS's are completed and manpower is available, as well as a concern that in some areas cooperative resource management plans involving several land managing agencies and land owners may be prepared in lieu of an Allotment Management Plan. The intent of the provision for after-the-fact payment of grazing bills is to permit the amount of the bill to reflect the actual use made within the flexibility

authorized by the AMP. It would not be appropriate to provide for this flexibility where an AMP has not been developed. The existing definition of an allotment management plan in the current regulations is sufficiently broad to include such things as coordinated resource management plans or other plans equivalent to an AMP. The amendment, however, has been changed to clarify that the after-the-fact billing procedure applies only where the AMP specifically includes such a provision.

Acts Prohibited on Public Lands

Several comments questioned the prohibition against allowing livestock on or driving them across public lands without authorization because emergency situations may require immediate action. In applying this provision, the Bureau has recognized that there are some situations, such as fire, for which immediate action must be taken to protect the lives of the animals. Such mitigating circumstances will be considered when determining whether a violation has occurred. One comment expressed concern that this section may be applied to wild indigenous animals. However, section 4140.1(b)(12) clearly refers only to those indigenous animals which are privately-owned or controlled. One technical change has been made in section 4140.1(b)(12)(iv) to correct the citation of section 4120.4(d) which refers to special marking or tagging requirements.

Settlement

One comment expressed a concern that this section was unnecessarily harsh and would prevent effective appeals because if a permittee failed to make payment for unauthorized use, he would be denied grazing use of the public lands until his appeal is resolved. The procedure for suspending a permit or lease or to deny an application because of a failure to make settlement is covered under section 4160 which makes it clear that the appeal of a final decision suspends implementation of the decision pending resolution of the appeal. Therefore, a permittee or lessee who was authorized grazing use the previous year could continue at that level of use until a decision is reached on the appeal, unless the circumstances warrant the placing of the decision in full force and effect.

Closure To Control Unauthorized Grazing Use

A number of comments revealed a misunderstanding as to the application of this section, particularly the effect that a closure would have on livestock authorized to graze in the affected allotments. Several language changes have been made to make it clear that the closure affects only unauthorized livestock. The intent of this provision is to provide a way to take timely action when there is a continuing problem of unauthorized grazing use and the unauthorized livestock are easily distinguishable from those authorized to graze in the area.

Decisions

Several commenters expressed a concern that the provisions for Rangeland Management Program Documents (RMPD) and RMPD updates are not included in these regulations. They feel that this is a key step in the process and are concerned that there is no regulatory commitment to the process. The provisions for and general content of these documents which, to prevent future confusion with land use plans called Resource Management Plans (RMP), have been retitled Rangeland Program Summaries (RPS's), have been included in these amendments. The RPS will follow shortly after completion of each grazing EIS with the first Update before decisions are issued to grazing permittees or lessees and thereafter as necessary to keep the public informed. The RPS focuses on the land use planning decisions which have been made while the RPS updates address actions being proposed to achieve the objectives of the land use plan.

A brief description has also been added for the content of a proposed decision that would make more than a temporary increase or decrease in livestock grazing use.

Several commenters questioned the relationship of later decisions to the original decision which specified a schedule for adjusting livestock grazing use. The primary concern appears to be for the potential delay in implementation of needed reductions because of multiple opportunities for appeal.

The changes being made preserve the rights of appeal by those affected by the Bureau's decisions and provide that an appeal of either the first or second increment of a three-step adjustment scheduled over five years will continue to stay implementation of the decision involved in the appeal.

This means that if there is an appeal of a five year phase-in decision at the time of its issuance, then the amount of use authorized while awaiting resolution of that appeal is the amount which was authorized during the year prior to the effective date of the decision. Even if the original decision was not appealed, the permittee can initiate an appeal by submitting an application for the third year greater than that scheduled for that year. If that application is denied, these amendments provide that the level of use to be authorized while awaiting resolution of the appeal is that level of use scheduled for the first year of the phase-in period. If an appeal is taken during any year other than the first or third year, the level of use to be authorized until the appeal is resolved would be as scheduled for that year in the original decision.

The rationale for these provisions is the assumption that the original decision is based upon the best available data and that no change should be made in the decision unless there is compelling information that indicates the scheduled adjustment is improper. If the original decision is appealed, the validity of the information will be determined during the appeals process. If the decision is not appealed or the Bureau's decision is upheld, then that decision will stand until new information indicates a change is warranted. However, the Bureau also recognizes that there is variability in vegetation inventories and that an equitable process should provide an opportunity to challenge the scheduled adjustment based on the experience gained after the first two years. However, during appeal at this third year, it is unreasonable to expect that, where a reduction was indicated, the appeal would result in grazing at the levels that existed prior to the original decision. Therefore, that level of use authorized while awaiting resolution of an appeal at this point will be the level scheduled for the first year of the reduction. There is also a firm commitment that the level of grazing use will be brought into balance with the grazing capacity by the fifth year, so these amendments provide that if there is an appeal involving use during the fifth year, the level of use to be authorized while awaiting resolution of the appeal will be as scheduled in the original decision.

The amendments also clarify that, where a decision is suspended because of an appeal, the level of use to be authorized while awaiting the outcome of the appeal does not include any temporary grazing use that was authorized the previous year on a nonrenewable basis under section 4130.4–2.

A number of commenters questioned the provisions in paragraph (d) for placing a decision in full force and effect. Some comments suggested that all decisions be placed in full force and effect while others requested elimination of the provision for full force

and effect decisions. Section 402(e) of the Federal Land Policy and Management Act of 1976 requires in certain circumstances that decisions be placed in full force and effect on the date specified. However, an opinion prepared by the Office of the Solicitor of the Department of the Interior has interpreted this requirement to mean that the date specified may be either a specific calendar date or the date at which a specific future event occurs, such as the date a decision is rendered on an appeal. To prevent future misunderstanding, this language has been added to section 4160.3(d).

Several comments requested that "orderly administration" and protection of resource values" be defined or that specific examples be given in the regulations. These terms have historically been used in the grazing regulations and are used in the current regulations. Their intent is to provide the authority to take necessary action when the delay of implementation pending an appeal would have serious consequences. To improve the understanding of this intent, several examples have been included in the regulations to illustrate some of the situations to which these provisions might be applied.

Show Cause

One comment recommended consultation with the local grazing advisory boards before any show cause notice is issued. However, section 403(b) of the Federal Land Policy and Management Act limits the responsibilities of the boards to providing advice and recommendations on development of AMP's and use of range betterment funds. The word "shall" has been changed to "may" to clarify that, depending on the circumstances, the authorized officer may either issue a show cause notice or issue, under section 4160.1–2, a proposed decision on an alleged violation.

Penalty For Violations

Several comments questioned the validity of this section and one comment suggested that local grazing advisory boards should be consulted prior to taking any action under this section. Since these provisions are a valid exercise of the Secretary's authorities and since the consideration of penalties for violations is not within the legally defined responsibilities of the grazing advisory boards, no changes from the proposed rulemaking have been made.

Federal and State Laws or Regulations

Several comments supported the proposed change which would incorporate the phrase "or by final determination of any agency charged with the administration of the conservation or environmental laws where no further appeals are outstanding." Much of the concern expressed by those opposed to this provision grew from an erroneous assumption that the right of a review by a court would be eliminated. This provision in no way affects an individual's right of court review. However, it does allow for action when an agency has determined that a violation has occurred and no appeal is made to the courts, thus leaving the agency's action as the final determination of the violation.

Other Changes

Editorial corrections have been made as needed and some wording has been modified to improve the clarity of the regulation.

The principal author of this rulemaking is David Little of the Division of Rangeland Management, Bureau of Land Management, assisted by the office of legislation and Regulatory Management.

Note.—The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Under the authority of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315, 315(a)-315(r)), Section 4 of the Act of August 28, 1937 (43 U.S.C. 1181(d)), and the Federal Land Policy and Management Act of 1976, as amended by the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1701 et seq.), Part 4100, Subchapter D, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

Guy R. Martin,

Assistant Secretary of the Interior.

January 14, 1981.

1. Section 4100.0–5 is amended by revising existing paragraphs (y) and (cc); deleting existing paragraph (w); redesignating existing paragraphs (b) through (t) as (c) through (u) respectively; redesignating existing paragraphs (u) and (v) as (w) and (x) respectively; redesignating existing paragraphs (x) through (bb) as (y) through (cc) respectively; redesignating existing paragraph (cc) as (ee); and inserting new paragraphs (b), (v) and (dd) to read as follows:

§ 4100.0–5 Definitions.

* * * * *

(b) "Affected interests" means any individual or organization who has been identified by the authorized officer as being potentially affected by a proposed action or who has expressed, in writing to the authorized officer, concern for the management of livestock grazing on specific grazing allotments. In addition to grazing permittees and lessees, such interests may include, for example, State officials, intermingled land owners, and wildlife or conservation representatives.

* * * * *

(v) "Monitoring" means the collection of data by a systematic and periodic examination of rangeland resources on specific areas by qualified individuals using techniques or methods, approved by the Director, designed to evaluate progres in meeting land-use or allotment management planning objectives.

* * * * *

(z) "Range improvement" means any activity on or relating to rangelands designed to improve production of forage, change vegetation composition, control pattern of use, provide water, stabilize soil and water conditions, and enhance habitat for livestock, fish, wildlife, and wild horses and burros.

* * * * *

(dd) "Suspended preference" means that portion of a grazing preference which has been suspended and for which active grazing use will not be reauthorized until forage is available and allocated for livestock grazing use on a sustained yield basis.

(ee) "Suspension" means temporarily withholding, in whole or in part, grazing use authorized under a grazing permit, lease or other grazing use authorization.

2. Section 4110.2–1 is amended by revising paragraphs (a) introductory text and (c) to read as follows:

§ 4110.2–1 Base property.

(a) The authorized officer shall find land or water owned or controlled by an applicant to be base property (see § 4100.0–5(g)) if:

* * * * *

(c) An applicant shall provide a legal description, or plat, of his base property and shall certify to the authorized officer that this base property meets the requirements under paragraphs (a) and (b) of this section and § 4100.0–5(g).

3. Section 4110.2–3 is amended by revising paragraph (f) to read as follows:

§ 4110.2–3 Transfer of grazing preference.

* * * * *

(f) Failure of the transferee to comply with the regulations of this section may result in the cancellation of the grazing preference.

4. Section 4110.3 is revised to read as follows:

§ 4110.3 Changes in available forage.

The allocation of forage for livestock grazing shall be determined through the land use plan which has been prepared in consultation, coordination and cooperation with affected grazing permittees and lessees, owners of intermingled lands, and other affected interests.

5. Section 4110.3–1 is amended by adding paragraph (d) to read as follows:

§ 4110.3–1 Additional forage.

* * * * *

(d) Additional forage for livestock grazing use shall be allocated to qualified applicants by the authorized officer in accordance with the land use plan. The authorized officer shall provide that permanent increases in allocations of livestock forage be phased in over a period not to exceed 5 years, except that increases of 15 percent or less of the authorized active use for the previous year shall be phased in over a period of less than 5 years. The authorized officer may subsequently modify (either increase or decrease) the allocation of forage to livestock based on the results of monitoring and the land use plan.

6. Section 4110.3–2 is amended by revising paragraph (c) and adding paragraphs (d) and (e) to read as follows:

§ 4110.3–2 Decrease in forage.

* * * * *

(c) Suspensions under paragraph (b) of this section shall be implemented over a 5-year period, with an initial reduction taken on the effective date of the decision and the balance taken in the third and fifth years following the effective date of the decision, except as provided in paragraphs (d) and (e) of this section The initial reduction, in combination with other management actions specified in the decision, shall be sufficient to achieve significant progress toward achieving the vegetation objectives set forth in the land use plan for the five-year period. In allotments containing more than one permittee or lessee, suspensions under paragraphs (a) or (b) of this section shall be equitably apportioned by the authorized officer or as agreed among the permittees or lessees and the authorized officer.

(d) The authorized officer shall schedule suspensions under paragraph (b) of this section over a period of less than 5 years if, after consultation with the affected permittees or lessees and other affected interest—

(1) An agreement is reached to implement the suspension in less than 5 years;

(2) The authorized officer determines that the suspension is required within less than 5 years to sustain resource productivity, i.e., to protect the resource from substantial and long-term damage; or

(3) The total scheduled suspension is 15 percent or less of the authorized active grazing use for the previous year.

(e) Prior to implementation of each step of a phased suspension, the authorized officer shall review available information to determine whether the amount of the suspension should be modified (either increased or decreased). If the authorized officer determines that monitoring data indicate that the amount of a scheduled suspension should be modified, a new decision shall be issued under § 4160 of this title. However, the new decision shall not extend a phase-in period established in a previous decision.

7. Section 4110.5 is amended by revising paragraph (a) to read as follows:

§ 4110.5 Conflicting applications.

* * * * *

(a) Historical use of the public lands (see § 4130.2(e));

* * * * *

8. Section 4120.2–2 is revised in its entirety to read as follows:

§ 4120.2–2 Other terms and conditions.

The authorized officer may specify in grazing permits or leases other terms and conditions which will assist in achieving objectives identified in land use plans, provide for proper range management, or assist in the orderly administration of the public rangelands. This may include, but is not limited to—

(a) The class of livestock that will graze on an allotment;

(b) The breed of livestock in allotments within which two or more permittees or lessees are authorized to graze;

(c) Authorization to use, and directions for the placement of, supplemental feed, including salt, for livestock on the public lands;

(d) A requirement that permittees or lessees, operating under a grazing permit or lease not incorporating an allotment management plan, submit within 15 days after completing their annual grazing use, or as otherwise specified in the permit or lease, a report of the actual livestock grazing use made;

(e) The kinds of indigenous animals authorized to graze under specific terms and conditions;

(f) Provision for livestock grazing to be temporarily delayed, discontinued or modified to provide for the reproduction, establishment or restoration of vigor of plants, or to prevent compaction of wet soils, such as where delay of spring turnout is required because of weather conditions or lack of plant growth; and

(g) The percentage of public land use determined by the proportion of livestock forage available on public lands within the allotment compared to the total amount available from both public lands and those owned or controlled by the permittee or lessee.

9. Section 4120.2–3 is amended by revising paragraph (a) to read as follows:

§ 4120.2–3 Allotment management plans.

* * * * *

(a) An allotment management plan shall be prepared in careful and considered consultation, cooperation, and coordination with its affected permittee(s) or lessee(s), landowners involved, the district grazing advisory boards where established, any State having lands within the area to be covered by such an allotment management plan, and when approved by the authorized officer shall be implemented (see § 4100.0–5(d) of this title). The allotment management plan shall include terms and conditions under 4120.2–1 of this title, may include terms and conditions under § 4120.2–2 of this title, and shall prescribe a system of grazing designed to meet specific management objectives. The plan shall include the limits of flexibility within which the permittee or lessee may adjust his/her operation without prior approval of the authorized officer. The plan shall provide for the collection of data that shall be used to evaluate the effectiveness of the system of grazing in achieving the specific objectives.

* * * * *

10. Section 4120.3 is revised in its entirety to read as follows:

§ 4120.3 Temporary modifications and closures to livestock use.

When the authorized officer determines that the soil, vegetation, or other resources on the public lands require temporary protection because of conditions such as drought, fire, flood, or insect infestation, and after consultation with affected permittees or lessees and other affected interests, action shall be taken either to close allotments or portions of allotments to grazing by any kind of livestock or to modify authorized grazing use.

(a) Notices of closure and decisions requiring modification of authorized grazing use shall be issued as final decisions which are placed in full force and effect under § 4160.3(c) of this title; and shall—

(1) State the reasons for the action;

(2) Specify the period of time during which the closure or modification will remain in effect and/or describe the resource conditions that must be present before the regularly authorized grazing use may resume;

(3) Be served personally or by certified mail to those who are authorized to graze livestock on the allotments affected;

(4) Require all owners of livestock affected to remove such livestock or modify grazing use as specified in the decision; and

(5) In the case of a closure, be published in the local newspaper(s) and be posted at the county courthouse and post office near the public land involved.

(b) The authorized officer shall modify grazing use authorizations as required by actions taken under paragraph (a) of this section.

(c) The authorized officer may, as provided under § 4150.5 of this title, impound, remove, and dispose of any livestock found in violation of a closure or modification of grazing use required under paragraph (a) of this section.

11. Section 4120.6–1 is amended by revising and redesignating existing paragraph (d) as paragraph (e) and inserting a new paragraph (d) to read as follows:

§ 4120.6–1 Conditions for range improvements.

* * * * *

(d) A range improvement permit or cooperative agreement does not convey to the permittee or cooperator right, title, or interest in any lands or resources held by the United States.

(e) When appropriated, one-half of the range betterment funds (see § 4130.5–1(f)) shall be available for use in the district from which the grazing fees were collected for the purpose of on-the-ground rehabilitation, protection, and improvement of public lands. The other one-half of the range betterment funds shall be used for on-the-ground range rehabilitation, protection, and improvement of public lands at the discretion of the Director. The range betterment funds shall be used as directed after consultations with user representatives. These funds shall be used for the installation, maintenance, modification, and removal of range improvements including such things as planning, environmental assessment, design, survey, materials, equipment, labor, and supervision related to these improvements.

12. Section 4120.6–3 is Revised to read as follows:

§ 4120.6–3 Range improvement permits.

(a) Any permittee or lessee may apply for a range improvement permit to install, use, maintain, and/or modify range improvements that are needed to achieve management objectives within his designated allotment. The permittee or lessee shall agree to provide full funding for construction, installation, modification, or maintenance. Such range improvement permits are issued at the discretion of the authorized officer.

(b) The permittee or lessee shall have title to removable range improvements authorized under range improvement permits.

(c) The use by livestock of stock ponds or wells on public lands which are recognized as base water under § 4110.2–1 of this title and authorized by a range improvement permit shall be controlled by the grazing permittee or lessee holding the range improvement permit.

13. Section 4130.2 is amended by revising paragraphs (d)(2), (d)(2)(v), (d)(3), (e)(2) and (e)(3); and adding a new paragraph (e)(4) to read as follows:

§ 4130.2 Grazing permits and leases.

* * * * *

(d) * * *

(2) Exceptions to the issuance of a grazing permit or lease for a term of 10 years shall be made on a case-by-case basis. In determining whether the interest of sound land management warrants the issuance of a grazing permit or lease for less than 10 years, the following are elements that the authorized officer shall consider.

* * * * *

(v) Whether significant adverse environmental impacts will result from issuance of a grazing permit or lease for a term of 10 years;

* * * * *

(3) Grazing permits or leases shall be modified, suspended, or canceled as required by land use planning decisions.

* * * * *

(e) * * *

(2) The permittee or lessee is in compliance with the regulations contained in this part and the terms and conditions of his grazing permit or lease;

(3) The permittee or lessee accepts the terms and conditions to be included in the new permit or lease by the authorized officer; and

(4) The base property offered by a grazing lessee is contiguous to the public lands to be grazed or, if noncontiguous, there are no conflicting applications submitted by those offering qualified base property which would be contiguous to the public lands to be grazed.

14. Section 4130.5–1 is amended by revising paragraph (e) to read as follows:

§ 4130.5–1 Payment of fees.

* * * * *

(e) Fees are due upon issuance of the billing notice and must be aid in full prior to grazing use except where an allotment management plan providing for later payment has been incorporated in a grazing permit or lease. In such cases a billing notice based on actual use may be issued at the end of the grazing period or year, or a billing notice based on the normal operation may be issued prior to the grazing period or year followed by an adjusted billing notice based on actual use after grazing use has been completed. If an actual use report is not submitted, the amount due will be based on grazing use at the upper limit of flexibility specified in the allotment management plan. Actual use billing privileges shall be cancelled by the authorized officer where the permittee or lessee fails or refuses to—(1) submit a timely actual use report; or (2) make timely payment upon issuance of a billing notice based upon an actual use report or, if the actual use report has not been submitted, the upper level of flexibility specified in the allotment management plan. The permittee or lessee, however, is not relieved of the responsibility for submitting an actual use report under § 4120.2–3(e).

* * * * *

15. Section 4140.1 is amended by revising paragraphs (b)(1) and (b)(12) to read as follows:

§ 4140.1 Acts prohibited on public lands.

* * * * *

(b) * * *

(1) Allowing livestock on or driving livestock across these lands—

(i) Without a permit, lease or other grazing use authorization;

(ii) In violation of the terms and conditions of a permit, lease, or other grazing use authorization including, but not limited to, livestock in excess of the number authorized;

(iii) In an area or at a time different from that authorized; or

(iv) Failing to comply with a requirement under § 4120.4(d) of this title.

* * * * *

(12) Allowing privately owned or controlled indigenous animals on or driving them across these lands—

(i) Without a permit, lease or other grazing use authorization;

(ii) In violation of the terms and conditions of a permit, lease, or other grazing use authorization including, but

not limited to, animals in excess of the number authorized;

(iii) In an area or at a time different from that authorized; or

(iv) Failing to comply with a requirement under § 4120.4(d) of this title.

16. Section 4150.3 is amended by revising paragraph (c) to read as follows:

§ 4150.3 Settlement.

* * * * *

(c) Violators shall not be authorized to make grazing use on the public lands or other lands administered by the Bureau of Land Management until any amount found to be due the United States under this section has been paid. The authorized officer may take action under § 4160.1–2 or 4160.5, of this title, to cancel or suspend grazing authorizations or to deny approval of applications for grazing use until such amounts have been paid.

17. Subpart 4150 is amended by adding a new § 4150.6 to read as follows:

* * * * *

§ 4150.6 Closure to control unauthorized grazing use.

To control unauthorized grazing use, the authorized officer may temporarily close allotments or portions of allotments to grazing by any kind or class of livestock different from those authorized to graze in the allotment, for a period not to exceed 12 months. The action taken by the authorized officer shall be specified in a written notice of closure which shall—

(a) State why the allotments, or portions of allotments, are being closed;

(b) Specify the kind or class of livestock to which the areas are closed;

(c) Specify the period for which the areas will be closed;

(d) Be published in the local newspaper(s);

(e) Be posted at the county courthouse and at a post office near the public land area involved;

(f) Be delivered personally or by certified mail to those who are authorized to graze livestock on the allotments affected;

(g) Be issued as a final decision in full force and effect under § 4160.3(c); and

(h) Require all owners of unauthorized livestock affected thereby to remove such livestock in accordance with provisions of the notice. The authorized officer may proceed to impound, remove, and dispose of any livestock found in violation of the closing notice after the closure date specified in the notice in accordance with § 4150.5–2 through § 4150.5–5 of this title.

18. Section 4160.1–1 is revised to read as follows:

§ 4160.1–1 Proposed decisions on permits or leases.

The authorized officer shall serve a proposed decision on any applicant, permittee or lessee, or his agent, or both, who is affected by his/her proposed action on applications for permits (including range improvement permits) or leases or by his/her proposed action related to terms and conditions or permits (including range improvement permits) or leases, by certified mail or personal delivery, and shall notify any lienholder of record of the proposed decision. The authorized officer shall also send copies to those who have indicated in writing that their interests may be affected by the proposed decision. The proposed decision shall state that reasons for the action, including reference to the pertinent terms, conditions and/or provisions of these regulations, and shall provide for a period of 15 days after receipt for the filing of a protest.

(a) Following completion of each grazing environmental impact statement and land use plan, the authorized officer shall prepare and distribute for public information a rangeland program summary and appropriate updates for the area before issuing proposed decisions to grazing permittees or lessees which would adjust livestock grazing use under §§ 4110.3–1(b) or 4110.3–2(b) of this title, unless a specific exception is approved by the State Director on a case-by-case basis because resource conditions require more immediate action.

(1) The rangeland program summary shall summarize the land use planning objectives and decisions for all rangeland uses and shall set forth those decisions that affect livestock grazing, including, for each allotment, the allocation of forage to livestock; the relationship of those planning decisions to the alternatives analyzed in the environmental impact statement; and the costs and benefits of the program. The rangeland program summary shall also describe the procedures and time available for all affected interests to express their views or take action on decisions set forth in the document.

(2) Rangeland program summary updates shall be prepared prior to the initial adjustment and each subsequent step of phased adjustments scheduled under §§ 4110.3–1(d) and 4110.3–2(d) of this title. The first rangeland program summary update shall summarize the actions being proposed to achieve the land use planning objectives and to implement the land use planning decisions and the monitoring program for the area. Subsequent updates shall summarize, by allotment, the progress toward achieving these objectives and implementing these decisions and shall identify any proposals by the authorized officer to modify scheduled adjustments in livestock grazing use.

(b) The authorized officer shall include in proposed decisions which would adjust livestock grazing use under §§ 4110.3–1(b) or 4110.3–2(b) of this title the recognized grazing preference, the allocation of forage to livestock, the specific schedule for implementing the adjustments, the specific management objectives for the allotment, the resource values to be evaluated to determine progress in meeting these objectives, the changes in these values that would warrant a modification of the scheduled adjustments and other information necessary to set forth actions required to achieve the required management objectives for the allotment.

19. Section 4160.3 is amended by revising paragraph (c), and adding new paragraphs (d), (e) and (f) to read as follows:

§ 4160.3 Final decisions.

* * * * *

(c) A period of 30 days after receipt of the final decision is provided for filing an appeal. Decisions that are appealed shall be suspended pending final action except as otherwise provided in this section. Except where grazing use the preceding year was authorized on a temporary basis under § 4110.3–1(a) of this title, an applicant who was granted grazing use in the preceding year may continue at that level of authorized active use pending final action on the appeal except as further provided in paragraphs (e) and (f) of this section. However, if the authorized officer places the final decision in full force and effect, as provided in paragraph (d) of this section, it shall take effect on the date specified, regardless of appeal.

(d) A decision shall be placed in full force and effect on the date specified by the authorized officer, either a specific calendar date or the date at which a specific event occurs such as the date a decision is rendered on an appeal, if it would—

(1) Make a temporary modification in livestock use or close an area to livestock use under § 4120.3 of this title;

(2) Close an area to unauthorized grazing use under § 4150.6 of this title;

(3) Modify the terms and conditions of a permit or lease under § 4120.2–1(b) of this title; or

(4) Be required for the orderly administration of the range or the protection of resource values.

(i) Orderly administration of the range could, for example, include situations where—

(A) All members of a group of operators should be treated alike, e.g., in common use allotments where all but one operator are agreeable to a management program;

(B) Rangelands are managed as ephemeral or annual rangeland with no predetermined stocking level and grazing is allowed only when growth of forage plants occurs or utilization levels are used to determine when grazing use of such ranges should be extended or terminated;

(C) Range improvements shall be completed in a specific sequence in several allotments, e.g., a water pipeline servicing several allotments, and the level of grazing use or existing patterns of use in one or more of the allotments would not permit prudent investment in the improvement;

(D) Special project funding is directed by Congress; or

(E) Forage or water is not available due to fire, drought, insects, floods and other disasters.

(ii) The protection of resource values could, for example, necessitate a full force and effect decision where—

(A) Utilization of key forage species by grazing animals significantly exceeds the biological limit to sustain these species and long-term damage or loss of the forage plans would result if prompt action is not taken to modify grazing use;

(B) The trend in range condition is significantly declining in relation to management objectives with no probable change in trend unless prompt action is taken;

(C) Prompt action is needed to arrest accelerated erosion resulting from grazing which is causing a continual decline in site productivity and/or is causing measurable deterioration of water quality or other serious resource damage, either on- or off-site; or

(D) Livestock grazing use is threatening other significant resources, such as the habitat of threatened or endangered species, significant cultural properties or critical habitat for wildlife.

(e) As appeal of the fifth-year increment of a final decision, or of a decision on an application for grazing use in any year, shall not suspend implementation of the decision. An appeal of a decision which concerns grazing use to be made in the third year of a scheduled 5-year phase-in period shall suspend implementation of the decision and grazing use shall be authorized at the level scheduled for the first year of the phase-in period.

(f) Where a decision that provides for implementation of an action within a specified period of time is appealed and the decision is upheld, the final date for completing implementation shall remain as specified in the decision or 30 days from the effective date of the decision on the appeal, whichever is later.

20. Section 4160.5 is revised to read as follows:

§ 4160.5 Show cause.

Whenever it appears to the authorized officer that disciplinary action is advisable because a permittee or lessee has willfully or repeatedly violated provisions of this part, the authorized officer may serve a show cause notice on the permittee or lessee, or the operator's agent, or both, by certified mail or personal delivery and shall notify any lienholder of record. The show cause notice shall state the alleged violation and refer to the specific terms, conditions, and/or provisions of these regulations alleged to have been violated. As applicable, the notice shall state the amount due under § 4130.5–1 or 4150.3 of this title. The show cause notice shall cite the permittee or lessee to appear before an administrative law judge at a designated time and place, in accordance with § 4.470 of this title, to show cause why the grazing use authorized under his/her grazing permit or grazing lease should not be suspended in whole or in part or why his/her grazing permit or grazing lease and grazing preference should not be canceled in whole or in part under § 4170.1–1 of this title.

21. Section 4170.1–1 is revised to read as follows:

§ 4170.1–1 Penalty for violations.

(a) The authorized officer may withhold issuance of a grazing permit or lease, or suspend the grazing use authorized under a grazing permit or lease, in whole or in part, or cancel a grazing permit or lease and grazing preference, or a free use grazing permit or other grazing authorization, in whole or in part, under subpart 4160 of this title, for violation by a permittee or lessee of any of the provisions of this part.

(b) The authorized officer shall suspend the grazing use authorized under a grazing permit, in whole or in part, or shall cancel a grazing permit or lease and grazing preference, in whole or in part, under subpart 4160 of this title for repeated willful violation by a permittee or lessee of § 4140.1(b)(1) of this title.

(c) Whenever a nonpermittee or nonlessee violates § 4140.1(b) of this title and has not made satisfactory settlement under § 4150.3 of this title the authorized officer shall refer the matter to proper authorities for appropriate legal action by the United States against the violator.

22. Section 4170.1–3 is amended by revising paragraph (c) to read as follows:

§ 4170.1–3 Federal or State laws or regulations.

* * * * *

(c) The permittee or lessee has been convicted of or otherwise found to be in violation of any of these laws or regulations by a court or by final determination of any agency charged with the administration of the conservation or environmental laws where no further appeals are outstanding.

[FR Doc. 81–1938 Filed 1–16–81; 8:45 am]

BILLING CODE 4310–84–M

federal register

Monday
January 19, 1981

Part XXXVI

Department of the Interior

Bureau of Land Management

Federal Land Withdrawals; Amendment To Withdrawal Procedures; Final Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Circular No. 2484]

43 CFR PARTS 2090, 2300, 2310, 2320, 2340 and 2350

Federal Land Withdrawals; Amendment to Withdrawal Procedures

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking sets out the procedures by which the Secretary of the Interior will process withdrawal applications and make, modify or extend Federal land withdrawals. This final rulemaking will implement the authority of the Secretary of the Interior derived from various statutes, but principally from section 204 of the Federal Land Policy and Management Act of 1976, to make, modify and extend Federal land withdrawals. It is also intended to implement the authority of the Secretary of the Interior to process national defense withdrawal applications in excess of 5,000 acres under the Act of February 28, 1958.

EFFECTIVE DATE: February 18, 1981.

ADDRESS: Any inquiries or suggestions should be sent to: Director (323), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Greg Sukys, (202) 343–6486 or Robert C. Bruce, (202) 343–8735.

SUPPLEMENTARY INFORMATION: A proposed rulemaking on this subject was published in the **Federal Register** on December 4, 1979 (44 FR 69868). Comments were invited for a 90-day period ending March 3, 1980. Comments were received from 42 different sources, with 14 coming from Federal departments and agencies, 14 from private interests, 7 from State and local governments and 7 from associations. The analysis of the comments and a careful reexamination of the proposed rulemaking have led to an extensive rewriting. None of the changes are substantive. The rewrite provides a better organization of the withdrawal process and should make the regulations easier to use.

General

Most of the comments from the private sector commended the Department of the Interior for issuing regulations on this subject because they create a management system for withdrawals. Several of the comments from the private sector voiced the view that withdrawals should be severely limited and that even stronger regulations might be needed. On the other side of that issue, one comment suggested that the proposed rulemaking was unduly restrictive and expressed the view that it should be made less restrictive. Several comments were of the opinion that the rulemaking should be expanded to include revocation of withdrawals. The Department of the Interior has determined that the revocation procedures will be covered at a later date by a separate rulemaking. Another general suggestion made by several of the comments was that the proposed rulemaking should be rewritten in language to make it clearer and more easily understood. With this objective in mind, the rulemaking has been extensively rewritten.

Comments on specific sections of the proposed rulemaking are discussed on a section-by-section basis. Only those sections on which comments were received, or which were significantly changed, are discussed in this preamble.

Purpose

In addition to general comments requesting the inclusion of revocations in this rulemaking, a few comments wanted the purpose section expanded to include the revocation of withdrawals. This comment has not been adopted because revocations will be covered in a separate rulemaking, as was pointed out earlier in this preamble. Another group of comments wanted the purpose section to state specifically the lands and types of withdrawals that are covered by the rulemaking. The authority section adequately sets out the discretionary authority that may be exercised by the Secretary of the Interior on withdrawals through the procedure established in this rulemaking. Regulations governing withdrawals under the Surface Mining Control and Reclamation Act of 1977 will be issued as a separate subpart to this title.

Authority

Several comments recommended that the reference in the authority section to Executive Order 10355 be deleted. The Office of the Solicitor advises that even though most of the President's withdrawal authority has been repealed by section 704 of the Federal Land Policy and Management Act of 1976, the Statutes-at-Large may still contain Presidential withdrawal authority of a limited nature that has been delegated to the Secretary of the Interior by Executive Order 10355. Further, section 1326(a) of the Alaska National Interest Lands Conservation Act (Pub. L. 96–487), authorizes the President to make withdrawals of more than 5,000 acres in the State of Alaska, subject to the provisions of that section. Therefore, the reference to Executive Order 10355 has been retained in the rulemaking.

One comment wanted a reference to the Mining and Minerals Policy Act of 1970 included in the authority section so that the authorized officer would be reminded of the responsibilities of the Secretary of the Interior under that statute. This recommendation has not been adopted because the statute in question does not afford direct authority for withdrawal procedures. However, the various statutory responsibilities of the Secretary of the Interior, to the extent delegated, should be taken into account by all officials of the Department in carrying out their day-to-day functions.

Another comment felt that this section could be read to imply that the Secretary of the Interior can make withdrawals for military purposes under the Act of February 28, 1958, sometimes referred to as the Engle Act. To clarify the Secretary's authority and the scope of this rulemaking, a sentence has been added to the provision covering the Act of February 28, 1958, to make it clear that, as to withdrawals in excess of 5,000 acres, a national defense withdrawal can only be made by an act of Congress.

A reference to section 302(b) of the Federal Land Policy and Management Act of 1976 has been added to the authority section to clarify the authority for memoranda of understanding that will be required in connection with certain withdrawals.

A reference to section 1326(a) of the Alaska National Interest Lands Conservation Act (Pub. L. 96–487), has been added to the authority section to identify the authority of the President and the Secretary of the Interior in regard to withdrawals exceeding 5,000 acres in the State of Alaska.

Two new paragraphs have been added to the statutory references for general information purposes. The new paragraphs cover the Classification and Multiple Use Act and the first proviso of section 302(b) of the Federal Land Policy and Management Act of 1976. While these references are not required for the rulemaking, their inclusion does provide background information.

Definitions

This section was the subject of a large number of comments—as many as any other section of the proposed rulemaking. Each comment has been carefully studied, and several of them prompted changes in this second prepared rulemaking.

Several of the comments expressed the view that the term "public lands" or "Federal lands" should be defined. One comment on this subject expressed the view that the proposed rulemaking was based primarily on the Federal Land Policy and Management Act of 1976 and, therefore, should refer exclusively to "public lands." In rejecting these contentions, it is noted that section 204(a) of the Federal Land Policy and Management Act of 1976 which confers general withdrawal authority on the Secretary of the Interior, carefully avoids the use of the term "public lands." Further, the definition of the term "withdrawal" in section 103(j) of the Federal Land Policy and Management Act of 1976 uses the term "Federal Lands," not the term "public lands." The rulemaking is designed to cover withdrawals on all lands under Federal jurisdiction, and not just those relating to "public lands." The definition section has not been expanded to include either the term "public lands" or "Federal lands."

One comment requested that the term "mineral" be defined more specifically than it was in the proposed rulemaking. After studying the rulemaking and its use of the term "mineral," the term "mineral" has been deleted from the definition section because it is not used frequently in the rulemaking and the term is employed in keeping with its general usage.

In response to a comment questioning the exact meaning of the term "segregation," the term has been added to the definition section of the rulemaking. In addition, definitions of the terms "withdrawal petition" and "withdrawal proposal" have been added to the section.

One comment requested that the word "legendary" be deleted from the definition of the term "cultural resources" because its use in the definition could lead to confusion. This comment has been adopted.

One comment suggested that the use of the word "transfer," as found in the definition of "withdrawal" was not proper. This comment has been rejected because a transfer of jurisdiction is one of the basic elements of a "withdrawal" as that term is defined in section 103(j) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702(j)).

A comment indicated that the inclusion of land and water areas in the definition of the term "lands" might cause some problems. After considering this comment, the definition has been revised.

A few comments were concerned about the emphasis placed on withdrawing lands from the general mining laws and the impacts such action has on the need for hard rock minerals. Withdrawal from the general mining laws is specifically mentioned in the rulemaking because withdrawal is the only method the Secretary of the Interior has to close Federal lands, on a long term basis, to location and disposal under the general mining laws. This is true because the 1872 Mining Law is a nondiscretionary land law which grants anyone the right to enter those public lands not closed to its operation for the purpose of exploring for and extracting hard rock minerals. The Mineral Leasing Act of 1920, as amended, on the other hand, gives the Secretary the discretion to preclude leasing of the minerals on the public lands that are covered by that Act, so the Secretary can, when necessary, prevent mining activity involving these minerals. There has been no change in the reference to the general mining laws in the rulemaking.

Two comments raised concerns about the definition of the term "legal description" and its impact on the rulemaking. The concerns were properly raised and the definition of the term "legal description" has been completely rewritten in the rulemaking.

A couple of comments wanted some reference to "valid existing rights" included in the definition of the term "withdrawal," with one comment making the point that land withdrawals would have no impact on valid existing rights. This suggested change has been made.

The term "resource uses" has been added to the definition section because of some confusion reflected in the comments about its use in other parts of the proposed rulemaking. In order to clear up this confusion, the term has been defined.

The term "modify" has been added to the definition section to clarify what that term means in the context of section 204(a) of the Federal Land Policy and Management Act of 1976.

Applications and Succeeding Sections on Application Processing

These sections were the basis of numerous comments, nearly all of which felt that changes were needed in order to clarify the process for submitting and processing an application for withdrawal. After considering the comments, these sections have been rearranged and rewritten, and some new sections have been added. The revision results in a much clearer statement of what is required for the submission and processing of an application for a withdrawal. The rewritten proposal attempts to answer all of the fundamental issues raised in the comments on this group of sections.

In an effort to achieve better coordination on a withdrawal application, the rulemaking now includes a section on preapplication consultation where problems can be surfaced and worked out prior to the submission of a formal application. Further, the elements required to be submitted with an application have been reduced substantially. The remaining items required by the rulemaking can be supplied in the two-year period during which the segregation is in effect. This is covered in a new section on developing and processing a case file for submission to the Secretary of the Interior.

Another new section outlines the actions that will be taken on an application after submission of the case file to the Secretary of the Interior. This latter section essentially adopts the language from the first proposed rulemaking relating to public land orders and denial notices. Also included in this general rewrite of stages in the submission and processing of applications is the section on duration of withdrawals, which has been retained with only minor editorial changes.

In connection with the processing of applications, a large number of comments were directed to the type of mineral survey that would be required on lands covered by a withdrawal application. Several of the comments went so far as to specify possible survey standards. The rulemaking continues to require a mineral survey for all withdrawal applications. The standards for these surveys, while not included in this rulemaking, will be part of the Bureau of Land Management's manual on withdrawal procedures that will be prepared for field use after this rulemaking becomes final.

One comment objected to the requirement for a memorandum of understanding, with special objection to those instances where the transfer of jurisdiction will be complete. The requirement for the memorandum of understanding has been retained. In those instances where the transfer of jurisdiction is not complete and some management responsibility is retained by the Bureau of Land Management, the memorandum of understanding will set out the terms of the shared management. In those instances where the transfer of jurisdiction is for all functions, the memorandum of understanding will so state.

Compensation for Improvements

This section has been revised in response to numerous comments and

suggestions. Analysis of the section disclosed that it was deficient and needed revision to make it effective.

Transfer of Administrative Jurisdiction

The comments on this section indicated a high degree of confusion about what the section was intended to accomplish. Several of the comments strongly suggested that the section be rewritten to clarify its intent and meaning. In response to these comments, the section has been revised.

Extensions

Only a couple of comments were received on this section. One comment requested assurance that a proposed extension would be granted only after adequate notice to the public. The rulemaking clearly indicates that an extension will not be granted until the public has received appropriate notice of the extension. A second comment on this section raised a question as to the type of environmental analysis that would be required for the allowance of a proposed withdrawal extension.

The circumstances at the time the withdrawal is being reviewed for purposes of an extension will determine the type of environmental analysis that will be required. For example, where little change in use is expected to occur, an environmental assessment, or, at most, a supplement to the environmental impact statement that was prepared for the initial withdrawal may be sufficient.

Special Action on Emergency Withdrawals

The comments on this section asked that the section be amended to include a provision for a notice for requesting public input prior to the making of an emergency withdrawal. This type of notice would defeat the purpose of an emergency withdrawal. In recognition of this fact, Congress expressly excluded the notice/publication requirements of section 204(b) of the Federal Land Policy and Management Act of 1976 from the procedures that are applicable to emergency withdrawals (See section 204(b)(2) of the Act). Emergency withdrawals may not last for more than 3 years, and terminate automatically. The same lands may then be withdrawn only if justified after processing a withdrawal application following normal procedures. For this reason, no change has been made in this section.

Federal Energy Regulatory Commission Withdrawals

As pointed out in the preamble to the proposed rulemaking, this subpart is a restatement, with only minor changes, of the existing regulations on this subject. The subpart has been included as part of Title 43 of the Code of Federal Regulations in accordance with an agreement between the Department of the Interior and the Federal Energy Regulatory Commission. Only minor comments, other than the request that the subpart be deleted, were received on this subpart, and no change has been made.

Editorial changes and technical corrections have been made as necessary.

The principal authors of this final rulemaking are Greg Sukys, Division of Land Resources and Realty, and Robert C. Bruce, Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that the publication of this document is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a significant regulatory action requiring the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Under the authority of section 204 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714), the Federal Power Act of 1920 (16 U.S.C. 818), the Act of February 28, 1958 (43 U.S.C. 155 et seq.), section 1326(a) of the Alaska National Interest Lands Conservation Act (Pub. L. 96-487), and Executive Order 10355 (17 FR 4831), Group 2300, Subchapter B, Chapter II, Title 43 of the Code of Federal Regulations is revised as set forth below.

Guy R. Martin,

Assistant Secretary of the Interior.

January 14, 1981.

1. Part 2300 is revised as follows:

PART 2300—LAND WITHDRAWALS

Subpart 2300—Withdrawals, General

Sec.

2300.0-1 Purpose.
2300.0-3 Authority.
2300.0-5 Definitions.

Subpart 2310—Withdrawals, General—Procedure

2310.1 Procedures—general.
2310.1-1 Preapplication consultation.
2310.1-2 Submission of applications.
2310.1-3 Submission of withdrawal petitions.
2310.1-4 Cancellation of withdrawal applications or withdrawal proposals and denial of applications.
2310.2 Segregative effect of withdrawal applications or withdrawal proposals.
2310.2-1 Termination of segregative effect of withdrawal applications or withdrawal proposals.
2310.3 Action on withdrawal applications and withdrawal proposals, except for emergency withdrawals.
2310.3-1 Publication and public meeting requirements.
2310.3-2 Development and processing of the case file for submission to the Secretary.
2310.3-3 Action by the Secretary—public land orders and notices of denial.
2310.3-4 Duration of withdrawals.
2310.3-5 Compensation for improvements.
2310.3-6 Transfer of jurisdiction.
2310.4 Review and extension of withdrawals.
2310.5 Special action on emergency withdrawals.

Subpart 2320—Federal Energy Regulatory Commission Withdrawals

2320.0-3 Authority.
2320.1 Lands considered withdrawn or classified for power purposes.
2320.2 General determinations under the Federal Power Act.

Authority: 43 U.S.C. 1201; 43 U.S.C. 1740; Executive Order No. 10355 (17 FR 4831, 4833).

Group 2300—Withdrawals

PART 2300—WITHDRAWALS

Subpart 2300—Withdrawals, General

§ 2300.0-1 Purpose.

(a) These regulations set forth procedures implementing the Secretary of the Interior's authority to process Federal land withdrawal applications and, where appropriate, to make, modify or extend Federal land withdrawals. Procedures for making emergency withdrawals are also included.

(b) The regulations do not apply to withdrawals that are made by the Secretary of the Interior pursuant to an act of Congress which directs the issuance of an order by the Secretary. Likewise, procedures applicable to withdrawals authorized under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272(b); 1281), and procedures relating to the Secretary's authority to establish Indian reservations or to add lands to the reservations pursuant to special legislation or in accordance with section 7 of the Act of June 18, 1934 (25 U.S.C. 467), as supplemented by section 1 of the Act of May 1, 1936 (25 U.S.C. 473a), are not included in these regulations.

(c) General procedures relating to the processing of revocation of withdrawals and relating to the relinquishment of reserved Federal land areas are not included in this Part.

§ 2300.0–3 Authority.

(a)(1) Section 204 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714) gives the Secretary of the Interior general authority to make, modify, extend or revoke withdrawals, but only in accordance with the provisions and limitations of that section. Among other limitations, the Federal Land Policy and Management Act of 1976 provides that the Secretary of the Interior does not have authority to:

(i) Make, modify or revoke any withdrawal created by an Act of Congress;

(ii) Make a withdrawal which can be made only by an Act of Congress;

(iii) Modify or revoke any withdrawal creating national monuments under the Act of June 8, 1906 (16 U.S.C. 431–433), sometimes referred to as the Antiquities Act;

(iv) Modify or revoke any withdrawal which added lands to the National Wildlife Refuge System prior to October 21, 1976, the date of approval of the Federal Land Policy and Management Act of 1976 or which thereafter adds lands to that System under the terms of that Act. In this connection, nothing in the Federal Land Policy and Management Act of 1976 is intended to modify or change any provision of the Act of February 27, 1976 (16 U.S.C. 668 dd(a)).

(2) Executive Order 10355 of May 26, 1952 (17 FR 4831), confers on the Secretary of the Interior all of the delegable authority of the President to make, modify and revoke withdrawals and reservations with respect to lands of the public domain and other lands owned and controlled by the United States in the continental United States or Alaska.

(3) The Act of February 28, 1958 (43 U.S.C. 155–158), sometimes referred to as the Engle Act, places on the Secretary of the Interior the responsibility to process Department of Defense applications for national defense withdrawals, reservations or restrictions aggregating 5,000 acres or more for any one project or facility. These withdrawals, reservations or restrictions may only be made by an act of Congress, except in time of war or national emergency declared by the President or the Congress and except as otherwise expressly provided in the Act of February 28, 1958.

(4) Section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)) authorizes the Secretary of the Interior to regulate the management of the public lands as defined in the Act through instruments, such as memorandum of understanding, which the Secretary deems appropriate.

(5) Section 1326(a) of the Alaska National Interest Lands Conservation Act (Pub. L. 96–487), authorizes the President and the Secretary to make withdrawals exceeding 5,000 acres, in the aggregate, in the State of Alaska subject to the provisions that such withdrawals shall not become effective until notice is provided in the **Federal Register** and to both Houses of the Congress and such withdrawals shall terminate unless Congress passes a Joint Resolution of approval within one year after the notice of withdrawal has been submitted to the Congress.

(b) The following references do not afford either withdrawal application processing or withdrawal authority but are provided as background information.

(1) Executive Order 6910 of November 26, 1934, and Executive Order 6964 of February 5, 1935, as modified, withdrew sizable portions of the public lands for classification and conservation. These lands and the grazing districts estalished under the Taylor Grazing Act of 1934, as amended, are subject to the classification and opening procedures of section 7 of the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315f); however, they are not closed to the operation of the mining or mineral leasing laws unless separately withdrawn or reserved, classified for retention from disposal, or precluded from mineral leasing or mining location under other authority.

(2) The Classification and Multiple Use Act of September 19, 1964 (43 U.S.C. 1411–1418), authorized the Secretary of the Interior to classify, in appropriate cases, public lands and other Federal lands exclusively administered by the Secretary of the Interior through the Bureau of Land Management for retention or disposal under Federal ownership and management. Numerous classification decisions based upon this statutory authority were made by the Secretary of the Interior. For the effect of these classification with regard to the disposal and leasing laws of the United States, see Subparts 2440 and 2461 of this title.

(3) Section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712) provides for land use planning and resultant management decisions which may operate to totally eliminate a particular land use, including one or more "principal or major uses," as defined in the Act. Withdrawals made pursuant to section 204 of the Federal Land Policy and Management Act of 1976 may be used in appropriate cases, to carry out management decisions, except that "public lands," as defined in the Act, can be removed from or restored to the operation of the Mining Law of 1872, as amended, or transferred to another department, agency or office, only by withdrawal action pursuant to section 204 of the Federal Land Policy and Management Act of 1976 or other action pursuant to applicable law.

(4) The first proviso of section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)) provides, in part, that unless otherwise provided for by law, the Secretary of the Interior may permit Federal departments and agencies to use, occupy and develop public lands *only* through rights-of-way under section 507 of the Act (43 U.S.C. 1767); withdrawals under section 204 of the Act (43 U.S.C. 1714); and, where the proposed use and development are similar or closely related to the programs of the Secretary for the public lands involved, cooperative agreements under section 307(b) of the Act (43 U.S.C. 1737(b)).

(5) Section 701(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 note) provides that all withdrawals, reservations, classifications and designations in effect on October 21, 1976, the effective date of the Act, shall remain in full force and effect until modified under the provisions of the Act or other applicable law.

§ 2300.0–5 Definitions.

As used in this part, the term:

(a) "Secretary" means the Secretary of the Interior or a secretarial officer subordinate to the Secretary who has been appointed by the President by and with the advice and consent of the Senate and to whom has been delegated the authority of the Secretary to perform the duties described in this part to be performed by the "Secretary."

(b) "Authorized officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this part to be performed by the "authorized officer."

(c) "Act" means the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 et seq.), unless otherwise specified.

(d) "Lands" includes both upland and submerged land areas and any right or interest in such areas. To the extent provided in section 1 of the Act of February 28, 1958 (43 U.S.C. 155), the term also includes offshore waters.

(e) "Cultural resources" means those fragile and nonrenewable physical remains of human activity found in districts, sites, structures, burial mounds, petroglyphs, artifacts, objects, ruins, works of art, architecture or natural settings or features which were

important to prehistoric, historic or other land and resource use events.

(f) "Archeological areas/resources" means sites or areas containing important evidence or the physical remains of former but now extinct cultural groups, their skeletons, settlements, implements, artifacts, monuments and inscriptions.

(g) "Resource use" means a land use having as its primary objective the preservation, conservation, enhancement or development of:

(1) Any renewable or nonrenewable natural resource indigenous to a particular land area, including, but not limited to, mineral, timber, forage, water, fish or wildlife resources, or

(2) Any resource value associated with a particular land area, including, but not limited to, watershed, power, scenic, wilderness, clean air or recreational values. The term does not include military or other governmental activities requiring land sites only as an incidental means to achieving an end not related primarily to the preservation, conservation, enhancement or development of natural resources or resource values indigenous to or associated with a particular land area.

(h) "Withdrawal" means withholding an area of Federal land from settlement, sale, location, or entry under some or all of the general land laws, for the purpose of limiting activites under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of Federal land, other than "property" governed by the Federal Property and Administrative Services Act (40 U.S.C. 472), from one department, bureau or agency to another department, bureau or agency.

(i) "Department" means a unit of the Executive branch of the Federal Government which is headed by a member of the President's Cabinet.

(j) "Agency" means a unit of the Executive branch of the Federal Government which is not within a Department.

(k) "Office" means an office or bureau of the Department of the Interior.

(l) "Applicant" means any Federal department, agency or office.

(m) "Segregation" means the removal for a limited period, subject to valid existing rights, of a specified area of the public lands from the operation of the public land laws, including the mining laws, pursuant to the exercise by the Secretary of regulatory authority to allow for the orderly administration of the public lands.

(n) "Legal description" means a written land description based upon either an approved and filed Federal land survey executed as a part of the United States Public Land Survey System or, where specifically authorized under Federal law, upon a protraction diagram. In the absence of the foregoing, the term means a written description, approved by the authorized officer, which defines the exterior boundaries of a tract of land by reference to a metes and bounds survey or natural or other monuments.

(o) "Modify" or "modification" does not include, for the purposes of section 204 of the act (43 U.S.C. 1714), the addition of lands to an existing withdrawal or the partial revocation of a withdrawal.

(p) "Withdrawal petition" means a request, originated within the Department of the Interior and submitted to the Secretary, to file an application for withdrawal.

(q) "Withdrawal proposal" means a withdrawal petition approved by the Secretary.

Subpart 2310—Withdrawals, General—Procedure

§ 2310.1 Procedures—general.

(a) The basic steps leading up to the making, modification or extension of a withdrawal, except emergency withdrawals, are:

(1) Preapplication consultation;

(2) Obtaining Secretarial approval of a withdrawal petition in appropriate cases;

(3) Submission for filing of an application for a requested withdrawal action;

(4) Publication in the **Federal Register** of a notice stating that a withdrawal proposal has been made or that an application has been submitted for filing.

(5) Negotiations between the applicant and the authorized officer as well as the accomplishment of investigations, studies and analyses which may be required to process an application.

(6) Preparation of the case file to be considered by the Secretary, including the authorized officer's findings and recommendations;

(7) Transmittal of the case file to the Director, Bureau of Land Management, for the Director's review and decision regarding the findings and recommendations of the authorized officer;

(8) Transmittal of the case file to the Secretary.

(9) Publication of a public land order or a notice of denial signed by the Secretary. If the application seeks a national defense withdrawal that may only be made by an act of Congress, the Secretary will transmit to the Congress proposed legislation along with the Secretary's recommendations, and documentation relating thereto.

§ 2310.1-1 Preapplication consultation.

A potential applicant should contact the appropriate State office of the Bureau of Land Management well in advance of the anticipated submission date of an application. Early consultation can familiarize the potential applicant with the responsibilities of an applicant, the authorized officer and the Secretary. Early consultation also will assist in determining the need for a withdrawal, taking possible alternatives into account, increase the likelihood that the applicant's needs will be considered in ongoing land use planning, assist in determining the extent to which any public lands that may be involved would have to be segregated if an application is submitted; and result in preliminary determinations regarding the scheduling of various investigations, studies, analyses, public meetings and negotiations that may be required for a withdrawal. Studies and analyses should be programmed to ensure their completion in sufficient time to allow the Secretary or the Congress adequate time to act on the application before the expiration of the segregation period.

§ 2310.1-2 Submission of applications.

(a) Applications for the making, modification or extension of a withdrawal shall be submitted for filing, in duplicate, in the proper Bureau of Land Management office, as set forth in § 1821.2-1 of this title, except for emergency withdrawal requests and applications that are classified for national security reasons. Requests for emergency withdrawals and applications that are classified for national security reasons shall be submitted, in duplicate, in the Office of the Secretary, Department of the Interior, Washington, D.C. 20240.

(b) Before the authorized officer can take action on a withdrawal proposal, a withdrawal application in support thereof shall be submitted. The application may be submitted simultaneously with the making of a withdrawal proposal, in which case only the notice required by § 2310.3-1(a) of this title, referencing both the application and the withdrawal proposal, shall be published.

(c) No specific form is required, but, except as otherwise provided in § 2310.3-6(b) of this title, the application shall contain at least the following information:

(1) The name and address of the applicant. Where the organization intending to use the lands is different from the applicant, the name and address of such using agency shall also be included.

(2) If the applicant is a department or agency other than the Department of the Interior or an office thereof, a statement of the delegation or delegations of authority of the official acting on behalf of the department or agency submitting the application, substantiating that the official is empowered to act on behalf of the head of the department or agency in connection with all matters pertaining to the application.

(3) If the lands which are subject to an application are wholly or partially under the administration of any department or agency other than the Department of the Interior, the Secretary shall make or modify a withdrawal only with the consent of the head of the department or agency concerned, except in the case of an emergency withdrawal. In such case, a copy of the written consent shall accompany the application. The requirements of section (e) of Executive Order 10355 (17 FR 4831), shall be complied with in those instances where the Order applies.

(4) The type of withdrawal action that is being requested (See § 2300.0–5(h) of this title) and whether the application pertains to the making, extension or modification of a withdrawal.

(5) A description of the lands involved in the application, which shall consist of the following:

(i) A legal description of the entire land area that falls within the exterior boundaries of the affected area and the total acreage of such lands;

(ii) A legal description of the lands, Federal or otherwise, within the exterior boundaries that are to be excepted from the requested action, and after deducting the total acreage of all the excepted lands, the net remaining acreage of all Federal lands (as well as all non-Federal lands which, if they should be returned to or should pass to Federal ownership, would become subject to the withdrawal) within the exterior boundaries of the affected land areas;

(iii) In the case of a national defense withdrawal which can only be made by an act of Congress, sections 3(2) and 3(3) of the Act of February 28, 1958 (43 U.S.C. 157 (2), (3)) shall be complied with in lieu of subparagraphs (5) (i) and (ii) of this paragraph.

(6) If the application is for a withdrawal that would overlap, or that would add lands to one or more existing withdrawals, the application shall also contain:

(i) An identification of each of the existing withdrawals, including the project name, if any, the date of the withdrawal order, the number and type of order, if known, or, in lieu of the foregoing, a copy of the order;

(ii) As to each existing withdrawal that would be overlapped by the requested withdrawal, the total area and a legal description of the area that would be overlapped; and

(iii) The total acreage, Federal or otherwise, that would be added to the existing withdrawal, if the new application is allowed.

(7) The public purpose or statutory program for which the lands would be withdrawn. If the purpose or program for which the lands would be withdrawn is classified for national security reasons, a statement to that effect shall be included; but, if at all possible, a general description of the use to which the lands would be devoted, if the requested withdrawal is allowed, should be included. In the case of applications that are not classified for national security reasons, an analysis of the manner in which the lands as well as their natural resources and resource values would be used to implement the purpose or program shall be provided.

(8) The extent to which the lands embraced in the application are requested to be withheld from settlement, sale, location or entry under the public land laws, including the mining laws, together with the extent to which, and the time during which, the lands involved in the application would be temporarily segregated in accordance with § 2310.2 of this title.

(9) The type of temporary land use that, at the discretion of the authorized officer, may be permitted or allowed during the segregation period, in accordance with § 2310.2 of this title.

(10) An analysis and explanation of why neither a right-of-way under section 507 of the act (43 U.S.C. 1767), nor a cooperative agreement under sections 302(b) (43 U.S.C. 1732(b)) and 307(b) (43 U.S.C. 1737(b)) of the act would adequately provide for the proposed use.

(11) The duration of the withdrawal, with a statement in justification thereof (see § 2310.3–4 of this title). Where an extension of an existing withdrawal is requested, its duration may not exceed the duration of the existing withdrawal.

(12) A statement as to whether any suitable alternative sites are available for the proposed use or for uses which the requested withdrawal action would displace. The statement shall include a study comparing the projected costs of obtaining each alternative site in suitable condition for the intended use, as well as the projected costs of obtaining and developing each alternative site for uses that the requested withdrawal action would displace.

(13) A statement as to whether water will or will not be needed to fulfill the purpose of the requested withdrawal action.

(14) The place where records relating to the application can be examined by interested persons.

(d) Except in the case of an emergency withdrawal, if the preceding application requirements have not been met, or if an application seeks an action that is not within the scope of the Secretary's authority, the application may be rejected by the authorized officer as a defective application.

§ 2310.1–3 Submission of withdrawal petitions.

(a) Withdrawal petitions shall be submitted to the Director, Bureau of Land Management, for transmittal to the Secretary.

(b) No specific form is required, but the petition shall contain at least the following information:

(1) The office originating the petition;

(2) The type and purpose of the proposed withdrawal action (See § 2300.0–5(h) of this title) and whether the petition pertains to the making, extension or modification of a withdrawal;

(3) A legal description of the entire land area that falls within the exterior boundaries affected by the petition, together with the total acreage of such lands, and a map of the area;

(4) The extent to which and the time during which any public lands that may be involved in the petition would be temporarily segregated and the temporary land uses that may be permitted during the segregation period, in accordance with § 2310.2 of this title; and

(5) A preliminary identification of the mineral resources in the area.

(c) Except in the case of petitions seeking emergency withdrawals, if a petition is submitted simultaneously with a withdrawal application, the information requirements pertaining to withdrawal applications (See § 2310.1–2 of this title), shall supersede the requirements of this section.

(d) If a petition seeks an emergency withdrawal under the provisions of section 204(e) of the act, the petition shall be filed simultaneously with an application for withdrawal. In such instances, the petition/application shall provide as much of the information required by §§ 2310.1–2(c) and 2310.3–2(b) of this title as is available to the

petitioner when the petition is submitted.

(e) Upon the approval by the Secretary of a petition for withdrawal, the petition shall be considered as a Secretarial proposal for withdrawal, and notice of the withdrawal proposal shall be published immediately in the **Federal Register** in accordance with § 2310.3–1(a) of this title. If a petition which seeks an emergency withdrawal is approved by the Secretary, the publication and notice provisions pertaining to emergency withdrawals shall be applicable. (See § 2310.5 of this title.)

§ 2310.1–4 Cancellation of withdrawal applications or withdrawal proposals and denial of applications.

(a) Withdrawal or extension applications and proposals shall be amended promptly to cancel the application or proposal, in whole or in part, with respect to any lands which the applicant, in the case of applications, or the office, in the case of proposals, determines are no longer needed in connection with a requested or proposed action. The filing of a cancellation notice in each such case shall result in the termination of the segregation of the public lands that are to be eliminated from the withdrawal application or withdrawal proposal. (See § 2310.2–1 of this title)

(b) The Secretary may deny an application if the costs (as defined in section 304(b) of the act (43 U.S.C. 1734(b)) estimated to be incurred by the Department of the Interior would, in the judgment of the Secretary, be excessive in relation to available funds appropriated for processing applications requesting a discretionary withdrawal, or a modification or extension of a withdrawal.

§ 2310.2 Segregative effect of withdrawal applications or withdrawal proposals.

The following provisions apply only to applications or proposals to withdraw lands and not to applications or proposals seeking to modify or extend withdrawals.

(a) *Withdrawal applications or withdrawal proposals submitted on or after October 21, 1976.*—Within 30 days of the submission for filing of a withdrawal application, or whenever a withdrawal proposal is made, a notice stating that the application has been submitted or that the proposal has been made, shall be published in the **Federal Register** by the authorized officer. Publication of the notice in the **Federal Register** shall segregate the lands described in the application or proposal from settlement, sale, location or entry under the public land laws, including the mining laws, to the extent specified in the notice, for 2 years from the date of publication of the notice unless the segregative effect is terminated sooner in accordance with the provisions of this Part. The notices published pursuant to the provisions of this section shall be the same notices required by § 2310.3–1 of this title. Publication of a notice of a withdrawal application that is based on a prior withdrawal proposal, notice of which was published in the **Federal Register**, shall not operate to extend the segregation period which commenced upon the publication of the prior withdrawal proposal.

(b) *Withdrawal applications submitted before October 21, 1976.*—The public lands described in a withdrawal application filed before October 21, 1976, shall remain segregated through October 20, 1991, from settlement, sale, location or entry under the public land laws, including the mining laws, to the extent specified in the **Federal Register** notice or notices that pertain to the application, unless the segregative effect of the application is terminated sooner in accordance with other provisions of this Part. Any amendment made on or after October 21, 1976, of a withdrawal application submitted before October 21, 1976, for the purpose of adding Federal lands to the lands described in a previous application, shall require the publication in the **Federal Register**, within 30 days of receipt of the amended application, of a notice of the amendment of the withdrawal application. All of the lands described in the amended application which includes those lands described in the original application shall be segregated for 2 years from the date of publication of the notice of the amended application in the **Federal Register.**

(c) Applications for licenses, permits, cooperative agreements or other discretionary land use authorizations of a temporary nature that are filed on or after October 21, 1976, regarding lands involved in a withdrawal application or a withdrawal proposal and that are listed in the notices required by § 2310.3–2 of this title as permissible during the segregation period, may be approved by the authorized officer while the lands remain segregated.

(d) Except as provided in paragraph (c) of this section, applications for the use of lands involved in a withdrawal application or a withdrawal proposal, the allowance of which is discretionary, shall be denied.

(e) The temporary segregation of lands in connection with a withdrawal application or a withdrawal proposal shall not affect in any respect Federal agency administrative jurisdiction of the lands, and the segregation shall not have the effect of authorizing or permitting any use of the lands by the applicant or using agency.

§ 2310.2–1 Termination of the segregative effect of withdrawal applications or withdrawal proposals.

(a) The publication in the **Federal Register** of an order allowing a withdrawal application, in whole or in part, shall terminate the segregative effect of the application as to those lands withdrawn by the order.

(b) The denial of a withdrawal application, in whole or in part, shall result in the termination of the segregative effect of the application or proposal as to those lands where the withdrawal is disallowed. Within 30 days following the decision to disallow the application or proposal, in whole or in part, the authorized officer shall publish a notice in the **Federal Register** specifying the reasons for the denial and the date that the segregative period terminated. The termination date of the segregation period shall be noted promptly on the public land status records on or before the termination date.

(c) The cancellation, in whole or in part, of a withdrawal application or a withdrawal proposal shall result in the termination of the segregative effect of the application or proposal, as to those lands deleted from the application or proposal. The authorized officer shall publish a notice in the **Federal Register**, within 30 days following the date of receipt of the cancellation, specifying the date that the segregation terminated. The termination date of the segregation shall be noted promptly on the public land status records. If the cancellation applies to only a portion of the public lands that are described in the withdrawal application or withdrawal proposal, then the lands that are not affected by the cancellation shall remain segregated.

(d) The segregative effect resulting from the publication on or after October 21, 1976, of a **Federal Register** notice of the submission of a withdrawal application or the making of a withdrawal proposal shall terminate 2 years after the publication date of the **Federal Register** notice unless the segregation is terminated sooner by other provisions of this section. A notice specifying the date and time of termination shall be published in the **Federal Register** by the authorized officer 30 days in advance of the termination date. The public land status records shall be noted as to the termination date of the segregation period on or before the termination date.

Such a termination shall not affect the processing of the withdrawal application.

(e) The segregative effect resulting from the submission of a withdrawal application or withdrawal proposal before October 21, 1976, shall terminate on October 20, 1991, unless the segregation is terminated sooner by other provisions of this part. A notice specifying the date and time of termination shall be published in the **Federal Register** by the authorized officer 30 days in advance of October 20, 1991. The public land status records shall be noted as to the termination date of the segregation period on or before October 20, 1991.

§ 2310.3 Action on withdrawal applications and withdrawal proposals, except for emergency withdrawals.

§ 2310.3-1 Publication and public meeting requirements.

(a) When a withdrawal proposal is made, a notice to that effect shall be published immediately in the **Federal Register.** The notice shall contain the information required by § 2310.1-3 of this title. In the event a withdrawal petition, which subsequently becomes a withdrawal proposal, is submitted simultaneously with a withdrawal application, the information requirements for notices pertaining to withdrawal applications (See paragraph (b) of this section) shall supersede the information requirements of this paragraph. However, in such instances, the notice required by paragraph (b) of this section shall be published immediately without regard to the 30-day period allowed for the filing for publication in the **Federal Register** of withdrawal application notices.

(b)(1) Except for emergency withdrawals and except as otherwise provided in paragraph (a) of this section, within 30 days of the submission for filing of a withdrawal, extension or modification application, the authorized officer shall publish in the **Federal Register** a notice to that effect. The authorized officer also shall publish the same notice in at least one newspaper having a general circulation in the vicinity of the lands involved and, with the cooperation and assistance of the applicant, when appropriate, shall provide sufficient publicity to inform the interested public of the requested action.

(2) The notice shall contain, in summary form, the information required by § 2310.1-2 of this title, except that the authorized officer may exclude the information required by § 2310.1-2(c)(2) of this title, and as much of the descriptive information required by §§ 2310.1-2(c) (5) and (6) of this title as the authorized officer considers appropriate. The notice shall:

(i) Provide a legal description of the lands affected by the application, together with the total acreage of such lands;

(ii) Specify the extent to which and the time during which any lands that may be involved may be segregated in accordance with § 2310.2 of this title;

(iii) Identify the temporary land uses that may be permitted or allowed during the segregation period as provided for in § 2310.2(c) of this title;

(iv) Provide for a suitable period of at least 90 days after publication of the notice, for public comment on the requested action;

(v) Solicit written comments from the public as to the requested action and provide for one or more public meetings in relation to requested actions involving 5,000 or more acres in the aggregate and, as to requested actions involving less than 5,000 acres, solicit and evaluate the written comments of the public as to the requested action and as to the need for public meetings;

(vi) State, in the case of a national defense withdrawal which can only be made by an act of Congress, that if the withdrawal is to be made, it will be made by an act of Congress;

(vii) Provide the address of the Bureau of Land Management office in which the application and the case file pertaining to it are available for public inspection and to which the written comments of the public should be sent;

(viii) State that the application will be processed in accordance with the regulations set forth in Part 2300 of this title;

(ix) Reference, if appropriate, the **Federal Register** in which the notice of a withdrawal proposal, if any, pertaining to the application was published previously;

(x) Provide such additional information as the authorized officer deems necessary or appropriate.

(c)(1) In determining whether a public meeting will be held on applications involving less than 5,000 acres of land, the authorized officer shall consider whether or not:

(i) A large number of persons have expressed objections to or suggestions regarding the requested action;

(ii) The objections or suggestions expressed appear to have merit without regard to the number of persons responding;

(iii) A public meeting can effectively develop information which would otherwise be difficult or costly to accumulate;

(iv) The requested action, because of the amount of acreage involved, the location of the affected lands or other relevant factors, would have an important effect on the public, as for example, the national or regional economy;

(v) There is an appreciable public interest in the lands or their use, as indicated by the records of the Bureau of Land Management;

(vi) There is prevailing public opinion in the area that favors public meetings or shows particular concern over withdrawal actions; and

(vii) The applicant has requested a public meeting.

(2) A public meeting, whether required or determined by the authorized officer to be necessary, shall be held at a time and place convenient to the interested public, the applicant and the authorized officer. A notice stating the time and place of the meeting, shall be published in the **Federal Register** and in at least one newspaper having a general circulation in the vicinity of lands involved in the requested action, at least 30 days before the scheduled date of the meeting.

§ 2310.3-2 Development and processing of the case file for submission to the Secretary.

(a) Except as otherwise provided in § 2310.3-6(b) of this title, the information, studies, analyses and reports identified in this paragraph that are required by applicable statutes, or which the authorized officer determines to be required for the Secretary or the Congress to make a decision or recommendation on a requested withdrawal, shall be provided by the applicant. The authorized officer shall assist the applicant to the extent the authorized officer considers it necessary or appropriate to do so. The qualifications of all specialists utilized by either the authorized officer or the applicant to prepare the information, studies, analyses and reports shall be provided.

(b) The information, studies, analyses and reports which, as appropriate, shall be provided by the applicant shall include:

(1) A report identifying the present users of the lands involved, explaining how the users will be affected by the proposed use and analyzing the manner in which existing and potential resource uses are incompatible with or conflict with the proposed use of the lands and resources that would be affected by the requested action. The report shall also specify the provisions that are to be made for, and an economic analysis of, the continuation, alteration or

terminaton of existing uses. If the provisions of § 2310.3–5 of this title are applicable to the proposed withdrawal, the applicant shall also furnish a certification that the requirements of that section shall be satisfied promptly if the withdrawal is allowed or authorized.

(2) If the application states that the use of water in any State will be necessary to fulfill the purposes of the requested withdrawal, extension or modification, a report specifying that the applicant or using agency has acquired, or proposes to acquire, rights to the use of the water in conformity with applicable State laws and procedures relating to the control, appropriation, use and distribution of water, or whether the withdrawal is intended to reserve, pursuant to Federal law, sufficient unappropriated water to fulfill the purposes of the withdrawal. Water shall be reserved pursuant to Federal law for use in carrying out the purposes of the withdrawal only if specifically so stated in the relevant withdrawal order, as provided in § 2310.3–3(b) of this title and only to the extent needed for the purpose or purposes of the withdrawal as expressed in the withdrawal order. The applicant shall also provide proof of notification of the involved State's department of water resources when a land use needed to carry out the purposes of the requested withdrawal will involve utilization of the water resources in a State. As a condition to the allowance of an order reserving water, the applicant shall certify to the Secretary that it shall quantify the amount of water to be reserved by the order.

(3) An environmental assessment, an environmental impact statement or any other documents as are needed to meet the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), and the regulations applicable thereto. The authorized officer shall participate in the development of environmental assessments or impact statements. The applicant shall designate the Bureau of Land Management as a cooperating agency and shall comply with the requirements of the regulations of the Council on Environmental Quality. The Bureau of Land Management shall, at a minimum, independently evaluate and review the final product. The following items shall either be included in the assessment or impact statement, or they may be submitted separately, with appropriate cross references.

(i) A report on the identification of cultural resources prepared in accordance with the requirements of 36 CFR Part 800, and other applicable regulations.

(ii) An identification of the roadless areas or roadless islands having wilderness characteristics, as described in the Wilderness Act of 1964 (16 U.S.C. 1131, et seq.), which exist within the area covered by the requested withdrawal action.

(iii) A mineral resource analysis prepared by a qualified mining engineer, engineering geologist or geologist which shall include, but shall not be limited to, information on: General geology, known mineral deposits, past and present mineral production, mining claims, mineral leases, evaluation of future mineral potential and present and potential market demands.

(iv) A biological assessment of any listed or proposed endangered or threatened species, and their critical habitat, which may occur on or in the vicinity of the involved lands, prepared in accordance with the provisions of section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1536), and regulations applicable thereto, if the Secretary determines that assessment is required by law.

(v) An analysis of the economic impact of the proposed uses and changes in use associated with the requested action on individuals, local communities, State and local government interests, the regional economy and the Nation as a whole.

(vi) A statement as to the extent and manner in which the public participated in the environmental review process.

(4) A statement with specific supporting data, as to:

(i) Whether the lands involved are floodplains or are considered wetlands; and

(ii) Whether the existing and proposed uses would affect or be affected by such floodplains or wetlands and, if so, to what degree and in what manner. The statement shall indicate whether, if the requested action is allowed, it will comply with the provisions of Executive Orders 11988 and 11990 of May 24, 1977 (42 FR 26951; 26961).

(5) A statement of the consultation which has been or will be conducted with other Federal departments or agencies; with regional, State and local Government bodies; and with individuals and nongovernmental groups regarding the requested action.

(c) Prior to final action being taken in connection with an application, the applicant shall prepare, with the guidance and participation of the authorized officer, and subject to the approval of the authorized officer, the Secretary and other affected departments, agencies or offices, a resource management plan and implementation program regarding the use and management of any public lands with their related resources uses. Consideration shall be given to the impact of the proposed reservation on access to and the use of the land areas that are located in the vicinity of the lands proposed to be withdrawn. Where appropriate, the plan and program will be implemented by means of a memorandum of understanding between the affected agencies. Any allocation of jurisdiction between the agencies shall be effected in the public land order or legislation. In those cases where the Secretary, acting through the Bureau of Land Management, would continue to exercise partial jurisdiction, resource management of withdrawn areas may be governed by the issuance of management decisions by the Bureau of Land Management to implement land use plans developed or revised under the land use planning requirements of section 202 of the act (43 U.S.C. 1712).

(d) In regard to national defense withdrawals that can only be made by an act of Congress, and to the extent that they are not otherwise satisfied by the information, studies, analyses and reports provided in accordance with the provisions of this section, the provisions of section 3(7) of the Act of February 28, 1958 (43 U.S.C. 157(7)), shall be complied with.

(e) The authorized officer shall develop preliminary findings and recommendations to be submitted to the Secretary, advise the applicant of the findings and recommendations, and provide the applicant an opportunity to discuss any objections thereto which the applicant may have.

(f) Following the discussion process, or in the absence thereof, the authorized officer shall prepare the findings, keyed specifically to the relevant portions of the case file, and the recommendations to the Secretary in connection with the application. The authorized officer also shall prepare, for consideration by the Secretary, a proposed order or notice of denial. In the case of a national defense withdrawal which can only be made by an act of Congress, the authorized officer shall prepare, with the cooperation of the applicant, a draft legislative proposal to implement the applicant's withdrawal request, together with proposed recommendations for submission by the Secretary to the Congress. The findings and recommendations of the authorized officer, and the other documents previously specified in this section to be prepared by the authorized officer shall be made a part of the case file. The case

file shall then be sent to the Director, Bureau of Land Management. At the same time, a copy of the findings and recommendations of the authorized officer shall be sent to the applicant.

(1) If the applicant objects to the authorized officer's findings and recommendations to the Secretary, the applicant may, within 30 days of the receipt by the applicant of notification thereof, state its objections in writing and request the Director to review the authorized officer's findings and recommendations. The applicant shall be advised of the Director's decision within 30 days of receipt of the applicant's statement of objections in the Bureau of Land Management's Washington office. The applicant's statement of objections and the Director's decision shall be made a part of the case file and thereafter the case file shall be submitted to the Secretary.

(2) If the applicant disagrees with the decision of the Director, Bureau of Land Management, the applicant may, within 30 days of receipt by the applicant of the Director's decision, submit to the Secretary a statement of reasons for disagreement. The statement shall be considered by the Secretary together with the findings and recommendations of the authorized officer, the applicant's statement of objections, the decision of the Director, the balance of the case file and such additional information as the Secretary may request.

§ 2310.3-3 Action by the Secretary—public land orders and notices of denial.

(a) Except for national defense withdrawals which can only be made by an act of Congress, and except as may be otherwise provided in section 1(d) of Executive Order 10355 (17 FR 4833), for applications that are subject to that order, the allowance or denial, in whole or in part, of a withdrawal, modification or extension application, may only be made by the Secretary.

(b)(1) Before the allowance of an application, in whole or in part, the Secretary shall first approve all applicable memoranda of understanding and the applicant shall make all certifications required in this part. When an application has been finally allowed, in whole or in part, by the Secretary, an order to that effect shall be published promptly in the **Federal Register.** Each order shall be designated as, and shall be signed by the Secretary and issued in the form of, a "public land order." Water shall be reserved pursuant to Federal law for use in carrying out the purposes of the withdrawal only if specifically so stated in the relevant public land order. In appropriate cases, the public land order also shall refer to the memorandum of understanding discussed in § 2310.3-2(c) of this title and shall be drawn to comply with § 2310.3-6 of this title.

(2) On the same day an order withdrawing 5,000 or more acres in the aggregate is signed, the Secretary shall advise, in writing, each House of the Congress, or in the case of an emergency withdrawal, the appropriate Committee of each House, of the withdrawal action taken. Pursuant to the Secretary's authority under the act, the notices that are sent to the Congress shall be accompanied by the information required by section 204(c)(2) of the act (43 U.S.C. 1714(c)(2)), except in the case of an emergency withdrawal, transmittal of the required information may be delayed as provided in § 2310.5(c) of this title.

(c) When the action sought in an application involves the exercise by the Secretary of authority delegated by Executive Order 10355 (17 FR 4831) and the Secretary denies the application in whole or in part, the applicant shall be notified of the reasons for the Secretary's decision. The decision shall be subject to further consideration only if the applicant informs the Secretary, in writing, within 15 days of the receipt by the applicant of the Secretary's decision, that the applicant has submitted the matter to the Office of Management and Budget for consideration and adjustment, as provided for in section 1(d) of the Executive Order.

(d) A withdrawal application shall be denied, if, in the opinion of the Secretary, the applicant is attempting to circumvent the Congressional review provisions of section 204(c)(1) of the act (43 U.S.C. 1714(c)(1)) concerning withdrawals of 5,000 or more acres in the aggregate.

(e) When an application is denied in its entirety by the Secretary, a notice to that effect, signed by the Secretary, shall be published promptly in the **Federal Register.**

(f) In the case of a national defense withdrawal that may only be made by an act of Congress, the Secretary shall transmit to the Congress proposed legislation effecting the withdrawal requested, together with the recommendations of the Secretary which may or may not support the proposed legislation in whole or in part. The proposed legislation shall contain such provisions for continued operation of the public land laws as to the public land areas included in the requested withdrawal as shall be determined by the Secretary to be compatible with the intended military use.

§ 2310.3-4 Duration of withdrawals.

(a) An order initially withdrawing 5,000 or more acres of land in the aggregate, on the basis of the Secretary's authority under section 204 of the act (43 U.S.C. 1714), may be made for a period not to exceed 20 years from the date the order is signed, except that withdrawals exceeding 5,000 acres in the State of Alaska shall not become effective until notice is provided in the **Federal Register** and to both Houses of Congress. All orders withdrawing 5,000 or more acres in the aggregate shall be subject to the Congressional review provision of section 204(c) of the act (43 U.S.C. 1714(c)), except as follows:

(1) A National Wildlife Refuge System withdrawal may not be terminated as provided in section 204(c)(1) of the act (43 U.S.C 1714(c)(1)) other than by an act of Congress; or

(2) A withdrawal exceeding 5,000 acres in the State of Alaska shall terminate unless Congress passes a Joint Resolution of approval within 1 year after the notice of such withdrawal has been submitted to the Congress.

(b) An order initially withdrawing less than 5,000 acres of land, in the aggregate, on the basis of the Secretary's authority under section 204 of the act (43 U.S.C. 1714), may be made:

(1) For such time as the Secretary determines desirable for a resource use;

(2) For not more than 20 years for any other use, including, but not limited to, the use of lands for non-resource uses, related administrative sites and facilities or for other proprietary purposes; or

(3) For not more than 5 years to preserve the lands for a specific use then under consideration by either House of Congress.

(c) An order withdrawing lands on the basis of an emergency as provided for in section 204(e) of the act (43 U.S.C. 1714(e)) may be made for not more than 3 years.

(d) Except for emergency withdrawals, withdrawals of specific duration may be extended, as provided for in § 2310.4 of this title.

§ 2310.3-5 Compensation for improvements.

(a) When an application is allowed, the applicant shall compensate the holder of record of each permit, license or lease lawfully terminated or revoked after the allowance of an application, for all authorized improvements placed on the lands under the terms and conditions of the permit, license or lease, before the lands were segregated or withdrawn. The amount of such compensation shall be determined by an appraisal as of the date of revocation or

termination of the permit, license or lease, but shall not exceed fair market value. To the extent such improvements were constructed with Federal funds, they shall not be compensable unless the United States has been reimbursed for such funds prior to the allowance of the application and then only to the extent of the sum that the United States has received.

(b) When an application is allowed that affects public lands which are subject to permits or leases for the grazing of domestic livestock and that is required to be terminated, the applicant shall comply with the cancellation notice and compensation requirements of section 402(g) of the act (43 U.S.C. 1752(g)), to the extent applicable.

§ 2310.3–6 Transfer of jurisdiction.

A public land order that reserves lands for a department, agency or office, shall specify the extent to which jurisdiction over the lands and their related resource uses will be exercised by that department, agency or office. (See § 2310.3–2(c) of this title).

§ 2310.4 Review and extensions of withdrawals.

(a) Discretionary withdrawals of specific duration, whether made prior to or after October 21, 1976, shall be reviewed by the Secretary commencing at least 2 years before the expiration date of the withdrawal. When requested, the department, agency or office benefitting from the withdrawal shall promptly provide the Secretary with the information required by § 2310.1–2(c) of this title, and the information required by § 2310.3–2(b) of this title, in the form of a withdrawal extension application with supplemental information. If the concerned department, agency or office is delinquent in responding to such request, the deliquency shall constitute a ground for not extending the withdrawal. Such withdrawals may be extended or further extended only upon compliance with these regulations, and only if the Secretary determines that the purpose for which the withdrawal was first made requires the extension, and then only for a period that shall not exceed the duration of the original withdrawal period. In allowing an extension, the Secretary shall comply with the provisions of section 204(c) of the act (43 U.S.C. 1714(c)), or section 204(d) of the act (43 U.S.C. 1714(d)), whichever is applicable; and, whether or not an extension is allowed, the Secretary shall report promptly on the decision for each pending extension to the Congressional Committees that are specified in section 204(f) of the act (43 U.S.C. 1714(f).

(b) Notwithstanding the provisions of this section, if the Secretary determines that a National Wildlife Refuge System withdrawal of specific duration shall not be extended, the Secretary shall nevertheless extend or reextend the withdrawal until such time as the withdrawal is terminated by an act of Congress.

§ 2310.5 Special action on emergency withdrawals.

(a) When the Secretary determines, or when either one of the two Committees of the Congress that are specified in section 204(e) of the act (43 U.S.C. 1714(e)) notifies the Secretary, that an emergency exists and that extraordinary measures need to be taken to protect natural resources or resource values that otherwise would be lost, the Secretary shall immediately make a withdrawal which shall be limited in its scope and duration to the emergency. An emergency withdrawal shall be effective when signed, shall not exceed 3 years in duration and may not be extended by the Secretary. If it is determined that the lands involved in an emergency withdrawal should continue to be withdrawn, a withdrawal application should be submitted to the Bureau of Land Management in keeping with the normal procedures for processing a withdrawal as provided for in this subpart. Such applications will be subject to the provisions of section 204(c) of the act (43 U.S.C. 1714(c)), or section 204(d) of the act (43 U.S.C. 1714(d), whichever is applicable, as well as section 204(b)(1) of the act (43 U.S.C. 1714(b)(1)).

(b) When an emergency withdrawal is signed, the Secretary shall on the same day, send a notice of the withdrawal to the two Committees of the Congress that are specified for that purpose in section 204(e) of the act (43 U.S.C. 1714(e)).

(c) The Secretary shall forward a report to each of the aforementioned committees within 90 days after filing with them the notice of emergency withdrawal. Reports for all such withdrawals, regardless of the amount of acreage withdrawn, shall contain the information specified in section 204(c)(2) of the act (43 U.S.C. 1714(c)(2)).

Subpart 2320—Federal Energy Regulatory Commission Withdrawals

§ 2320.0–3 Authority.

(a) Section 24 of the Federal Power Act of June 10, 1920, as amended (16 U.S.C. 818), provides that any lands of the United States included in an application for power development under that Act shall, from the date of filing of an application therefor, be reserved from entry, location or other disposal under the laws of the United States until otherwise directed by the Federal Energy Regulatory Commission or by Congress. This statute also provides that whenever the Commission shall determine that the value of any lands of the United States withdrawn or classified for power purposes shall not be injured or destroyed for such purposes by location, entry or selection under the public land laws, the Secretary of the Interior shall declare such lands open to location, entry or selection for such purposes under such restrictions as the Commission may determine are necessary, and subject to and with a reservation of the right of the United States or its permittees or licensees to enter upon, occupy and use any and all of the lands for power purposes. Before any lands are declared open to location, entry or selection, the Secretary shall give notice of his intention to make this declaration to the Governor of the State within which such lands are located, and the State shall have a preference for a period of 90 days from the date of this notice to file under any applicable law or regulation an application of the State, or any political subdivision thereof, for any lands required as a right-of-way for a public highway or as a source of materials for the construction and maintenance of such highways. The 90-day preference does not apply to lands which remain withdrawn for national forest or other purposes.

(b) The Mining Claims Rights Restoration Act of 1955 (30 U.S.C. 621 et seq.), opened public lands which were then, or thereafter, withdrawn or classified for power purposes, with specified exceptions, to mineral location and development under certain circumstances.

§ 2320.1 Lands considered withdrawn or classified for power purposes.

The following classes of lands of the United States are considered as withdrawn or classified for the purposes of section 24 of the Federal Power Act (16 U.S.C. 818): Lands withdrawn for powersite reserves under sections 1 and 2 of the Act of June 25, 1910, as amended (43 U.S.C. 141–148); lands included in an application for power development under the Federal Power Act (16 U.S.C. 818); lands classified for powersite purposes under the Act of March 3, 1879 (43 U.S.C. 31); lands designated as valuable for power purposes under the Act of June 25, 1910, as amended (43 U.S.C. 148); the Act of June 9, 1916 (39 Stat. 218, 219), and the Act of February

26, 1919 (40 Stat. 1178, 1180); lands within final hydroelectric power permits under the Act of February 15, 1901 (43 U.S.C. 959); and lands within transmission line permits or approved rights-of-way under the aforementioned Act of February 15, 1901, or the Act of March 4, 1911 (43 U.S.C. 961).

§ 2320.2 General determinations under the Federal Power Act.

(a) On April 22, 1922, the Federal Power Commission (as predecessor to the Federal Energy Regulatory Commission) made a general determination "that where lands of the United States have heretofore been or hereafter may be reserved or classified as powersites, such reservation or classification being made solely because such lands are either occupied by power transmission lines or their occupancy and use for such purposes have been applied for or authorized under appropriate laws of the United States, and such lands have otherwise no value for power purposes, and are not occupied in trespass, the Commission determines that the value of such lands so reserved or classified or so applied for or authorized, shall not be injured or destroyed for the purposes of power development by location, entry or selection under the public land laws, subject to the reservation of section 24 of the Federal Power Act."

(b) The regulations governing mining locations on lands withdrawn or classified for power purposes, including lands that have been restored and opened to mining locations under section 24 of the Federal Power Act, are contained in Subpart 3730 and in Group 3800 of this title.

§ 2320.3 Applications for restoration.

(a) Other than with respect to national forest lands, applications for restoration and opening of lands withdrawn or classified for power purposes under the provisions of section 24 of the Federal Power Act shall be filed, in duplicate, in the proper office of the Bureau of Land Management as set forth in § 2321.2–1 of this title. No particular form of application is required, but it shall be typewritten or in legible handwriting, and it shall contain the information required by 18 CFR 25.1. Each application shall be accompanied by a service charge of $10 which is not returnable.

(b) Favorable action upon an application for restoration shall not give the applicant any preference right when the lands are opened.

PARTS 2310, 2320, 2340, AND 2350—[REMOVED]

2. The following parts are removed as indicated:

(a) Part 2310—removed in its entirety.
(b) Part 2320—removed in its entirety.
(c) Part 2340—removed in its entirety.
(d) Part 2350—removed in its entirety.

PART 2090—SPECIAL LAWS AND RULES

§§ 2091.4 and 2091.2–5 [Removed]

3. Sections 201.2–4 and 2091.2–5 are removed from Subpart 2091.

[FR Doc. 81–1939 Filed 1–16–81; 8:45 am]
BILLING CODE 4310–84–M

federal register

Monday
January 19, 1981

Part XXXVII

Department of Transportation

Urban Mass Transportation Administration

Buy America Requirements

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 660

Buy America Requirements

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Final rule.

SUMMARY: The Urban Mass Transportation Administration (UMTA) is revising its regulations implementing Section 401, "Buy America" of the Surface Transportation Assistance Act of 1978. These revisions are based on comments received on the original emergency final rule published on December 6, 1978 (43 FR 57144) and on our experience in implementing the statutory provision. These revisions clarify the existing regulations and respond to several issues and comments presented to us since the passage of the statute.

EFFECTIVE DATE: The revisions are effective on February 18, 1981.

FOR FURTHER INFORMATION CONTACT: John Collins or Edward Gill, Office of the Chief Counsel, (202) 426-1906.

SUPPLEMENTARY INFORMATION: Section 401 of the Surface Transportation Assistance Act of 1978 provides, with exceptions, that funds authorized may not be obligated for urban mass transportation projects unless articles, materials, and supplies used are of United States origin.

UMTA issued emergency regulations implementing the statute on December 6, 1978, which were effective retroactive to November 6, 1978 (the effective date of the statute). We requested comments on the regulations. We have received approximately fifty written comments and numerous telephonic comments and inquiries concerning the statute, the regulations, and their implementation. We have utilized all of these plus the experience gained in carring out the statute and the regulations in developing the revisions and the discussions in this document.

In addition to these final revisions, we are also issuing a Notice of Proposed Rulemaking which is published elsewhere in this **Federal Register**.This NPRM will address several issues concerning the implementation of the Buy America statute which we will propose to treat differently than they are treated under the existing regulations. A detailed discussion of these issues is contained in the NPRM

The Administrator has determined that this regulation is a significant regulation under the criteria in the DOT Order for Improving Government Regulations (44 FR 11042, February 26, 1979) since significant public interest was expressed during the previous comment period.

A Regulatory Evaluation has been prepared and has been placed in the public docket, and is available at the Office of the Chief Counsel, Urban Mass Transportation Administration, Room 9320, 400 7th Street, S.W., Washington, D.C. 20590.

The provisions of OMB Circular A-95 apply to this Final Rule. It covers the following programs as listed in the Catalog of Federal Domestic Assistance (CFDA):

20.500—Urban Mass Transportation Capital Grants
20.504—Mass Transportation Technology
20.507—Urban Mass Transportation Capital and Operating Assistance Formula Grants
20.509—Public Transportation for Rural and Small Urban Areas.

This regulation will not have a significant economic impact on a substantial number of small entities, within the meaning of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354). Small entities, such as small businesses and small governmental organizations, must already comply with the statutory domestic preference requirement of Section 401, when contracts are awarded that use UMTA funds. The changes made by this regulation do not impose any significant economic impacts beyond those currently required by the terms of the statute and the regulation that was published in 1978 (43 FR 57144). Therefore, this regulation will not have a significant economic impact on a substantial number of small entities.

Environmental Impact Statement

This regulation does not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969.

Discussion of Comments

Exclusion of Non-Federal Preferences

The preamble to the 1978 regulation stated that a grantee could not impose any local or domestic preference requirements other than the UMTA Buy American requirement. Several commentors questioned UMTA's authority to condition eligibilty for financial assistance upon compliance with the Section 401 regulations and to exclude differing local preference provisions, and differing State and local Buy American provisions. They noted that no provision of the Surface Transportation Assistance Act expressly pre-empted State and local preference legislation. Furthermore, they stated that they failed to find Congressional intent to pre-empt State and local actions in the legislative history of Section 401. They point out that UMTA's position, as reflected in the Section 401 regulations, might force grantees either to violate State law or to forego UMTA financial assistance.

We have received specific guidance from the Congress in the resolution of this issue for the current fiscal year which ends on September 30, 1981. This guidance was published in the Federal Register on October 16, 1980 (45 FR 68655) and is presented here for the convenience of the reader. Congress mandated different treatment of non-Federal local preference laws ("Buy State" or "Buy Local" laws) compared to non-Federal national preference laws ("Buy National" laws). The guidance that applies to all of these non-Federal preference laws after September 30, 1981 will depend on the future instructions from the Congress.

The DOT and Related Agencies Appropriations Act for fiscal year 1981 (Pub. L. 96-400 (94 Stat. 1689)) mandates that UMTA administer our grant program "pursuant to the provisions of section 401, Pub. L. 95-599". The Conference Report for the Act (House Report No. 96-1400 (September 25, 1980) pp. 16-17) clarifies what is meant by this language. The Conferees explained that:

> If a contract bid does not fall within the scope of any of the exceptions cited in Section 401 of Public Law 95-599, then the grantee should not be denied UMTA financial assistance simply because of the imposition of a state domestic preference law. The conferees do not intend the term "state domestic preference law" to include so-called "buy-state laws" which require preferences for products manufactured in a particular state or subdivision and any such state laws shall not prevail over Federal law. On the other hand, if the imposition of a state domestic preference law causes the contract bid to fall within the scope of any or all of the exceptions cited in Section 401 of Pub. L. 95-599, then UMTA financial assistance could be denied because State statutes are undoubtedly subject to Federal law prescribing the "Buy America" exceptions of public interest, unavailability and unreasonable cost.

During the period October 9, 1980 to September 31, 1981, state "Buy National" preference provisions that are more restrictive with respect to the procurement of foreign made products than Section 401 will be permitted in contracts awarded using UMTA funds provided that the preference provision and its terms are specifically set out in state law. The Federal exceptions to the

application of "Buy National" statutes described in Section 401(b) of the Buy America statute will continue to govern UMTA's participation in such contracts. These exceptions require UMTA to withhold funds from contracts where application of the state "Buy National" law is: not in the public interest, adds unreasonably to the cost of rolling stock, makes materials unavailable, or adds more than 10% to the cost of the contract. If an exception under Section 401(b) is appropriate, it will be granted by UMTA under the procedural provisions of subpart C of 49 CFR Part 660. UMTA will not participate in such contracts if the state law is administered in a manner that is inconsistent with the application of the Federal exceptions. The administration of the state statute must conform to the Federal waiver or we will not help fund the contract. The contracting process must not exclude contractors who have the potential to qualify for the Federal exceptions.

The original policy remains applicable to all other preference provisions. We will continue to decline to participate in contracts governed by:

1. Preference provisions which are not as strict as the Federal requirement.

2. State and local "Buy National" preference provisions which are not explicitly set out under state law. For instance, administrative interpretations of non-specific state legislation will not control.

3. State and local "Buy Local" preference provisions.

The following example illustrates the application of this guidance. State "A" has three types of preference provisions that it wishes to include in an UMTA-funded contract. Preference provision No. 1 permits bids only from manufacturers located within the state. Preference provision No. 2 is a state law which requires all structural steel used in the contract to be manufactured in the United States. Preference provision No. 3 is an administrative regulation, not supported by an explicit state law, which requires manufacturers to use 100% domestic components. Applying the above guidance, No. 1 and No. 3 would make the contract ineligible for UMTA assistance. No. 1 is a "Buy State" provision. No. 3 is an administrative regulation which is not required by a specific state statute. A type No. 2 preference could be included in the bidding documents, but it would be subject to the specific waivers of subpart C. For example, it would have to be waived if it increased the price of the contract by more than 10% (see § 660.32(a)(4)).

Construction Contracts

Under UMTA's 1978 Buy America regulations, procurement of construction is treated as procurement of a manufactured product in that the deliverable of the construction contract is considered as the end product and the construction materials used therein are considered components of the end product. Thus an UMTA construction project may be considered domestic if more than fifty percent of the value of the construction materials delivered to the jobsite and incorporated into the project is domestic and if the final assembly of the components (construction) takes place in the United States. As can be seen, the UMTA regulations permit bidders to use up to 50% of foreign construction materials without forfeiting the competitive advantages of a domestic bid. The UMTA regulations differ from other Federal laws and regulations that require each construction material used in the project to be domestic, unless a waiver is granted, thus making the use of foreign construction materials far more difficult.

UMTA has received few comments about this unique treatment of construction for purposes of Section 401. Most have been oral inquiries about what the regulations require.

It is useful to view the UMTA treatment of construction in the context of the 1933 Act that governs direct Federal construction. Unlike the UMTA provision, the Buy American Act of 1933 has a separate provision, 41 U.S.C. section 10b tailored to construction contracts. Recognizing that construction is a type of service requiring the use of materials, and is thus functionally different from the procurement of materials, Section 3 (41 U.S.C. § 10(a)) of the 1933 Act requires, ". . . that in the performance of the work the contractor, subcontractors, material men, or suppliers, shall use only . . ." domestic articles, materials and supplies. Section 3 of the 1933 Act does permit the agency head to waive the Buy America requirements to the extent appropriate if he finds, ". . . that in respect to some particular articles, materials, or supplies it is impracticable to make such requirement or that it would unreasonably increase the cost . . ." It should be noted that the "impracticable" grounds permitted for waiver in construction projects under the 1933 Act would be easier to meet than the "public interest" or "unavailable" grounds of Section 2 of the 1933 Act (41 U.S.C. § 10a) and of the Section 401 of the Surface Transportation Assistance Act of 1978.

The Federal Procurement Regulations set forth "Buy American" regulations for construction in a separate Part (41 CFR Part 1–18) from the "Buy American" regulations for the procurement of articles, materials, and supplies (41 CFR Part 1–6).

Unlike the Buy American Act of 1933, Section 401 has no separate provisions directed toward the treatment of construction projects. Instead, the language of Section 401 is confined to the procurement of manufactured and unmanufactured articles, materials and supplies.

For this reason UMTA's emergency regulations do not provide different treatment for construction projects than for equipment acquisition projects. Instead UMTA's regulations provide that, "These regulations apply to all federally-assisted procurements . . . for equipment and construction of facilities in which a third party contract exceeds $500,000 and is financed by funds administered by UMTA. . . ." 49 CFR § 660.11(a). The UMTA grantee is charged to ". . . include in its bid specifications for procurement of equipment and construction of facilities . . . an appropriate notice of the Buy America provision." 49 CFR § 660.21(b). Nowhere in the UMTA regulations is there a special definition of "construction" or "construction material." Instead, the construction project is treated as a manufactured end product whose final assembly takes place at the construction site. Within the Federal Government, this treatment of construction for "Buy America" purposes is unique to UMTA.

The Public Works Employment Act of 1977, 42 U.S.C. 6705(f)(1) and the Clean Water Act of 1977, 33 U.S.C. § 1295 impose domestic preference requirements on other grant programs. Neither of these measures contains specific requirements about the treatment of construction nor does the word "construction" appear within any of these measures. But unlike the UMTA regulations, the Department of Commerce regulations implementing the Public Works Employment Act of 1977, 13 CFR § 317.16(c) and § 317.35(i), and the Environmental Protection Agency regulations implementing the Clean Water Act of 1977, 40 CFR § 35.936–13(d) require that each construction material used in the grant must be domestic unless a waiver is obtained.

However, both of these statutes provide for a waiver upon a finding of "unreasonable cost." Section 401 provides that a waiver be granted if "inclusion of domestic material will increase the cost of the over-all project contract by more than 10 per centum."

Thus it is much easier for EPA or Commerce to grant a waiver for an unreasonably expensive component than for UMTA to grant a waiver because a component for a construction contract could not easily be argued to constitute the "overall project contract."

In addition, the Federal Highway Administration follows the approach of these other regulations for construction projects, which poses little complication for FHWA since its regulations are directed only at steel construction materials. On November 24, 1980, FHWA issued a proposed rule which would apply the current UMTA test of "Buy America" to equipment and ferry boats purchased with funds authorized under Title 23 of the United States Code. (See 45 FR 77456).

UMTA will continue the treatment of construction as set forth in the emergency regulations. The statute gives no reason to treat construction procurement contracts differently from equipment procurement contracts. Since items of unknown origin are deemed to be foreign, this means that the contractor can stop his record-keeping when he ascertains that 50% by value of the materials delivered to the jobsite were made in the U.S. The provision would be likely to protect U.S. manufacturers of high cost items, such as steel producers, since their product might account for more than 50% of the material delivered to the jobsite. It avoids problems of tracing the origin of every item that is delivered to the job site. However, we are inviting comments on alternative approaches to this treatment of construction in the NPRM that is being published elsewhere in this Federal Register.

Two questions raised by commentors in regards to construction contracts require clarification.

Construction equipment used by a contractor at a construction jobsite is not covered by the requirement since it is not physically "incorporated into the end-product."

A question was raised whether temporary supporting materials, such as soldier piles, which could be removed at the end of construction without affecting the end-product were included within the scope of the regulation. If an item is used in the construction process as an aid to construction and remains at the construction site but serves no purpose in the completed end product, then the item is not a component since it is not "directly incorporated" into the end product and its origin and cost need not be computed for the purposes of § 660.22. The definition of component in § 660.13 is being revised to clarify this point.

Relation to 1933 Act

One commentor requested clarification of the relationship between the 1933 Buy American Act (41 U.S.C. 10a–10d) and Section 401 of the Surface Transportation Assistance Act of 1978. The 1978 Act applies to direct procurement and to federally-assisted procurements under grants, loans, and cooperative agreements made pursuant to the Urban Mass Transportation Act of 1964, as amended, and sections 103(e)(4) and 142 of Title 23 United States Code, for equipment and construction of facilities. We will not issue separate regulations for direct federal procurement, but will utilize the regulations in Part 660. We are promulgating Part 660 under the authority of the 1978 Act and the 1933 Act.

Types of Contracts

Several questions were raised concerning the applicability of the requirements as set forth in § 660.11. The requirements do not apply to consultant contracts since the regulations do not apply to the procurement of services. They also do not apply to a lease if a lease is considered a purchase of service. Also, under Appendix A to Subpart C of the regulation, a waiver has been granted for operating assistance grants, and the majority of leasing arrangments are undertaken utilizing operating assistance funds. It should be pointed out, however, that the requirements would apply to a lease/purchase agreement in which the third party contract exceeds $500,000.

One commentor requested clarification as to whether the requirements apply to sole-source procurements. Section 660.11 states that the "regulations apply to all federally-assisted procurements." This includes sole-source procurement. This statement in the regulation is adequate and no change is being made.

One commentor felt that engineering services included in the cost of an end product should be excluded from the requirements. These engineering services are not treated separately. If engineering costs are allocated to a component under normal accounting principles, then they increase the cost of that foreign or domestic component. If they are properly allocated to the final assembly of the end-product, then they are included as part of the final assembly test.

Definitions and Applicability

One commentor requested clarification as to what constitutes an end product. The deliverable item specified in the contract is the end product. For example, in a contract for 10 buses that must contain 500 h.p. engines, the 10 buses are the end-products (We will utilize this example throughout this document for clarification).

Section 660.11(b) is being revised to utilize the term "domestic end product." This term is defined in § 660.13 and "domestic end products" are the subject of the specific requirement in § 600.11(b). It must be emphasized that this change does not alter the thrust of the requirements. Only domestic unmanufactured articles, materials and supplies and manufactured articles, materials and supplies that have been manufactured in the United States substantially all from domestic articles, materials, and supplies may be procured with assistance provided by UMTA unless a waiver is granted.

Section 660.11(c) is being revised to indicate that materials of foreign origin "may" be considered for UMTA-assisted procurements rather than "should be considered." There is no UMTA direction to grantees to use foreign materials. This concept emphasizes the fact that the statute provides for domestic preference, but does not set up an absolute "Buy American" requirement.

Section 660.11(f) is being revised to clarify that the location where components are manufactured, mined or produced is critical in determining the origin of the components or end products. The nationality of suppliers or their employees is not a factor. For example, a foreign firm that manufactures a component in the United States (thereby utilizing U.S. labor) would be considered as manufacturing a domestic component.

We have received a request concerning clarification of the concepts of "component" and "final assembly." The current regulation defines component as that which is "directly incorporated" into the end-product. We interpret this phrase to be a test of what comes "through the walls" of the final assembly point. This means that any item shipped to the final assembly point is a "component" in the form that it arrives at the final assembly point. The component must be shipped to the final assembly point. Shipment means the steps that would normally take place in a plant-to-plant shipment, including, but not limited to, packing, labeling, on-loading, and off-loading. Movement of an item that takes place within a plant (by hand, forklift, or assembly line, for example) is not "shipment." In order for an item to be considered a component, it

must be "shipped" to the final assembly location, in the manner described and defined above. A sufficient amount of labor and overhead costs must be undertaken at the final assembly location to constitute a legitimate final assembly step. In response to a specific inquiry, UMTA has determined that if at least 10 percent of the cost of each end-product is attributable to work done at the final assembly location, then there is legitimate final assembly. We will continue to review final assembly on a case-by-case basis until the definition of final assembly proposed in the NPRM is finalized.

One commentor requested that UMTA specifically name or delineate the major components of an end product. We have set up tests to determine the origin of components, and these appear to be sufficient. For example, an engine for a bus is a component of that bus if it is directly incorporated into the bus at the final assembly point. On the other hand, the engine is an end product in and of itself if it is ordered as a spare part. Thus, delineation of this item as a component would be misleading and confusing since it is not, in fact, always a component. The commentator also requested that we differentiate between components and major components. There is no differentiation needed since *anything* directly incorporated into an end product at final assembly is a component, whether it be considered a major item or less than a major item. Section 660.13(c) is being revised to clarify that a component must be directly incorporated into an end product at the point of final assembly. This revision makes the definition compatible with other requirements in the regulations.

One commentor requested that the definition of component in § 660.13(c) be revised to indicate that all parts of an engineered system taken together represent a "component." The definition of "component" tracks the definition used to implement the 1933 Buy American Act. If a "system" is delivered to the final assembly point and is directly incorporated into an end product, then the system is considered a component. If individual parts of the system are delivered to the final assembly point and are incorporated into the end product, then each part is considered a component. The regulation does not contemplate a system being considered a component in and of itself if it is not delivered to the final assembly point and incorporated as a unit into the end product.

One commentor questioned whether the certification required by § 660.21 is required to be submitted by sub-component manufacturers. A sub-component manufacturer is not required to submit the certification to the grantee. However, a prime contractor may require a sub-contractor to certify to him that domestic components will be delivered so that the prime contractor has a means to ensure that there will be adequate domestic component content.

One commentor suggested that we require the bidder to submit information in sufficient detail to permit an analysis of whether the bidder has grounds for submitting the certificate required by § 660.21. This back-up material would include a specific listing of foreign components to be used, a listing of the costs of the components, and a discussion of the method used in arriving at the cost. We are using the certification procedure used in the 1933 Act and we feel that the submission of the certificate is sufficient. The bidder must list foreign end products. A listing of the cost of components is not required at the time of submission of a bid, as long as the bidder certifies that domestic end-products are being provided (see section 660.22). We feel that the enforcement procedure set out in Subpart D of the regulations is sufficient to ensure compliance.

Grantee Responsibility

One commentor requested that the regulations be revised to provide bidders with sufficient certainty that a waiver would be sought if the grounds for a waiver exist. As written, § 660.21 permits only grantees to seek a waiver. The commentor felt that this put grantees in the position of being able to exclude bids offering foreign end products by not seeking a waiver. The commentor further stated that it felt that the waiver process should not be used to exclude competitive responsive and responsible bids offering foreign products. Section 660.21 is being revised and will require the grantee to indicate its intention to seek a waiver if the grounds for a waiver exist. This is consistent with the statute since we are required to grant a waiver if we find that the statutory conditions have been met. It should also be pointed out that § 660.31(c) provides that a waiver may be granted by the Administrator on his own initiative when he believes that it would be appropriate.

Shipping Costs

A question was raised as to whether the cost of shipping a foreign component on a U.S. flag carrier is considered a U.S. component. Since the "Buy America" requirements do not apply to services, the cost of shipping is not a separate component. The cost of shipping must be included as part of the cost of the component being shipped and not as a separate component. A similar question was raised concerning the relationship of the "Buy America" requirements to cargo preference requirements. Again, it must be pointed out that transportation and shipping are not, in and of themselves, components, but are to be considered in determining the cost of a component being shipped.

50 Percent Test

Clarification was requested as to how the 50 percent domestic component cost required under § 660.22 is computed. It is calculated as the cost of domestic components compared to the cost of all components. For example, in a contract bid at $1 million, if all components shipped to the final assembly point cost $600,000 then the cost of domestic components must exceed 50 percent of this or $300,000. The cost of a component is the cost of the component to the bidder or offeror. If a component is manufactured by the bidder or offeror, the cost of the component is the cost of labor and materials incorporated into the component, plus an allowance for profit and administrative overhead costs under normal accounting principles. For example, design costs would be factored into a component cost if a prime contractor hires a sub-contractor to design the component.

However, it should be pointed out that the design and labor costs for making an end-product are not included when calculating component cost but are rather considered as final assembly costs. All of the final assembly costs are used to decide whether meaningful final assembly has taken place in the United States. This is part of the test established in § 660.22(a)(2). Only the cost of the component is computed, but this cost can include the design of the conponent. A new § 660.22(d) is being added to clarify what is meant by component cost.

One commentor requested that § 660.22(a) be revised to reflect that the "substantially all" requirement of Section 401 be satisfied if the cost of domestic components and subcomponents exceed 75 percent of the total cost of the end product.

Before discussing the "75 percent test" versus the "50 percent test" which is used in the regulation, two clarifications are necessary. As mentioned elsewhere in this document, the percentage test applies to component cost and not to subcomponent cost. Also, as mentioned previously, the treatment of subcomponents is being addressed in a separate Notice of Proposed

Rulemaking. Secondly, it is again emphasized that cost is determined using the cost of components and *not* the cost of the end product.

The commentor, in recommending that we utilize the "75% test" rather than the "50% test" felt that the legislative history of Section 401 mandated that we use the "75% test" since this was the original standard utilized to implement the 1933 Buy American Act. Executive Order 10582 which currently governs the implementation of the 1933 Act, mandates that "materials shall be considered to be of foreign origin if the cost of the foreign products used in such material constitutes 50% or more of the cost of all the products used in such materials." The commentor argued that Executive Order 10582 does not apply to Section 401. We disagree. Our reading of the legislative history of Section 401 is that Executive Order 10582 gives broad guidance to agencies in interpreting the Act; whereas the commentor felt that in implementing Section 401, Congress intended us to follow the 1933 Act exclusively. During the debate on the Conference Report on Section 401 *(Daily Congressional Record,* Vol. 124, pg. S 1894, October 14, 1978), Executive Order 10582 was specifically mentioned, and the fact that it is still in force was emphasized. Senator Randolph stated that it was the conferee's intent that in implementing Section 401, we should not vary from existing Federal procurement practices. Thus, we have followed Executive Order 10582 and utilized the "50% test" and in so doing, carried out the express intent of Congress.

Waivers—Application

One commentor requested that UMTA waive the requirement for final assembly in the United States if the quantities involved are uneconomical, or if specialized skills or capabilities not readily available or economically available in the United States are required. The statute does not provide for a waiver of the final assembly requirement, as such, and thus we will not grant this general waiver. However, public interest waivers could be considered in this area on a case-by-case basis.

A new paragraph is being added to § 660.31 to provide that a request for a waiver and the subsequent action taken by UMTA on the requests will be available for public inspection.

One commentor requested that § 660.31 be revised to permit a bidder to apply for a waiver directly to UMTA rather than through the grantee. We are not making a change to this requirement since we feel that it is a grantee's responsibility to request the waiver, including the preparation of the justification.

Several commentors requested that we clarify what is meant by "in a timely manner" as used in § 660.31(a). We were requested to insert a date certain for submittal of requests. We are not revising the regulation at this time. It is anticipated that most requests for a waiver will be submitted within 30 days of bid opening. However, we will not insert this time frame in the regulations since there may be circumstances which dictate a request being made more that 30 days after bid opening. These will be considered on a case-by-case basis to determined their reasonableness.

Section 660.31(b) is being revised to clarify that a request for a waiver must be submitted to the UMTA Administrator through the UMTA Regional Administrator.

Waivers—Types

Section 660.32(b) is being revised to indicate that the Administrator will issue a written determination of whether or not a public interest waiver will be granted, and the reasons for granting the request or denying the request. This change will enable the grantee to be aware of the rationale for a denial of a request for a public interest waiver.

Section 660.32(f) is being revised to indicate that the waivers are separate and distinct from one another. The granting of a waiver or the grounds for a waiver do not depend on any other waiver. There are four separate reasons for the granting of a waiver which are independent of one another.

One commentor suggested that the second sentence of § 660.32(f) be deleted since the statute does not provide for waivers for components. UMTA disagrees with the suggestion since the implementation of the 1933 Act has contained a history of waivers for components. UMTA has used the public interest waiver for those components listed in 41 CFR 12–6.105 (Appendix A, Paragraph (a) of Subpart C of these regulations.)

Several comments were received which recommended that we issue a general public interest waiver in order to honor treaty commitments, off-set agreements with foreign nations, and trade agreements with foreign nations. Our review of these treaties and agreements does not indicate a requirement that we issue a blanket waiver. However, we will continue to review requests for public interest waivers in this area on a case-by-case basis.

Several comments were received which questioned the use of the word "supplies" in the waiver in § 660.32(a)(3) and the criteria for determining whether that waiver will be issued which speaks to the unavailability of domestic end products. In response to this comment, we are revising § 660.32(d) to reflect that our authority to waive the Buy America provision, if no domestic bids are received, flows from both Section 401(b)(1) and Section 401(b)(3). If no domestic bids are received, we believe that it is in the public interest to proceed with the award of the contract. The Federal government cannot force a domestic company to bid.

One commentor requested that the test established for the 10% differential waiver be revised. The commentor felt that only the costs of major foreign and domestic components should be compared rather than the over-all bids. The waiver speaks to inclusion of domestic material increasing the over-all project contract cost. Thus, a bid offering domestic end products must be compared to a bid offering foreign end products to determine if the inclusion of domestic materials would increase the over-all project contract cost by more than 10%. The comparison of the over-all bids includes all costs and this is the only way to determine if the over-all cost of the project contract will be increased by 10% or more.

One commenteor requested that § 660.32(e) be revised to provide that the 10% differential be calculated solely on the actual costs of the materials, supplies or equipment being acquired, exclusive of the service, labor, or other non-material costs of project contracts. The differential is based on the bid price for the end-product. The statutory language speaks to "inclusion of domestic material" increasing "the cost of the overall project contract by more than 10 per centum." In this case "material" means "end product" and thus the differential is applied to the overall project contract bid. "Material" means "end product" because it is possible to have a domestic "end product" which contains foreign components and also have a foreign "end product" containing domestic components. The key in this area is to determine the origin of the end product and apply the differential to the overall project contract to determine if the bid consisting of foreign "end products" qualifies for the waiver.

The rolling stock/tax waiver (Section 401(b)(2)) was the source of six comments. One commentor asked if taxes paid by other than the bidder would be considered. The commentor also asked if taxes paid by the bidder included workman's compensation, corporate tax, and real estate tax. One

commentor asked if a multiplication factor that assumed a certain percentage of tax benefits could be developed by UMTA and applied to bids.

Three commentors asked that the types of taxes that were included be expanded. One asked that all direct taxes of suppliers to the bidder be included in the computation. Another commentor asked that workers' taxes paid to state and local governments be included in the computation. A third commentor asked that all taxes be included in the computation such as "payroll taxes, worker's income taxes, social security taxes by the employer and employee, real estate taxes, and the like."

The problems inherent in this waiver are manifest. The desire for the specific tax waiver appears only after the bids are opened (since the foreign bidders might have hoped that he would qualify for the 10% differential or that no domestic end products would be offered). UMTA and the grantee would have to evaluate the waiver during the limited amount of time available while the bids are valid. Tax projections of the foreign bidder and the lowest domestic bidder would be speculative since they would be based on future costs, future locations, future profits, and future worker pay scales. Further the bidders might view the information as proprietary. Even if the information could be gathered in the short amount of time it would defy analysis since the taxes would vary with corporate profitability, the state in which the work is done, profits, and worker pay scales.

The rolling stock/tax waiver is unique to Section 401. No other statute has a similar provision.

UMTA has decided to maintain the current guidance that only bidders' direct taxes are included in determining whether or not the waiver will be granted. This approach limits the suppositions as to what future taxes of employees and foreign suppliers will be, and provides guidance to bidders and grantees to assist in determining whether the waiver would apply.

UMTA will monitor the use of the waiver and determine if a study is necessary. The study would address various methods of computations of taxes, and which taxes could be considered.

Waivers—Issuance

One commentor requested that we delete §§ 660.33(b) and 660.34(a) since he felt that we are unable to make waiver determinations before bids are opened. We feel that in certain circumstances we are able to make the necessary determinations prior to a bid opening. For example, the general waivers in Appendix A to § 660.34 have obviously been granted prior to any bid, and we do expect that some request for waivers, especially public interest waivers, could be made prior to bids.

Section 660.33(b) is being revised to clarify the time frame within which UMTA may issue a waiver.

Waivers—Rural Operating Assistance

A conforming change has been made to Appendix A of § 660.34 to include operating assistance grants given to rural areas under the § 18 grant program. Operating assistance under all of the other UMTA programs has already been excluded.

Waivers—Spare Parts

Several comments were received concerning the treatment of spare parts under Section 401.

If spare parts are "deliverables," then they are end-products in and of themselves. For example, in a contract for ten buses with 500 h.p. engines and two extra 500 h.p. engines for the buses, the buses and the two extra engines would each be end-products. If the engines for the ten buses were directly incorporated into the buses at the final assembly point, those engines are components. A separately specified spare part is an end-product by itself.

UMTA has decided to issue a general public interest waiver which provides that foreign-sourced spare parts which are end-products will be granted an automatic waiver if their total cost is 10% or less of the overall project contract cost. This waiver is being issued in order to provide for compatibility of parts. It is in the public interest that this compatibility exist since it promotes efficiency and economy.

This general waiver will be added to Appendix A to § 660.34.

Enforcement

One commentor requested that § 660.45 be deleted because it was felt that the interpretation of the statute and rights under the statute are more properly the role and function of the courts. This section does not attempt to usurp the role or function of courts, but merely sets out an administrative interpretation concerning the rights of third-parties under the statutory provision.

Accordingly, Part 660 of Title 49 of the Code of Federal Regulations is amended as follows:

1. In § 660.11, by revising paragraphs (b), (c) and (f) and adding a new paragraph (g) to read as follows:

§ 660.11 Applicability.

* * * * *

(b) Only domestic end products may be procured with assistance provided by UMTA unless the Administrator waives the application of these requirements as set forth in Subpart C of this Part.

(c) Because a domestic preference requirement, rather than an absolute "Buy America" requirement, has been established, materials of foreign origin may be considered for UMTA-assisted procurements.

* * * * *

(f) The location where components and end products are manufactured, mined, or produced is critical in determining their origin. The nationality of suppliers or the employees of these suppliers does not affect the origin of end products or components.

(g) UMTA will not participate in procurements in which a competitive advantage is given to State or local bidders or to bidders that agree to use State or local products.

2. By revising paragraphs (c) and (e) of § 660.13 to read as follows:

§ 660.13 Definitions.

(c) "Component" means any article, material, or supply, whether manufactured or unmanufactured, directly incorporated into an end product at the point of final assembly. An item used in the construction process as an aid to construction which remains at the construction site but serves no purpose in the completed end product is not a component.

* * * * *

(e) "End product" means an article, material or supply, whether manufactured or unmanufactured, that is to be acquired by the grantee, with financial assistance derived from UMTA, and that is to be delivered to the grantee, as specified by the third party contract. In construction projects, the deliverable of the construction contract is the end product. Materials delivered to the jobsite and incorporated directly into the construction end-product are components.

3. By revising paragraph (a) and adding a new paragraph (c) in § 660.21 to read as follows:

§ 660.21 Grantee responsibility.

(a) The grantee shall adhere to the Buy America clause set forth in its grant agreement with UMTA. The clause directly affects any third party contract utilizing funds obligated by UMTA after November 6, 1978. These requirements do not apply to any third party contract financed without UMTA funds or to any procurement or construction third party contract not exceeding $500,000. The

Buy America clause will be included in any grant or loan agreement entered into by UMTA that exceeds $500,000.

* * * * *

(c) The grantee shall include in its bid specifications a statement that a waiver from the Buy America provision will be sought if the grounds for a waiver exist.

4. By revising paragraph (c) and adding a new paragraph (d) in § 660.22 to read as follows:

§ 660.22 Determination of origin.

* * * * *

(c) Transportation costs to the place of incorporation into the end product and, in the case of foreign components, applicable duties, must be included in determining component cost under paragraph (a) of this section.

(d) The cost of a component is the price that a bidder or offeror must pay to a subcontractor or supplier for components. If the component is manufactured by the bidder or offeror, the cost of the component is the cost of labor and materials incorporated into the component and an allowance for profit and administrative and overhead costs attributable to that component under normal accounting principles.

5. By revising paragraph (b) and adding a new paragraph (d) to § 660.31 to read as follows:

§ 660.31 Application for waiver.

* * * * *

(b) In the case of third party contracts, only a grantee may request a waiver. The request must be in writing, include facts and justification to support the granting of the waiver, and be submitted to the Administrator through the Regional Administrator.

* * * * *

(d) Each request for a waiver and UMTA's action on the request are available for public inspection under the provisions of 49 CFR Part 601, Subpart C.

6. In § 660.32, by revising paragraphs (b), (d), and (f) to read as follows:

§ 660.32 Types of waivers.

* * * * *

(b) In determining whether the waiver described in paragraph (a)(1) will be granted, the Administrator considers all appropriate factors including, but not limited to, the cost, "red tape", and delay that would be imposed if the provision were not waived. The Administrator will issue a written determination setting forth the reasons for the granting or denial of the waiver.

* * * * *

(d) A domestic end product will be presumed unavailable if no responsive and responsible domestic bid has been received and a waiver will be granted by UMTA.

* * * * *

(f) The statutory waiver provisions of Section 401 of the Act are separate and distinct from each other. End products and components of end products may be granted different waivers.

7. By revising paragraph (b) of § 660.33 to read as follows:

§ 660.33 Relationship of waivers to bid process

* * * * *

(b) Waivers may be issued for a particular contract at any time based on information available to UMTA.

8. By revising item (a) and adding a new item (c) to Appendix A to § 660.34 to read as follows:

Appendix A—Compilation of Waivers Issued Under § 660.33(a)

(a) The provision has been waived for all operating assistance grants under Sections 5, 17, and 18 of the UMT Act, and for any operation assistance portions of grants under Section 6 of the UMT Act.

* * * * *

(c) The provision is waived for foreign sourced spare parts whose total cost is 10% or less of the overall project contract cost.

(49 U.S.C. 1602, note (Sec. 401, Pub. L. 95–599; 92 Stat. 2689); 41 U.S.C. 10a, 10c, and 10d; 49 CFR 1.51).

Dated: January 14, 1981.

Theodore C. Lutz,

Administrator.

[FR Doc. 81–1942 Filed 1–16–81; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 660

[Docket No. 80-L]

Buy America Requirements

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Urban Mass Transportation Administration (UMTA) is proposing to amend its "Buy America" regulations which apply to UMTA-funded contracts. The proposed amendments would permit subcomponents manufactured in the United States that receive Customs Bureau tariff exemptions to retain their domestic identity for purposes of determination of origin under the Buy America regulations. A definition of "final assembly" is also being proposed. These proposals are based on comments received on the original Buy America regulations issued in December 1978, and on our experience to date in implementing the Buy America statute and the regulations.

DATE: Comments must be received by April 20, 1981.

ADDRESS: Comments must be submitted to UMTA Docket No. 80-L, 400-7th Street, S.W., Washington, D.C. 20590. All comments and suggestions received will be available for examination in room 9320 at the above address between 8:30 a.m. and 5:00 p.m., Monday through Friday. Receipt of comments will be acknowledged by UMTA if a self-addressed, stamped postcard is included with the comment.

FOR FURTHER INFORMATION CONTACT: John Collins or Edward Gill, Office of the Chief Counsel, (202) 426-1906.

SUPPLEMENTARY INFORMATION: All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. Comments received after the expiration of the comment period will be considered to the extent feasible.

The Administrator has determined that this regulation is a significant regulation under the criteria in the DOT Order for Improving Government Regulations (44 FR 11042, February 26, 1979) since significant public interest was expressed during the previous comment period, and since these proposals will have an impact on the transit supply industry.

A draft Regulatory Evaluation has been prepared for this proposal and has been placed in the public docket, and is available at the address listed above.

The provisions of OMB Circular A-95 apply to this Notice of Proposed Rulemaking. It covers the following programs as listed in the Catalog of Federal Domestic Assistance (CFDA):

20.500—Urban Mass Transportation Capital Grants
20.504—Mass Transportation Technology
20.507—Urban Mass Transportation Capital and Operating Assistance Formula Grants
20.509—Public Transportation for Rural and Small Urban Areas

Environmental Impact Statement

This policy change does not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969.

This proposed regulation will not have a significant economic impact on a substantial number of small entities, within the meaning of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354). Small entities, such as small businesses and small governmental organizations, must already comply with the Statutory domestic preference requirements of Section 401 of Pub. L. 95-599 when contracts are awarded that use UMTA funds. The changes that are proposed here do not impose any significant economic impacts beyond those currently required by the express terms of the statute.

Discussion of Proposal and Background

In addition to this NPRM, we are issuing final revised regulations implementing other provisions of the "Buy America" statute. These final regulations are published elsewhere in this Federal Register.

We have received several comments requesting that we revise our treatment of "subcomponents". In § 660.22(b) of the "Buy America" regulation, the statement is made that "(t)he origin of subcomponents is immaterial." This statement is made in the regulations which establish the criteria for determining the origin of components and end products. In order for an item to be a "domestic end product", the cost of its domestic components must exceed 50% of the cost of all components, and the final assembly of the components to form the end product must take place in the United States. The commentors felt that the cost of domestic U.S. subcomponents that are incorporated into components in other countries should be included in the computation of domestic components.

In connection with this, several commentors also requested that we define the term "final assembly". Several suggested definitions were forwarded to us. UMTA had maintained, pursuant to its current regulations, that the end product is the item or items specified as the deliverables in the proposed third party contract and the components are the items that are "directly incorporated into an end product" at the final assembly point. Thus if an intermediate assembly of domestic origin were incorporated into a higher assembly abroad and if then this new higher assembly were shipped to the United States for final assembly into the end product, this higher assembly would be the component and the intermediate assembly would be the subcomponent under the UMTA regulations. The domestic content of the intermediate assembly made in the United States, therefore, would not be included in the computation for the fifty percent domestic component test. If, however, an assembly of domestic origin were sent abroad to aid in the manufacturing process and the same assembly were later returned unchanged to the United States and directly incorporated into the end product at the final assembly point, this assembly would then be a component under our regulations and its cost to the bidder would be treated as a domestic component cost.

Several of the commentors questioned the fairness of the provisions that would result in a U.S. subcomponent losing its U.S. identity for purposes of "Buy America", if the subcomponent were incorporated into a higher assembly outside of the U.S. Treating as entirely foreign a component that contains substantial and traceable U.S. content is claimed to be inequitable and to inhibit trade unduly.

The UMTA approach in determining the origin of end-products and components and the treatment of subcomponents is generally consistent with the implementation of the Buy American Act of 1933 (41 U.S.C. 10a-10d). Neither Section 401 nor the 1933 Act contain statutory language addressing the end-product, component, or subcomponent. The "fifty percent test" for determining the origin of a product for purposes of the 1933 Act was first established in Section 2(a) of Executive Order No. 10582, December 17, 1954, which provides as follows:

(a) For the purposes of this order, materials shall be considered to be of foreign origin if the cost of the foreign products used in such materials constitutes fifty per centum or more of the cost of all the products used in such materials.

The Federal Procurement Regulations (FPR), which implement the requirements of the 1933 Act for direct procurement, set forth definitions of end-products, components, and domestic source end-products at 41 CFR § 1–6.101 that have been the basis for the requirements of the UMTA regulations. Most pertinent is the language of 41 CFR § 6.101(b) and the first sentence of 41 CFR § 1–6.101(d) that state:

(b) Components means those articles, materials, and supplies which are directly incorporated in end products.

(d) Domestic source end product means an unmanufactured end product which has been mined or produced in the United States, or an end product manufactured in the United States if the cost of its *components which are mined, produced, or manufactured in the United States* exceeds 50 percent of the cost of all its components. [Emphasis added]

The FPR does not give further guidance on the application of this but leaves it up to the individual agency in the context of a particular procurement. The General Accounting Office (GAO) often reviews these factual determinations when disappointed bidders filed bid protests. There is no clear rule concerning the point in a manufacturing process when a subcomponent becomes a component. Before 1976, GAO typically held that a component was something directly used in the manufacture of an end product; and that foreign subcomponents lose their foreign identity when assembled into domestic components. See, e.g. B–158869, April 27, 1966, 45 Comp. Gen. 658. But in a 1976 GAO decision, *In re Cincinnati Electronics Corporation, et al.*, 55 Comp. Gen. 1479, GAO recognized the concept that domestic objects acquired for assembly into end products need not lose their domestic nature even though they are sent abroad and fashioned into a higher assembly with final manufacturing to take place in the United States. Here GAO deferred to the contractor and procuring agency's assertion that the purchase in the United States, initial assembly in Mexico, with completion in the United States is one complete manufacturing process. However, GAO expressly limited the application of this concept to the particular fact pattern. There is no clear rule about what constitutes a single manufacturing process or what constitutes separate manufacturing processes. It should be noted, however, that GAO is inclined to honor agency interpretations of particular contracts that are arguably reasonable. Agency regulations are afforded even more deference.

UMTA chose to develop regulations rather than relying on case by case decisions to provide some predictability to the procurement process. This was considered to be especially important in the case of a grant program since procurements are administered at the local and state levels.

However, the 1978 regulation created a mechanical test that the place of assembly of the component automatically determined whether the total value of the component was foreign or domestic. Because most transit vehicles are relatively complex, many major components consist of several subcomponents. For example, a car body that is a vehicle component might include windows, lighting, floors, seats and other interior parts that would be treated as subcomponents. Even if those subcomponents were domestic, they would lose their identity under the UMTA regulations if incorporated into a foreign shell abroad to form the car body.

The following illustrations set forth below demonstrate the problem in establishing fair treatment for subcomponents.

(1) Under the current UMTA regulations, if the value of the domestic components of an end-product were less than 50% and the value of foreign components of that end-product exceeded 50%, and even if many identifiable subcomponents of the foreign components were domestic, the end-product would still be considered foreign. The 1978 regulation encourages the prime bidder to do large amounts of final assembly in the U.S., but does not provide any incentive to buy U.S.-made subcomponents.

(2) Conversely, under an approach that would permit the value of domestic subcomponents to be included in determining the origin of an end product, if final assembly took place in the U.S. and if the value of the domestic components were less than 50% and the remaining foreign components contained sufficient identifiable domestic subcomponents to cause the overall domestic content of the end product to exceed 50% in value, the end product would then be considered domestic. This would encourage the purchase of U.S. subcomponents but could lead to less final assembly work in the United States.

UMTA is proposing to revise its regulations to permit manufactures to include the cost of domestic subcomponents in the fifty percent test, utilizing an existing Bureau of Customs procedure. A review of the U.S. Tariff Schedules reveals that Item 807.00 implements a legislative exemption from customs duty on those components which are products of the United States that have been assembled abroad into articles if those United States products (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape, or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting. The duty imposed on such manufactured articles is computed by subtracting the cost of value of the United States products from the duty that is applicable to the full value of the imported articles. The United States Customs Service has published regulations implementing Item 807.00 at 19 CFR 10.11–10.24. An importer who desires to take advantage of this exception files documentation identifying the United States components in the assembled product. This determination of value of the U.S. subcomponents utilizing the Customs approach is considered a suitable substitute for the simple "origin" test now contained in our regulation. Under this approach, of course, United States subcomponents would not need to lose their identity simply because they had been sent abroad to be assembled into higher components.

We are proposing to permit United States subcomponents that receive Customs Bureau tariff exemptions to retain their domestic identity for purposes of determining origin of end-products. The cost of subcomponents that receive Customs Bureau tariff exemptions would be included in the computation of domestic components. The cost of the foreign components, after substracting the cost of such subcomponents, would be included in the computation of non-domestic components. This approach is being proposed because it would provide more flexibility to end-product manufacturers; would provide an advantage to U.S. subcomponent manufacturers and their workers; and because it is administratively feasible to identify U.S. subcomponents by reference to Customs documents.

Since we are proposing this change, we are also proposing a definition of "final assembly" to ensure that an adequate amount of final assembly takes place in the United States. As the current regulation is drafted, the term "final assembly" neither has, nor needs, much definition to insure that it is a meaningful step. The definition of components and the emphasis placed on

components under the current regulation provide insurance that final assembly will entail the assembly of a number of different U.S. components. Since under the proposed treatment of subcomponents, assembly of he end-product in the U.S. could be a trivial step if components were manufactured in a foreign country, all from U.S. subcomponents, we are proposing a definition of "final assembly" which establishes a test of meaningful final assembly. The test of final assembly that we are proposing would require that the cost of labor effort and overhead at the final assembly point in the United States must be 10 percent of the bid price. Less of an effort would mean that the end-product would not qualify as a domestic end-product.

As an alternative to defining final assembly in terms of the cost of labor and overhead at the final assembly point, we invite comment on a substitute treatment which would require that 10 percent of the total assembly hours be done at the final assembly point. Under this approach, the manufacturer would estimate total manufacturing hours for all items that are not off-the-shelf items. The manufacturer would have to undertake 10 percent of these hours at the final assembly point in the United States or would fail to qualify as a domestic end-product manufacturer.

As a result of our experience to date in implementing the statute and the regulations we are proposing to revise the regulation to permit the non-final assembly United States labor effort performed at the final assembly point to be included in the dollar value of the United States component. The value is used in determining whether or not the "50% test" required in the regulation is met. The labor effort is proposed to be limited to the direct labor cost plus fringe benefits.

This proposal will encourage manufacturers to increase the amount of United States labor involvement in the manufacturing process.

We specifically request comments on this approach. While we believe that it offers more flexibility than exists under the current regulation, we are interested in learning whether this change would lead to burdensome recordkeeping for manufacturers.

As an alternative to the changes that we are proposing today to § 660.22 "Determination of Origin", we invite comments on two other ways of implementing the Section 401 provision which have been suggested by domestic manufacturing firms. While either approach would require comprehensive changes to the current regulation, we would be willing to pursue these approaches if commentors believed that we could offer adequate preferences to domestic industries while reducing red tape and cost to the industry.

Alternative #1 would be to use manhours to test whether an end-product is domestic rather than the current two step final assembly and component content tests that are calculated using cost. Under this alternative, each bidder would be required to estimate the total number of hours to manufacture each end-product (e.g. a railcar), excluding off-the-shelf items. The bidder would also have to estimate the number of such manhours performed in the United States. An end-product would be domestic only if more than 15 percent of the manhours were done in the United States.

Alternative #2 would be to use a value added approach to test whether an end-product is domestic rather than the current two step test. Under this alternative, the cost of the associated end-product. The value added in the United States would have to be at least double the value of the imported sub-items for the end-product to be considered domestic. For example, if the imported value was $50, at least $100 of value would have to be added in the United States. That is, the end-product would have to cost at least $150.

We would especially like comments evaluating the proposed changes to § 660.22, Alternative #1, and Alternative #2 in terms of the protection that would be afforded to domestic companies versus the cost to the manufacturer of complying with the three different approaches. We would welcome comments on the reliability of data that the manufacturers would have and whether any of the approaches is susceptible to abuse. Commentors are invited to suggest different numerical tests for Alternatives #1 and #2. All comments should be supported by verifiable facts and figures whenever possible. We are also interested in comments on the economic effects of the current and proposed regulation and any effects of the regulations on small business.

We also welcome comments on alternatives to the treatment of construction that is described in the final rule published elsewhere in this **Federal Register.** We are especially interested in alternative approaches that would provide additional protections to United States manufacturers without creating unduly burdensome tracking and record-keeping requirements.

In consideration of the foregoing, it is proposed that Part 660 of Title 49 of the Code of Federal Regulations be amended as follows:

1. By adding a new § 660.13(e–1) and (g–1) to read as follows:

§ 660.13 Definitions.

* * * * *

(e–1) "Final assembly" means the effort expended at the final assembly point to manufacture the end-product.

* * * * *

(g–1) "Non-final assembly labor" means the cost of any labor effort and overhead at the final assembly point that exceeds the cost required by §660.22(a–1).

* * * * *

2. By revising §660.22 to read as follows:

§ 660.22 Determination of origin.

(a) In order for a manufactured end-product to be considered a domestic end-product, (1) the cost of the domestic components plus non-final assembly labor must exceed 50 percent of the cost of all its components plus non-final assembly labor; and (2) the final assembly of the components to form the end-product must take place in the United States.

(a–1) The cost of the final assembly must be 10 percent of the overall project contract cost.

(b) In determining the origin of components, each component must be treated as either entirely domestic or entirely foreign, based on the place where the component is mined, produced, or manufactured. Components of unknown origin must be treated as foreign. The origin of subcomponents, that is, items contained in components, is immaterial except for those subcomponents that receive Customs Service tariff exemptions as set out in paragraph (b–1).

(b–1) United States subcomponents that receive Customs Service tariff exemptions under 19 CFR 10.11–10.24 retain their domestic identity and are considered to be of domestic origin. Their cost may be included in determining the cost of domestic components under paragraph (a).

* * * * *

(49 U.S.C. 1602, note (Sec. 401, Pub. L. 95–599; 92 Stat. 2689); 41 U.S.C. 10a, 10c, and 10d; 49 CFR 1.51)

Dated: January 14, 1981.

Theodore C. Lutz,

Administrator.

[FR Doc. 81–1943 Filed 1–16–81; 8:45 am]

BILLING CODE 4910–57–M

federal register

Monday
January 19, 1981

Part XXXVIII

Department of Transportation

Urban Mass Transportation Administration

Urban Initiatives Program; Final Rules

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 642

Urban Initiatives Program

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Final rule.

SUMMARY: The Urban Mass Transportation Administration (UMTA) is issuing regulations governing its Urban Initiatives Program. The Urban Initiatives Program provides funding for mass transportation projects that enhance urban development. The regulations codify and clarify existing requirements and guidelines concerning the program.

DATES: The regulations are effective on February 18, 1981.

FOR FURTHER INFORMATION CONTACT: Casimir Bonkowski, Office of Grants Assistance (202) 472-7037.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published on October 23, 1980 (45 FR 70412). Interested persons were given until December 8, 1980 to submit comments. Approximately 40 written comments were received. The Administrator has determined that this regulation is not a significant regulation under the criteria in the DOT Order for Improving Government Regulations (44 FR 11042, February 26, 1979).

Under the DOT Order, a full evaluation is not warranted because the expected economic impact of the regulation is minimal. The proposed regulation is a codification and clarification of existing requirements.

The provisions of OMB Circular A-95 apply to this Final Rule. It covers the following program as listed in the Catalog of Federal Domestic Assistance (CFDA): 20:500 Urban Mass Transportation Capital Grants.

The NPRM set out the requirements as Part 654 of Title 49 of the Code of Federal Regulations. The Final Rule establishes a new Part 642, which is only an editorial revision. The only other major changes are discussed below.

Discussion

The requirement for development of an employment plan was most often mentioned by commenters. Most felt that the requirement made it difficult to secure private investor participation, and that procedures for development of the plan were unnecessarily proscriptive. After consideration we have decided to retain the requirement intact. An employment plan is only required when a project creates new permanent employment. This will affect only a portion of the Urban Initiatives projects. Second, the number and type of employment opportunities created will dictate the level of information to be required. UMTA and Department of Labor (DOL) personnel will assist the project sponsor and private developers in the preparation of the plan, identifying DOL resources available to assist in the recruiting and training of new job holders. Third, agreements similar to the DOT agreement with DOL were also signed by the Department of Housing and Urban Development (HUD) and the Economic Development Administration (EDA) thereby providing a uniform mechanism for linking employment opportunities for the long term unemployed.

UMTA's position not to fund parking not directly associated with a mass transit project also elicited comment. Comments both favorable and negative to the policy decision were received. While acknowledging that parking plays an integral role in the commuting habits of the public, and cognizant of the fact that the provision of parking is required for the success of many development activities, we continue to maintain the position that the national mass transportation program is not the appropriate source to finance parking facilities *which are not directly related to the provision of mass transportation services.* Local and other Federal agencies have resources available to them to finance parking components. If, as part of a comprehensive development project, the creation of parking is demonstrated to significantly enhance local mass transportation usage, UMTA will consider funding of the *transit* aspects of such multi-faceted projects on a case-by-case basis.

In regard to comments that UMTA should finance transit malls which provide a roadway for private automobiles as well as public transportation vehicles, we feel that in order to ensure the economic enhancement and provide the operating efficiency and visability that the Urban Initiatives Program attempts to achieve, transit malls funded under the Urban Initiatives Program must be transit exclusive. In areas where roadways are extraordinarily wide, expansion of pedestrian spaces, creation of bike paths and the incorporation of public and private people-oriented activity centers which generate transit and retail patronage should be considered.

In response to requests to consider funding of the construction of revenue-producing space, this activity is beyond UMTA's statutory authority. UMTA's financial support of private investment is restricted to activities detailed in § 642.29.

In response to comments that the existence of special considerations, as identified in Subpart D, penalized some applicants, we emphasis that these elements are taken into consideration after the project eligibility has been established and are utilized to establish priorities when projects are relatively equal. The regulations identify the factors which are being considered and invite the project sponsor to elaborate on project features or circumstances which warrant additional consideration. The inclusion of a request for information as to proposal features which the community feels are a special or unique opportunity to meet local priority needs is intentional and an attempt to encourage flexibility within the program and innovation on the part of the applicant.

In response to comments that applicants would prefer to submit one complete application, the two phase preapplication and final application process will continue because it succeeds in reducing paperwork for applicants. Once a project is selected, applicants need only provide supplementary information.

They need not duplicate existing material. Unsuccessful candidates will have been spared the expenditure of time and resources required to assemble material not essential to making a selection.

In response to a comment that the Urban Initiatives Program should finance acquisition of vehicles, it has been determined that there are insufficient funds available to finance the acquisition of vehicles within the Urban Initiatives Program budget. Where appropriate, UMTA will work with the applicant to provide funding under other programs.

In refining the review process, UMTA has reduced the time necessary to establish if it will participate in a project. Therefore, the request that an option for a Letter of No Prejudice be retained since the length of the review process presents a hardship was not considered valid. Prior to the actual selection of projects, when a number of worthwhile proposals are under consideration, it would be inappropriate to bias the selection process by authorizing a Letter of No Prejudice. Such requests will continue to be turned away during the preapplication phase.

Once a fund reservation is made, no prejudice requests can be considered.

In response to other comments that the regulation specify UMTA's requirements on consideration of traffic disruption and air quality prior to grant approval UMTA's requirements pertaining to environmental assessment provide for extensive analysis of these issues and therefore they are not separately addressed here.

A commentor noted that new capital projects often resulted in increased deficits and that these features of a project should also be considered in making a funding decision. This area had been assumed to be considered within the section requesting that the burdens the central city would assume as a result of the project be documented. A clarifying reference to the transit provider and the potential negative impact on operating budgets has been added.

In response to a comment that the joint development program guidelines appeared to be biased towards industrial projects and another that they were biased against housing, facts do not substantiate either interpretation. There have been no industrial projects funded to date and a number of grants awarded for projects with a housing component.

There were a number of references to the $5 million limit on UMTA participation in Urban Initiatives projects. It is important to note that the focus on smaller budgeted projects does not preclude the consideration of proposals from larger cities. The goal is to encourage a wider range of projects with multiple funding sources thereby enabling a broader impact within the program's budget. Projects requiring a Federal share larger than $5 million have been considered. It is expected however, that there is a commensurate increase in benefits if they are selected for funding. The emphasis of the program is also not on projects in larger rail oriented cities as some have commented. Innovative proposals by small urban areas and medium size cities have enabled Urban Initiatives funds to be awarded to a substantial number of areas with emerging bus transit systems. The consensus is that projects from cities of various population sizes appear to be competitive without further constraints or incentives placed on their participation. For these reasons, and because of the limited financial resources available to the program, creation of a separate pool of funds for projects from large and small cities was not considered to be appropriate at this time.

In consideration of the foregoing, a new Part 642 be added to Title 49 of the Code of Federal Regulations to read as follows:

PART 642—URBAN INITIATIVES PROGRAM

Subpart A—General

Sec.

642.1 Eligible Recipients.
642.3 Funding.
642.5 Project Scope and Feasibility.

Subpart B—Eligible Project Categories

642.11 General Requirements.

Intermodal Transfer Facilities

642.13 Types of Facilities.
642.15 Requirements: Intermodal Transfer Facilities.
642.17 Eligible Projects Costs: Intermodal Transfer Facilities.

Transit Malls

642.19 Types of Malls.
642.21 Requirements: Transit Malls.
642.23 Eligible Projects Costs: Transit Malls.

Joint Development Projects

642.25 Types of Projects.
642.27 Requirements: Joint Development Projects.
642.29 Eligible Project Costs: Joint Development.
642.31 Participation in Proceeds Derived from UMTA Investment.

Subpart C—Criteria for Meeting Policy Objectives

642.41 General.
642.43 Transit.
642.45 Socio-Economic: Employment.
642.47 Socio-Economic: Involvement of Neighborhood Organizations and Voluntary Associations.
642.49 Development: Urban Economic Development/Private Sector Investment.
642.51 Development: Business Opportunities for Small and Minority Business.
642.53 Development: Enhancement of the Immediate Physical Environment Around the Project.
642.55 Development: Coordination.

Subpart D—Special Considerations

642.61 Establishing Priorities.

Subpart E—Application Procedures

642.71 Preapplication Procedures.
642.73 Application Procedures.
642.75 Post Grant Activities.
Appendix A Policy Objectives.
Appendix B DOT-DOL Memorandum of Understanding.
Appendix C Timing and Degree of Public and Private Commitments for Joint Development Projects.
Appendix D Project Application Review and Selection Process.

Authority: 49 U.S.C. 1602(a)(1)(D) and 1603(c)(1)(B); 49 CFR 1.51.

Subpart A—General

§ 642.1 Eligible recipients.

(a) A public agency which is eligible for UMTA capital assistance is eligible for Urban Initiatives grants. These public agencies include transit authorities, local governments, States, agencies of States, and quasi-public development corporations.

(b) Eligible public bodies may pass through funds to a quasi-public development corporation to manage projects.

(c) Applicants other than transit authorities or State and local governments must provide evidence of their financial and managerial ability to ensure continued operation of the transportation components of an Urban Initiatives project over the life of the project in order to be an eligible recipient.

§ 642.3 Funding.

(a) In reviewing funding sources for potential Urban Initiatives projects, every effort should be made to match each available funding source with the most appropriate project elements, based on various eligible cost requirements and restrictions.

(b) Project components such as traffic diverters and barriers, pedestrian malls, sidewalks and walkways, bicycle paths, and street landscaping and furniture independent of a transit mall or terminal, should be funded from DOT's Federal Highway Administration Federal Aid Urban Systems funds to the maximum extent feasible rather than as Urban Initiatives project components.

(c) The applicant shall develop a project implementation schedule for financial participation.

§ 642.5 Project scope and feasibility.

(a) Each applicant shall sufficient feasibility analysis in the planning phase of Urban Initiatives project development to provide a minimum level of technical data with which UMTA may evaluate the project. Funds for technical assistance are available from the UMTA Section 8 Technical Studies Program through local Metropolitan Planning Organizations.

(b) In developing projects, applicants are encouraged to undertake sufficient environmental analysis and engineering to enable UMTA to establish the project scope.

Subpart B—Eligible Project Categories

§ 642.11 General requirements.

(a) To qualify for consideration under the funding authorization of the Urban Initiatives Program, a project must extend beyond the scope of traditional

transit improvements to clearly demonstrate a significant degree of impact on the urban physical and economic environment, including increased private investment, enhanced interagency coordination and the support of social goals including increased employment opportunities and accessibility for disadvantaged groups.

(b) Projects which do not contain a significant transit element are not eligible for funding under the Urban Initiatives Program.

(c) The acquisition of vehicles is not an eligible Urban Initiatives activity.

(d) There are three categories of eligible projects: Intermodal terminals, transit malls and joint development.

Intermodal Transfer Facilities

§ 642.13 Types of facilities.

Intermodal transfer facilities that are eligible for funding under the Urban Initiatives Program include the construction and improvement of facilities which provide for the integration of urban public transportation systems with other forms of public and private transportation services such as intercity bus and rail systems, and taxis, which enhance the effectiveness of mass transit and facilitate coordination among modes.

§ 642.15 Requirements: Intermodal transfer facilities.

(a) UMTA will not participate in the construction of an intermodal terminal unless the space and service needs of local mass transportation constitute a reasonable component of the project.

(b) Project sponsors must notify private carriers operating within the area of the project of their intent to apply for Urban Initiatives funds for construction or reconstruction of an intermodal facility.

(c) If an intermodal terminal is to provide space for private carriers, the preapplication data must contain letters of interest committing the carriers to use of the facility providing that acceptable accommodations and rents are negotiated.

(d) Prior to award of construction funds, the applicant must secure a lease or lease equivalent type agreement from private carriers committing them to long term use of the facility.

(e) The intermodal facility must be the property of a public body.

(f) The proceeds from rental payments or other reimbursements in excess of operating and maintenance expenses must be used to offset eligible local mass transit capital expenses.

(g) Proceeds realized from lease or sale payments may not be used to reduce local debt service payments, or otherwise reduce local share requirements without a commensurate reduction in the Federal share.

§ 642.17 Eligible projects costs: intermodal transfer facilities.

(a) Eligible project costs for intermodal transfer facilities include, but are not limited to, the following:

(1) Design and engineering tasks.

(2) Acquisition of real property, facilities, and equipment.

(3) Roadbeds, tracks, and bus ramps.

(4) Pedestrian concourses, and related equipment and facilities.

(5) Loading shelters.

(6) Improvements of existing bus or rail transit terminals, stations, major transfer points, and shelters as well as other facilities directly related to the linking of public transportation facilities with other modes of transportation.

(7) Incidental parking. A small number of spaces may be provided. The number is limited to the amount required to reasonably accommodate the needs of intermodal facility patrons and employees who are not within the transit service area of any public transportation provider including taxis. It must be demonstrated that parking cannot be financed from other sources.

(b) Urban Initiatives funds may only be used to finance the engineering and construction of non-revenue producing elements. Funds may not be used for restaurants, major concessions, package storage and delivery facilities, and other revenue producing facilities not directly required for the transport of passengers.

Transit Malls

§ 642.19 Types of malls.

Transit malls eligible for funding under the Urban Initiatives Program are those on streets which—

(a) Have been improved for pedestrian use; and

(b) Retain a roadway reserved for public transportation vehicles integrated with the city-wide, or regional transportation system.

§ 642.21 Requirements: Transit malls.

(a) The type of public transportation vehicles to be allowed to utilize the transit mall is a local decision determined by local priorities and the vehicular capacity of the mall. Public transportation vehicles may include, but are not restricted to, taxis, paratransit vehicles, or other high occupancy vehicles whose use provides increased mass transit service. General access by private vehicles, other than public transportation and emergency vehicles, must be restricted.

(b) Preferential signalization to facilitate bus movements must be incorporated within the mall design whenever appropriate.

(c) Parking is not an eligible item in a transit mall project.

§ 642.23 Eligible project costs: Transit malls.

Eligible project costs for transit malls include, but are not limited to the following:

(a) Design and engineering.

(b) Mall construction activities such as surveying, utility relocation (to the extent that the utility is not responsible for such costs), materials testing, and construction management.

(c) Street, sidewalk and utility construction.

(d) Traffic control devices.

(e) Landscaping.

(f) Pedestrian concourses and walkways and other passenger and pedestrian amenities.

Joint Development Projects

§ 642.25 Types of Projects.

Joint development projects that are eligible for funding under the Urban Initiatives Program are commercial, residential, industrial, or mixed use developments that are induced by or enhance the effectiveness of mass transportation projects, including private development activities associated with new rail rapid transit systems, automated systems, improvement and extension of existing rail systems, intermodal transfer facilities, transit malls, and Federal, State or local investments in existing facilities.

§ 642.27 Requirements: Joint Development Projects.

(a) Each joint development project must—

(1) Include a transit element;

(2) Enhance the effectiveness of a significant mass transportation project;

(3) Be physically or functionally related to the mass transportation project;

(4) Create new or enhanced coordination between public transportation, and other forms of transportation; and

(5) Enhance urban economic development through the incorporation of private investment including office, commercial, or residential development.

(b) A project is physically related to a mass transportation project if it provides a direct physical connection with mass transportation services or facilities, including projects involving air rights over stations or adjacent property.

(c) A project is functionally related to a mass transportation project if it is related by activity and use and is functionally linked (with or without direct physical connection) to mass transportation services or facilities. Functional relationships must not extend beyond the distance most people will reasonably walk to use a transit service. The eligible project area for a functionally related project will be defined on a case-by-case basis.

§ 642.29 Eligible Project Costs: Joint Development Project.

(a) Eligible project costs for joint development projects include, but are not limited to, the following:

(1) Site design, engineering, and environmental analysis as appropriate.

(2) Real estate packaging for a specific UMTA capital project including assessment of market potential, preliminary design and engineering, estimates of operating income and expenses, capital costs, and negotiations to secure financing, developers and prime tenants.

(3) Land acquisition, relocation, and demolition.

(4) Foundations and substructure improvements for buildings over transit facilities.

(5) Pedestrian connections and access links between mass transportation services and related development.

(6) Other facilities and infrastructure investments needed to induce significant private investment and to improve access between new or existing development and mass transportation facilities.

(b) The eligibility of the costs of utility work associated with private investment will be considered on a case-by-case basis. UMTA will not pay for the costs of utility work that are attributable to non-UMTA project purposes unless—

(1) The utility serves a joint private and transit use; or

(2) The utility lines will be located under a collocated street or sidewalk or within other common elements so that it would benefit the project to provide adequate capacity at the outset of the project.

(c) Front end (expect as noted in paragraph (a)(2) of this section), construction and permanent financing costs related to the design and construction of retail, commercial, housing or other public and private revenue producing facilities are not eligible joint development costs.

(d) Requests for UMTA participation in financing parking elements of joint development projects will be considered on a case-by-case basis.

(e) In developing proposals which contain a parking element, the applicant must demonstrate that—

(1) The provision of parking is strictly required for the success of the project and cannot be determined to adversely impact on the efficiency and effectiveness of mass transit service;

(2) The proposal will increase public transportation patronage;

(3) Trips to the project site cannot be adequately accommodated by use of existing or reasonably upgraded transit service. The local political jurisdiction is encouraged to document steps undertaken to upgrade area transit service, operator efficiency, visibility or accessibility, which when completed, will serve to reduce the public's dependency on private automobiles;

(4) The amount of parking in the proposal conforms to an approved local parking plan;

(5) All other possible sources of financing have been exhausted, including other Federal agencies, revenue bonds, and State and local agencies. UMTA is the source of funding for parking only as a matter of last resort;

(6) In cases where UMTA finances land acquisition or infrastructure improvements in support of a private or otherwise non-UMTA funded parking facility, local transit must participate in any disposition of proceeds arrangements (see § 642.31); and

(7) In cases where UMTA finances the construction of a parking facility, the project sponsor must assure that—

(i) The proportion of the structure and number of spaces financed are necessary to the proper functioning of the mass transportation facility; and

(ii) The net revenues realized from the accrual of parking receipts are to be used to offset transit system operating expenses (consistent with UMTA Circular 9050.1, Application Instructions for Section 5 Operating Assistance Projects).

(f) The applicant must provide all necessary documentation regarding the provision and justification for UMTA participation in projects with parking elements.

§ 642.31 Participation in proceeds derived from UMTA investment.

(a) Each grantee must negotiate a fair and equitable return of the benefits to be generated as a result of the UMTA investment.

(b) Local mass transit must benefit from revenues accruing as a result of UMTA financial participation in a project.

(c) Project sponsors must retain for transit related use proceeds and profits realized in connection with UMTA participation in joint development projects.

(d) Proceeds and profits may include returns generated from, but not limited to, sale or lease of property, mortgage proceeds, or returns stemming from local agency participation in the distribution of project revenues.

(e) Local mass transit's participation in proceeds will reflect the percentage of the UMTA investment in relation to that of other participating public agencies.

(f) If property is sold, the entire proceeds of the sale up to the amount of the combined UMTA and local investment must be applied to finance other existing or proposed capital project elements that would be eligible for assistance under Section 3 of the UMT Act, or the proceeds may be returned to UMTA to reduce the amount of the Urban Initiatives grant. These project elements include traditional transit projects, existing Urban Initiatives projects, or new Urban Initiatives projects. Funds from these proceeds may not be used for local share of such federally assisted projects. Should profits result from such a sale, (that is, any amount above the combined UMTA and local share) those profits must be used for the above purposes and may also be used as the local share for other capital or operating projects. The grantee must obtain UMTA concurrence in the disposition of proceeds.

(g) If property is leased, or if any payments are made to the grantee or the public agency in consideration for the use of the property, the entire proceeds of the lease, as well as the proceeds from local agency participation in the distribution of project revenues, up to the amount of the appraised value of the leased property must be applied to capital project elements eligible for assistance under Section 3 of the UMT Act or the proceeds may be returned to UMTA to reduce the amount of the Urban Initiatives grant. These project elements include traditional transit, projects, existing Urban Initiatives projects or new Urban Initiatives projects. UMTA will approve the appraised value in accordance with the procedures set forth in UMTA Circular 4530.1 "Land Acquisition and Relocation Assistance Manual". Any additional proceeds from the lease beyond the approved appraised value must be used for the above purposes or as the local share for other capital or operating projects. The grantee must obtain UMTA concurrence in the disposition of lease proceeds.

(h) Agreements which transfer title or control of land or facilities acquired as

part of the UMTA project must contain provisions which—

(1) Extend the requirements of the UMTA grant contract;

(2) Ensure that the grantee retains continuing control of the mass transportation project; and

(3) Assures that transit participates in the disposition of proceeds in the manner established in the grant contract.

Subpart C—Criteria for Meeting Policy Objectives

§ 642.41 General.

(a) Applicants for grants to assist in funding projects under the Urban Initiatives Program must demonstrate how the proposed project will meet the objectives of the President's Urban Policy Statement (the President's Policy Objectives are set out in Appendix A to this part).

(b) The criteria that an applicant must follow in meeting the Objectives are set out in this subpart.

§ 642.43 Transit.

(a) Projects must demonstrate a positive impact on transit patronage and quality of service. A project demonstrates a positive transit impact if it—

(1) Improves accessibility and equity of service for elderly, handicapped and minority communities;

(2) Increases system security and attractiveness;

(3) Makes improvements allowing for more efficient use and operation of service and facilities; or

(4) Increases public transportation access to employment, social, educational, health, recreational, and residential areas.

(b) The applicant must provide both general and specific information as appropriate on the project's transit impact including such factors as transit patronage, operational efficiency, increased service, projected changes in revenues/deficit, accessibility and security.

(c) Each proposal must include a description of any related changes in transit operations which, though not part of a specific project, will increase public access and facilitate circulation (i.e., headways, increased service, and special demonstrations).

(d) The project sponsor, if other than the local transit provider, must provide documentation that the transit provider participated in the development of the proposal, and identify the proposal's relative priority within the Transportation Improvement Program.

§ 642.45 Socio-economic: Employment.

(a) For projects that create new permanent jobs, each applicant shall set a goal of reserving 10–15 percent of the jobs for long term unemployed persons eligible to obtain assistance under the Comprehensive Employment and Training Act (CETA) (29 U.S.C. 801 et seq.).

(b) Each applicant for a project that creates new permanent jobs shall certify the established goal as a part of project development.

(c) Each applicant for a project that creates new permanent jobs shall develop an employment plan that documents how employment opportunities will be made available.

(d) The employment plan must be submitted prior to grant award or before receipt of construction funds.

(e) The employment plan must include the following elements:

(1) The total number, title, and description of jobs to be created.

(2) The goals for the total number, titles and timing of jobs to be made available to the long term unemployed.

(3) The skill requirements for the jobs that are being made available to the long term unemployed.

(4) A description of the activities which are to be undertaken in order to link new employment opportunities, training programs and assistance for CETA eligible individuals (The Linkage Program). This description must include:

(i) The name of the CETA prime sponsor, or other employment and training provider, who is assisting the applicant in developing and implementing the employment plan, including the name of a responsible person, with an address and telephone number;

(ii) An identification of the employment and training programs to be applied in preparing or referring qualified persons to available jobs with an indication of how they will be used and any special conditions required by the employer (i.e., number of referrals per vacancy to be filled, timing of referrals);

(iii) An identification of the roles and responsibilities of the participants in the employment plan (i.e., UMTA applicant, UMTA beneficiary, if different from applicant; employment and training provider; and local agency, if not the applicant);

(iv) The steps to be taken and the schedule for implementing the plan; and

(v) The signatures of persons or agencies party to the employment plan, (i.e. UMTA beneficiary, if different from the applicant; employment and training provider; and the economic development agency).

(f) After UMTA approval of the employment plan, each applicant shall provide UMTA with comprehensive quarterly status reports on the plan's implementation.

§ 642.47 Socio-Economic: Involvement of Neighborhood Organizations and Voluntary Associations.

(a) Each project sponsor shall document the degree to which the project considers established priority needs of the local community, and contributes to local plans.

(b) Each project should have active citizen participation at the planning and development stages. This participation can be satisfied by involvement of neighborhood organizations and voluntary associations.

§ 642.49 Development: Urban Economic Development/Private Sector Investment.

(a) Each project must enhance urban economic development and/or incorporate or leverage private sector investment.

(b) Each applicant shall provide documentation concerning how public/private financial participation and investment ratios are determined.

§ 642.51 Development: Business Opportunities for Small and Minority Businesses.

Each applicant shall indicate the extent to which the project will provide business opportunities for female owned, small, and minority businesses during the construction phase, or the extent to which the project generates opportunities for female, small or minority businesses to participate in spin-off development and business formation generated by the Federal investment.

§ 642.53 Development: Enhancement of the immediate physical environment of the project.

(a) Each project must enhance the immediate physical environment of the project.

(b) Each applicant shall document the extent to which the project is part of larger development plans or projects.

(c) Each applicant shall identify—

(1) Potential secondary development including private as well as public investment;

(2) A timetable for development;

(3) Any interface between the project and future development; and

(4) Changes in the nature of transportation services, accessibility and detailed impacts of broader development plans, parking regulations, auto restrictions, and impacts on air and noise pollution.

(d) Each applicant shall provide specific information as to how and to what degree private investors will financially participate in the project directly, or in related redevelopment in the project area.

(e) Each applicant shall provide information concerning the status of securing a developer's commitment.

(f) Each applicant shall submit pro formas and projected cash flow statements identical to those submitted to financial institutions to secure financing in those cases in which financing has been secured. If financing has not been secured, the applicant shall submit a preliminary pro forma and cash flow statement.

§ 642.55 Development: Coordination.

Each applicant shall submit—

(a) A discussion of the effect of investment on the economic viability of the central city;

(b) A discussion of the consistency of the project with local and State (if appropriate) plans including land use, economic development, employment, and housing;

(c) A discussion of the impacts of the project on central city revenues, accounting for anticipated changes in property, sales and income taxes; and

(d) A discussion of additional public expenditures (if any) which the transit provider and the central city will have to bear as a result of the proposed project and its corresponding development shifts.

Subpart D—Special Consideration

§ 642.61 Establishing priorities.

The extent to which projects meet the criteria set out in Subpart C of this part determines their priority within the Urban Initiatives Program. However, all else being equal, special considerations will be given to the following:

(a) Projects with smaller dollar value which provide strong potential for achieving the programs' objectives and those which can be fully funded within the budgetary constraints of the program. Emphasis is placed on funding smaller projects of less than $5 million Federal share, and on ensuring a representative geographic balance in selecting projects.

(b) Projects which are located in those cities or sections of cities which have been determined to be distressed. Rules and regulations governing the basis for determining a city's economic status have been published by a number of Federal agencies including the Department of Housing and Urban Development (HUD), the Economic Development Agency (EDA), or Department of Interior. Applicants shall state if the project is in a distressed city; identify the distress index utilized; provide the city's (area's) rank standing; and state how the project contributes to eliminating or alleviating the area's distress status.

(c) Projects which target UMTA funds cooperatively with HUD, EDA, and other Federal agency resources to maximize the economic development potential of Federal investments. Where appropriate, Urban Initiatives projects should be developed in maximum cooperation with projects planned or committed to by other Federal agencies. The application must include a discussion of the status and anticipated timing of any commitments by other Federal agencies.

(d) Projects which contain evidence of significant state financial participation. This includes, but is not limited to, long term lease arrangements for use of facilities; independent financing of integral components of the project, or separate but supporting components; engineering, design and construction of public works improvements in support of the project; commitment of other Federal funds within the control of the State, i.e. interstate substitution, or Federal Aid Urban System funds, to the project; contributed services; and participation in assisting the applicant to meet local share requirements.

(e) Projects which represent a special or unique opportunity to meet local priority needs and which are consistent with the overall objectives of the President's Urban Policy. Applicants should provide information about features of their proposal, program, neighborhood or community which are considered sufficiently special or unique to justify special consideration.

(f) Projects that meet UMTA's Employment Initiatives goal. In this regard, it is recognized by UMTA that not all projects will result in new permanent job opportunities, and that certain types of projects by their nature, will generate substantially less employment opportunities than others.

Subpart E—Application Procedures

§ 642.71 Preapplication procedures.

(a) In order to limit the requirements all applicants must address during the initial review process, each applicant shall submit a preapplication in lieu of a full Section 3 discretionary capital grant application package. The preapplication must include the following information:

(1) Standard Form 424.

(2) A brief description of the total project, including a discussion of prospective funding sources.

(3) A separate discussion and budget for the elements to be funded by UMTA stressing the proposal's physical and functional relationship to the project.

(4) Documentation required to support eligibility (as discussed in Subpart B of this part).

(5) Data demonstrating the degree to which the project meets the selection criteria (as discussed in Subpart C of this part).

(6) Employment Initiatives requirements (as discussed in § 642.45).

(7) Data demonstrating how the project addresses the Special Consideration Criteria (as discussed in Subpart D of this part).

(8) Discussion of the project applicant's compliance with regulations dealing with Historic Preservation/ Environmental Protection (UMTA Circular 5620.1).

(9) Status of attempts to utilize FHWA Federal Aid Urban Systems (FAUS) funds as well as resources available from HUD, EDA and other Federal agencies to finance components of the project.

(10) Financial pro formas establishing the value of the private investment, and the need for Federal participation are to be submitted for new private sector development proposed as part of the project.

(b) All forms, and the format for submitting data are available from the UMTA regional offices.

(c) In order to be eligible for consideration during the two selection periods, preapplication data must be submitted to the UMTA Regional Office, prior to September 15 for the December 31 announcement and prior to February 15 for the May 31 announcement.

(d) Letters of No Prejudice will not be issued during the preapplication phase of the selection process.

§ 642.73 Application procedures.

(a) Each applicant shall meet all standard Section 3 discretionary capital grant requirements before a grant can be awarded.

(b) Each applicant shall—

(1) Comply with the following regarding Civil Rights:

(i) UMTA Circular 1160.1 "Guidelines for Title VI Information Specific to UMTA Program", dated December 30, 1977.

(ii) UMTA Circular 1155.1 "UMTA Equal Employment Opportunity Policy and Requirements for Grant Recipients", dated December 30, 1977.

(iii) 49 CFR Part 23, "Participation by Minority Business Enterprise in Department of Transportation Programs".

(iv) 49 CFR Part 27, "Nondiscrimination on the basis of handicap in Federally-Assisted Programs and Activities Receiving or Benefitting from Federal Financial Assistance".

(2) Comply with the provisions of 23 CFR Part 450, Subpart C requiring that proposed projects be incorporated into the Annual Element of the local Transportation Improvement Program (TIP) in order to be considered eligible for funding;

(3) Possess adequate local public and private funds to assure implementation. Anticipated local public and private commitment must be identified in the application;

(4) Develop an Employment Plan;

(5) Sign a labor protection agreement meeting the provision of Section 13(c) of the Urban Mass Transportation Act;

(6) Secure OMB Circular A–95 clearance, addressing comments if appropriate; and

(7) Provide sufficient data to satisfy UMTA environmental impact and historic preservation requirements.

(c) The Section 3 application with supporting requirements must be completed within 90 days after fund reservation. If it is determined that an applicant cannot meet program requirements by the end of the fiscal year for which the funds are reserved, the reservation will be withdrawn, and funds programed for another project.

§ 642.75 Post Grant Activities.

Subsequent to grant award, grantees shall submit quarterly progress reports as to the status of project implementation, and the steps being taken to ensure that the project, when completed, achieves the objectives of the President's Urban Policy.

Appendix A—Policy Objectives

The objectives of the President's Urban Policy Statement are as follows:

1. Encourage and support efforts to improve local planning and management capacity, and the effectiveness of existing Federal programs by coordinating these programs, simplifying planning requirements, reorienting resources, and reducing paperwork.

2. Encourage States to become partners in assisting urban areas.

3. Stimulate greater involvement by neighborhood organizations and voluntary associations.

4. Provide fiscal relief to the most financially hardpressed communities.

5. Provide strong incentives to attract increased private investment in distressed communities.

6. Provide increased employment opportunities, primarily in the private sector, for the long-term unemployed and disadvantaged in urban areas.

(7) Increase access to opportunities for those disadvantaged by a history of discrimination.

(8) Expand and improve social and health services to disadvantaged people in cities, counties, and other communities.

(9) Improve the urban physical environment and the cultural and aesthetic aspects of urban life.

Appendix B—Interagency Agreement Between the Urban Mass Transportation Administration of the Department of Transportation and the Employment and Training Administration of the Department of Labor

I. Purpose

In an effort to effectively implement the Interagency Coordinating Council's Employment Initiatives, this agreement specifies the process by which the Employment and Training Administration (ETA) of the Department of Labor (DOL) and the Urban Mass Transportation Administration (UMTA) of the Department of Transportation (DOT) will coordinate their activities to ensure that the maximum feasible number of jobs created by UMTA's Urban Initiatives Program go to the long-term unemployed. For purposes of this agreement, "long-term unemployed" is defined as persons who are eligible to obtain assistance under the Comprehensive Employment and Training Act (CETA).

II. Scope

In order to accomplish the purpose of this agreement, the provisions set forth herein relate to: (1) Specific employment goals to be established by UMTA with respect to the long term unemployed; (2) operational procedures to be used by UMTA and ETA in achieving these employment goals; (3) reporting and monitoring; and (4) provision for technical assistance and training to facilitate placing long term unemployed in permanent jobs created by federally assisted mass transportation projects.

III. Employment and Goals

Consistent with the President's national urban policy to stimulate private investments as well as increase employment opportunities in urban areas, the Urban Mass Transportation Administration, in consultation with the Employment and Training Administration, agrees to the following provisions:

(1) As a fiscal 1980 goal, 10–15% of the permanent jobs created by its Urban Initiatives Program will be filled by the long term unemployed.

(2) By no later than September 1 of each year, in conjunction with the Employment and Training Administration, UMTA will review the current annual employment goal and experience, and establish its goal for the next fiscal year no later than September 20.

IV. Operational Procedures

A. UMTA

To achieve the employment goal that has been established for FY 1980 as well as those of succeeding years, UMTA will institute the following operational procedures relative to the Urban Initiatives Program:

1. *Provide ETA with List of Employment Initiatives Coordinators*—UMTA will provide each ETA Regional Administrator with the names, addresses and telephone numbers of the UMTA Employment Initiatives Coordinators in the respective region.

2. *Certification of Intent to Establish Project Employment Goals*—Applicants seeking assistance under UMTA's Urban Initiatives Program will, as a criterion of participation, be expected to make a certification at the preapplication stage (project data sheet submission) that if new, permanent jobs result from such support, 10–15% will be earmarked for CETA eligible persons.

UMTA will review the preapplication data to determine if new permanent jobs will be created as a result of the project. UMTA's Regional Employment Initiatives Coordinator will also notify the relevant ETA Regional Employment Initiatives Coordinator of the project and its estimated employment impacts. The ETA representative will be invited to provide comments as to the viability of projects' employment generating possibilities and their potential impact on local unemployment. ETA comments, when provided, will be incorporated into the preapplication data to be considered during project review and evaluation. UMTA will review the applicant's certification in addition to other project support data in making its determination as to which projects to advance to the final application stage.

3. *Initiate Consultation*—Upon notifying an applicant to prepare a final application, the applicant working in conjunction with the UMTA Employment Initiative Coordinator, will develop an employment plan and initiate formal consultation with a CETA prime sponsor or other employment/training provider. UMTA will advise its applicant to consult first with the CETA prime sponsor. This consultation is

expected to continue as required, throughout the application, project funding, and implementation stages.

4. *Employment Plan*—Applicants from whom UMTA elects to solicit final applications for Urban Initiatives assistance will be required to prepare an employment plan when new permanent jobs will be created. If an employment plan is not appropriate, an explanation of why it is not must be submitted with the application. The employment plan shall include the following elements:

a. The total number and titles (and/or description) of jobs to be created by the project.

b. The goals for the total number, specific titles, and timing of jobs to be made available to CETA eligible persons.

c. The skill requirements for the jobs that are being made available to CETA eligible persons.

d. The linkage process:

i. Name of the CETA prime sponsor or other employment/training provider who is assisting the applicant in developing and implementing this employment plan. (Including name of responsible person, address, and telephone number.)

ii. Identification of any employment and training programs to be applied to preparing and/or referring qualified persons to available jobs. Indication of how they will be used and any special conditions required by the employer (e.g., number of referrals per vacancy to be filled, timing of referrals).

iii. Identification of the roles and responsibilities of the participants in the employment plan (i.e., UMTA applicant; UMTA beneficiary, if different from applicant; CETA prime sponsor or other employment and training provider; and local transit agency, if not the applicant).

iv. Indication of the procedure and schedule for implementing the employment plan.

v. Providing the signatures of persons or agency representatives party to the employment plan (i.e., UMTA beneficiary, if different from applicant; CETA prime sponsor or other employment and training provider; and local transit agency, if not the applicant).

5. *Contingent Project Approvals*—If the applicant certifies that the project will conform to program employment goals, but is unable to complete an employment plan by the time of scheduled grant award, UMTA may elect to approve the project contingent upon subsequent receipt of a satisfactory plan. Contract language will be included however, which would withhold construction funds until an employment plan acceptable to UMTA is provided.

UMTA may elect to award architectural and engineering funds in order to assess feasibility of a project prior to concurring in an employment plan: *Provided*, The project sponsor certifies that new permanent jobs resulting from subsequent Urban Initiatives construction funding will be consistent with the program employment goals.

6. *Notification*—Upon approval of a project which includes or will include an employment plan, UMTA in conjunction with its grantee, will notify the CETA prime sponsor or other employment/training provider signatory to the employment plan, as well as the ETA Employment Initiatives Coordinator.

7. *Certification of Eligibility*—UMTA and its grantee will provide the information necessary to assist the CETA prime sponsors and the ETA delivery system in certifying the eligibility of persons who may be eligible for CETA assistance but are not CETA participants when such persons are to fill new and permanent jobs resulting from UMTA's Urban Initiatives projects.

8. *Identifying Alternate Employment/Training Provider*—When the local prime sponsor is unable to assist UMTA's staff and applicant in developing and implementing an employment plan, the UMTA staff may call upon the ETA Employment Initiatives Coordinator to discuss an alternate employment/training provider who might provide the necessary services.

B. ETA

The Employment and Training Administration recognizes that linking its employment and training programs with UMTA's Urban Initiatives Program can result in increased permanent employment opportunities for CETA eligible persons and agrees to facilitate this linkage by taking the lead in coordination of several activities.

1. *Provide UMTA with List of Prime Sponsors*—The Employment and Training Administration will provide each UMTA Regional Administrator with an updated list of CETA prime sponsor directors and regional ETA Employment Initiatives Coordinators along with their telephone numbers and addresses.

2. *Staff*—ETA will require each Regional Administrator and prime sponsor to identify an Employment Initiatives Coordinator to assume responsibility for coordinating activities related to the Employment Initiatives. To the extent possible, personnel assigned these functions at the Federal and local levels should be the same staff that has been assigned to the Private Sector Initiatives Program.

3. *Responsibilities of Employment Initiatives Coordinators*—The designated Employment Initiatives Coordinators (EIC) assigned to coordinate activities related to the Employment Initiatives in each of the regions by ETA and at the local level by prime sponsors will assist UMTA's staff and applicants in developing and implementing the employment plan delineated above. The Employment Initiatives Coordinators will also be responsible, at their respective levels, for consulting with the UMTA Employment Initiatives Coordinators to determine the status of a project so that they can initiate required CETA activities (e.g. employment, training, recruiting, screening, referral and counseling services) in a timely fashion, to place CETA eligible persons in permanent jobs created by UMTA's Urban Initiatives Program.

4. *Identifying Alternate Employment/Training Provider*—When the local prime sponsor is unable to assist UMTA's staff and applicants in developing and implementing an employment plan, ETA's Employment Initiatives Coordinator will assist in identifying an alternate employment/provider who might provide the necessary services.

5. *Assist UMTA in Describing CETA Programs and Participants*—Consistent with available funds, ETA will assist UMTA in involving its applicants in employment/training programs by jointly developing and publishing information packets geared to the private sector, focusing on the availability and benefits of employment/training resources, including various tax credits.

6. *Certification of Eligibility*—Prime sponsors and the ETA delivery system, working with UMTA and its funds recipients, will certify the eligibility of persons who fill new and permanent jobs resulting from UMTA's Urban Initiatives projects.

V. Reporting/Monitoring

In order to keep the Interagency Coordinating Council (IACC), the Office of Management and Budget (OMB), and each of the participating agencies informed of the progress in achieving the goals of this agreement, UMTA and ETA agree to the following reporting/monitoring provisions:

A. Effective April 1, 1980, and on a semi-annual basis thereafter (October 1 and April 1), UMTA will submit reports to OMB. These reports shall include the

total number of projects funded for the six-month and annual periods, the federal dollars committed, the number of permanent jobs anticipated, the total number of actual jobs created, and the number/percentage of jobs to be filled by CETA eligible persons.

B. Effective April 1, 1980, and on a semi-annual basis thereafter (October 1 and April 1), ETA will submit reports to OMB. These reports shall include the total number of employment plans that prime sponsors and the ETA delivery system have entered into with UMTA and is grantees, the total number of jobs projected for the long term unemployed, and the total number of persons actually placed in jobs created by UMTA's Urban Initiatives Program.

VI. Technical Assistance

To facilitate and promote the placement of CETA eligible persons in permanent jobs resulting from UMTA assistance, both ETA and UMTA agree to provide the following technical assistance:

A. Whenever necessary, the agencies will brief each other's staff on programmatic and/or procedural changes affecting the implementation of the Employment Initiatives.

B. Jointly develop and publish promotional information on the placement of CETA eligible persons in permanent jobs created by UMTA investments.

C. As necessary, jointly conduct interagency workshops/seminars related to the Employment Initiatives, assessing experiences and focusing on techniques and strategies to be used to more effectively implement the Employment Initiatives.

VII. Duration

This agreement shall remain in effect through November 1, 1982. ETA and UMTA will, however, jointly review the provisions herein on an annual basis (prior to September 30) in order to make any necessary modifications. The operational procedures that are being utilized by UMTA and ETA to achieve UMTA's employment goal will be given particular attention during the annual review.

Appendix C—Timing and Degree of Public and Private Commitments for Joint Development Projects:

Joint development project negotiations typically progress through the following stages:

Stage 1. Executing letters of intent between local public agencies, developers, and financial institutions.

Stage 2. Executing development contracts, financing agreements and securing building permits.

Stage 3. Executing construction contracts.

UMTA's commitment to fund the project will depend on the stage of local negotiations. If the applicant has not progressed to Stage 2, UMTA would be reluctant to make a commitment to participate in the project. This will not preclude UMTA from making grants for preliminary engineering, design, appraisals and other analyses, which will allow costs to be more accurately defined. At Stage 1, UMTA may award a grant, or set aside funds for the project pending completion of final negotiations and grant approval requirements. At Stage 2 and/or 3, the local commitment would be sufficiently secure to allow UMTA to award a grant. However, the timing and degree of mutual commitments will be adjusted to reflect the needs of particular situations.

Appendix D—Project Application Review and Selection Process:

A.

The Urban Mass Transportation Administration will announce grant fund reservations for Urban Initiatives projects bi-annually based on preapplications received and evaluated. The first announcement will be made no later than December 31, and the second announcement no later than May 31. Additional announcements may be made if selected projects prove unable to meet Section 3 program requirements or additional program funds become available. Fund reservations will be made based upon a preapplication submission.

B. Preapplication Review

(1) The project sponsor will be sent a letter from the UMTA Regional Office within the first 15 days of the review period acknowledging receipt of the proposal for processing.

(2) All preapplications will be screened for completeness by the Regional Office before being officially accepted for review.

(a) If the preapplication is incomplete, the UMTA Regional Office will notify the project sponsor of the items needed to complete the preapplication. Consideration of the proposal will, however, be deferred until the next review period.

(b) Complete preapplications will be assessed to establish the proposal's eligibility for funding under the Urban Initiatives Program. The Regional Office will notify applicants if the project is eligible for further consideration within 30 days of the beginning of the review period.

(3) All eligible projects will be included in the Urban Initiatives national competition.

C. Selection Process/Fund Reservation

UMTA will make announcement of approvals or reservations no later than December 31 and May 31 respectively.

UMTA will determine which proposals best meet the objectives of the Urban Initiatives Program. Because funds are limited not all eligible projects will be funded.

Applicants will be notified of their proposal's status with the announcements of reservations and approvals:

(1) If a proposal is rejected, the preapplication will be returned with the deficiencies noted.

(2) If a proposal is deferred for lack of sufficient supporting data, the applicant will be advised to work with the Regional Office to provide the necessary data. These proposals will be reconsidered in the following review period if the applicant satisfies all deficiencies noted.

(3) Should lack of sufficient Urban Initiatives funds be cited as the reason for deferral, the proposal will automatically be reconsidered in one additional round of review.

(4) If a proposal is accepted, and a fund reservation made, the applicant will be notified to work with the Regional Office to develop a final application.

UMTA will announce a reservation of funds for those proposals which have been selected as part of the Urban Initiatives Program national competition. The action will set aside a specified sum of Urban Initiatives funds to be made available to the project sponsor upon satisfactorily fulfilling the requirements for a Section 3 discretionary capital grant.

If a project application cannot satisfactorily meet Section 3 program requirements by September 30 of the fiscal year in which the reservation is made, funds will be withdrawn. Projects for which funds have been withdrawn are automatically reconsidered as part of the national competition in the next two review periods. If it is determined that significant program requirements are not or cannot be met within this time, the application will be withdrawn and returned to the project sponsor.

D. Grant Award

UMTA will make grants no later than the last day of the fiscal year. The applicant will be notified in writing of grant award and will receive

appropriate contract documents from the UMTA Regional Office.

E. UMTA Regional Offices

Region I: Donald Sullivan, Acting Regional Administrator, Transportation Systems Center, Kendall Square, 55 Broadway, Cambridge, MA 02142, Tel: (617) 494–2055.
Region II: Hiram Walker, Regional Administrator, Suite 14–130, 26 Federal Plaza, New York, NY 10007, Tel: (212) 264–8162.
Region III: Peter N. Stowell, Regional Administrator, Suite 1010, 434 Walnut Street, Philadelphia, PA 19106, Tel: (215) 597–8098.
Region IV: Carl Richardson, Acting Regional Administrator, Suite 400, 1720 Peachtree Road, N.W., Atlanta, GA 30309, Tel: (404) 881–3948.
Region V: Joel Ettinger, Regional Administrator, Suite 1740, 300 South Wacker Drive, Chicago, IL 60606, Tel: (312) 353–2789.
Region VI: Glen Ford, Regional Administrator, Suite 9A32, 819 Taylor Street, Fort Worth, TX 76102, Tel: (817) 334–3787.
Region VII: Lee Waddleton, Regional Administrator, Suite 303, 6301 Rock Hill Road, Kansas City, MO 64131, Tel: (816) 926–5053.
Region VIII: Lou Mraz, Regional Administrator, Suite 1822, Prudential Plaza, 1050 17th Street, Denver, CO 80265, Tel: (303) 837–3242.
Region IX: Dee Jacobs, Regional Administrator, Suite 620, Two Embarcadero Center, San Francisco, CA 94111, Tel: (415) 556–2884.
Region X: Aubrey Davis, Regional Administrator, Suite 3142, Federal Building, 915 Second Avenue, Seattle, WA 98174, Tel: (206) 442–4210.

(49 U.S.C. 1602(a)(1)(D) and 1603(c)(1)(B); 49 CFR 1.51)

Dated: January 14, 1981.

Theodore C. Lutz,

Administrator.

[FR Doc. 81–1945 Filed 1–16–81; 8:45 am]
BILLING CODE 4910–57–M

federal register

Monday
January 19, 1981

Part XXXIX

Department of Transportation

Urban Mass Transportation Administration

Technology Introduction Program; Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 641

[Docket No. 81-A]

Technology Introduction Program

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Urban Mass Transportation Administration (UMTA) is proposing regulations governing the applications for and the administration of its Technology Introduction Program. This program will provide grants or loans to assist States and local public bodies and agencies to finance the introduction of both innovative and improved products into public transportation service.

DATE: Comments must be received on or before March 20, 1981. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. Comments received after the expiration of the comment period will be considered to the extent feasible.

ADDRESS: Comments must be submitted to UMTA Docket No. 81–A, 400 7th Street, SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination in room 9320 at the above address between 8:30 a.m. and 5:00 p.m., Monday through Friday. Receipt of comments will be acknowledged by UMTA if a self-addressed, stamped postcard is included with each comment.

FOR FURTHER INFORMATION CONTACT: Robert Haught, Office of Safety and Product Qualification, (202) 426–9545.

SUPPLEMENTARY INFORMATION: UMTA has determined that this document does not contain a significant proposal according to the criteria established by the Department of Transportation's policies and procedures issued pursuant to E.O. 12044. The anticipated economic impact is so minimal as not to require the preparation of a full regulatory evaluation at this time. Based on comments received in response to this rulemaking, UMTA will review the need for a regulatory evaluation in conjunction with the preparation of a final rule.

UMTA believes that this document may have an impact on small private mass transportation companies and other small businesses. UMTA, therefore, requests comment on this issue.

The provisions of OMB Circular A–95 apply to this Notice of Proposed Rulemaking. It covers the following program in the Catalog of Federal Domestic Assistance (CFDA), 20.500—Urban Mass Transportation Capital Grants.

Background

Section 3(a)(1)(C) of the Urban Mass Transportation Act of 1964, as amended, (49 U.S.C. 1602 (a)(1)(C)), (UMT Act) authorizes the Secretary of the Department of Transportation, "to make grants or loans * * * to assist States and local public bodies and agencies thereof in financing * * * the introduction into public transportation service of new technology in the form of innovative and improved products." The purpose of the proposed regulations is to prescribe the policies and procedures for administering this grant program.

UMTA's specific objective in financing new technology is to encourage transit suppliers to produce and transit operators to adopt innovations and improved products that will:

(a) Provide societal benefits such as energy conservation, environmental protection, or central city revitalization;

(b) Provide consumer benefits that make urban transit more attractive to potential transit users and to transit users, including the elderly and the handicapped;

(c) Reduce transportation life cycle costs; and/or

(d) Improve the competitive position of the domestic transit suppliers' industry.

To meet this objective, UMTA will provide financial assistance to grantees to purchase limited production quantities of new products. UMTA has determined that there is often a gap between the end of the research and development process of a product, which merely proves technical and engineering feasibility, and transit industry acceptance of that product. UMTA hopes to bridge this gap by providing financial assistance to purchase products. The successful performance in revenue service of new products should enhance the grantees' confidence in the new products and provide a sound and valid empirical basis for cost effectiveness tradeoffs in transit equipment selection decisions. Extraordinary project costs, which are not eligible for reimbursement under UMTA capital grant funds, may be funded using Section 6 funds.

UMTA encourages potential grantees to seek financial assistance under the Technology Introduction Program for improved facilities, equipment, techniques, and methods in the provision of mass transportation service. UMTA will consider applications for funding under this program for any promising innovations or product improvement. The following innovations and improved products have been developed in the past or are being developed with UMTA funds and would be considered to qualify for funding under the Technology Introduction Program. Position within the list does not indicate priority.

Product Improvements

1. Noise Kit for Buses.
2. Paratransit Vehicles.
3. Escalator Modification Kits.
4. Ring-Damped Wheels.
5. New Engines for Buses.
6. New Brakes for Buses.
7. Multiplexing.
8. Modular Air Conditioning.
9. Improved Doors.
10. Off-Vehicle Fare Collection.
11. Wheelchair Lifts.
12. Snow Removal Equipment.
13. Track Geometry Measurement System.
14. Automated Transit Information System (for telephone inquires).
15. Screw-Type Elevators/other unconventional Elevators.
16. Gap-Fillers between Rail Vehicle and Loading Platform.

Major Innovations.

1. Tunnel Construction Machines.
2. Energy Storage Flywheels.
3. Steerable Trucks.
4. AC Propulsion.
5. Static Inverter.

Project Schedule

The project selection and approval process for the Technology Introduction Program shall consist of eight phases: Proposal solicitation; proposal submission; proposal evaluation and ranking; grant budget planning; notification to potential grantees; grant application; grant approval; and grant management.

The schedule which UMTA proposes to follow in administering the Technology Introduction Program is:

Phase	Month/Calendar Year
Proposal Solicitation	October/X.
Proposal Submission	December/X.
Proposal Evaluation	February/X+1.
Grant Budget Planning (for two years beyond year X).	March/X+1.
Notification to Potential Grantees	October/X+1.
Grant Application	During X+1.
Grant Approval	X+1.

Until the proposed procedures and schedule become final, however, UMTA will consider grants for new technology deployment on a case-by-case basis using the intent of the proposed regulation as guidance. Potential grantees for Fiscal Year 1981 funds are requested to submit their proposals, as

soon as possible, in accordance with the procedures described in § 641.503. The December 1 deadline in § 641.503 for proposal submission will not be applicable until the rule becomes final.

In consideration of the foregoing it is proposed that a new Part 641 be added to Title 49 of the Code of Federal Regulations to read:

PART 641—TECHNOLOGY INTRODUCTION PROGRAM

Subpart A—Purpose and Definitions

Sec.

641.101 Purpose.
641.103 Definitions.

Subpart B—General Requirements

641.301 Eligible project expenditures.
641.303 Test and acceptance.
641.305 Recoupment of extraordinary costs.
641.307 Recoupment provisions.
641.309 Patents, inventions and rights in data.
641.311 Special contract clauses.
641.313 Civil rights act title VI responsibilities.
641.315 Equal employment opportunity.
641.317 Minority business enterprise obligation.
641.319 Compliance with regulations concerning handicapped individuals.
641.321 Environmental requirements.
641.323 Labor protection requirements.
641.325 Local share.
641.327 Public hearing.
641.329 Charter bus/school bus.
641.331 Planning.
641.333 Capability.

Subpart C—Project Selection, Approval and Management

641.501 Proposal solicitation.
641.503 Proposal submission..
641.505 Private mass transportation companies.
641.507 Proposal evaluation and ranking.
641.509 Criteria to be used for proposal evaluation.
641.511 Notification to potential grantees.
641.513 Grant application and approval.
641.515 Grant management.
641.517 Project evaluation and information dissemination.

Authority: Sec. 3(a)(1)(C) of the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1602(a)(1)(C); and 49 CFR 1.51(a).

Subpart A—Purpose and Definitions

§ 641.101 Purpose.

This part prescribes the Urban Mass Transportation Administration's policies and procedures for administering the Technology Introduction Program, which provides grants for projects using innovative and improved products in the management and operation of public transportation systems.

§ 641.103 Definitions.

(a) Capital grants. UMTA capital assistance projects are referred to in this regulation as capital grants, whether the assistance instrument is a grant, cooperative agreement or loan.

(b) Grantee refers to the recipient of an UMTA grant, cooperative agreement or loan intended to assist with new product introduction, whether funded solely from Section 3(a)(1)(C) or jointly from 3(a)(1)(C) and Section 6.

(c) Product improvements are those incremental new developments and modifications of existing technology which are incorporated into standard or commercially available transportation equipment, software or services, as a normal part of product upgrading, reflecting purchaser demands or advantages which accrue to suppliers or users. Product improvements have minor effects on other components or subsystems within the assembled systems.

(d) Major Innovations are new technologies, service improvements or software which are significantly different from existing products, components or subsystems in operational service. Major innovations affect or alter the operational characteristics of other components or subsystems within the assembled system.

(e) Section 3(a)(1)(C) grants are capital assistance projects which, in addition to meeting all the usual requirements, terms, and conditions for assistance under Section 3 of the Urban Mass Transportation Act, are subject to technical control and direction by the Office of Technology Development and Deployment.

(f) Extraordinary project costs are costs, incurred by the grantee or UMTA, which UMTA determines to be necessary to the successful conduct of a technology introduction project. Extraordinary project costs are not normally eligible for reimbursement under the terms of an UMTA capital grant because of policy or administrative restrictions. Extraordinary project costs, when deemed appropriate by UMTA, will be funded from Section 6 money.

(g) UMT Act. The Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1601 *et seq.*

Subpart B—General Requirements

§ 641.301 Eligible product expenditures.

(a) Discretionary capital grant assistance under the 3(a)(1)(C) program may be used for improved facilities, equipment, techniques, and methods in the provision of mass transportation service.

(b) Funding for this program will be used for appropriate technology introduction only when:

(1) The technology has reached a state suitable, per paragraph 641.303, for introduction or application in providing public transportation service;

(2) Potential benefits to the grantee have been identified; and

(3) The grantee has demonstrated that a public agency has agreed to assume the local share and attendant risks associated with the introduction of new technology.

§ 641.303 Tests and acceptance.

(a) Technology introduction for either product improvements or major innovations must meet the following tests in order to be funded as part of an UMTA capital assistance project:

(1) To be acceptable for 3(a)(1)(C) grants, new products must have successfully completed engineering and prototype testing for each component (subsystem) and for the assembled product (system). Required testing is limited to those factors which are likely to be affected by these improvements.

(2) All such improvements must have been successfully tested in their operational environment using at least prototypes on a limited scale.

(b) In addition to those requirements in paragraph (a) of this section, a field demonstration must be conducted for major innovations to establish the utility, economic feasibility, and, where applicable, the public acceptance of the product.

(c) Grantees may mandate certain tests as a condition of acceptance of the product. The cost of testing may be reflected in both the grantee's grant application and grant proposal.

(d) Grantees are responsible for asuring UMTA that tests under paragraph (a) and (b) of this section have been conducted. As a basic requirement for projects selected for Section 3(a)(1)(C) funding assistance, grantees must assure UMTA that manufacturers have conducted adequate engineering and pre-production tests of subsystems and of the fully assembled systems and will demonstrate/document this to purchasers. UMTA reserves the right to concur with any test plan prior to approval of the Section 3(a)(1)(C) application.

(e) Where the national importance of the innovation warrants, UMTA may decide that capital assistance funds may be made available to purchase facilities and equipment for the field trials and limited operational tests indicated in paragraphs (a)(2) and (b) of this section.

Facilities and equipment purchased under this clause must still meet those requirements indicated in paragraph (a)(1) of this section.

§ 641.305 Recoupment of extraordinary costs.

In those instances where the Government has contributed financial assistance for the research and development of new technology, UMTA will determine whether a special competitive advantage in the private commercial or international market is likely to accrue to the supplier of a newly introduced product or technology assisted under this program. If so, UMTA may, in its discretion, recommend that the grant document contain special terms and conditions by means of which extraordinary project costs to UMTA or the grantee may be recovered, in whole or in a part, through reimbursement by the supplier from profits derived from future sales revenues (e.g., pro-rated on the basis of a fixed amount per unit sold). The following considerations will be reflected in UMTA's administration of this policy:

(a) Royalties will not be required unless the commercial product developed under the contract is profitably sold.

(b) Royalties will cease when the Federal Government's investment in the development is reimbursed.

(c) Royalties will not be so high as to price the product out of the market.

§ 641.307 Recoupment provisions.

If UMTA determines that the grantee is likely to bear a substantial share of extraordinary project costs, any recoupment from the supplier of such costs, pursuant to § 641.305 of this part, may be deemed to reduce the net project cost of the capital grant for product introduction. If, however, extraordinary project costs are expected to be borne entirely by the Government, the terms of the supplier's third-party contract may require that a pro-rated amount of future revenues derived from commercial sales of the new product may be reimbursed directly to UMTA, not to exceed the initial level of Government financial participation.

§ 641.309 Patents, inventions, and rights in data.

Although the primary purpose of this program is to foster the introduction of already developed projects into public transportation service, capital grant projects for new product or technology introduction may, directly or indirectly, provide Federal support for additional research and product development which produces patents, inventions or data to which the Federal Government may have rights.

§ 641.311 Special contract clauses.

UMTA reserves the right to draft appropriate special clauses, for use in third-party contracts with suppliers of new products, that may be needed to provide for recoupment of extraordinary project costs or for securing the government's rights to patents, inventions, and data.

§ 641.313 Civil Rights Act Title VI responsibilities.

The grantee shall administer its Technology Introduction Program in such a manner as to assure that no person in the United States shall, on the grounds of race, color, sex, or national origin be excluded from the participation in, be denied the benefits of, or otherwise be subjected to discrimination under the program. The requirements concerning Title VI responsibilities are in Part 21 of this Title.

§ 641.315 Equal employment opportunity.

Grant recipients shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin according to UMTA Circular 1155.1.

§ 641.317 Minority business enterprise obligation.

That grant recipient shall administer its Technology Introduction Program in such a manner as to assure that minority business enterprises as defined in Part 23 of this Title have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds under this program. In this regard all grant recipients shall take all necessary and reasonable steps in accordance with Part 23 of this Title to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Grant recipients and their contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of Department of Transportation assisted contracts.

§ 641.319 Compliance with regulations concerning handicapped individuals.

The grant recipient shall administer its Technology Introduction Program in such a manner as to assure that no otherwise qualified handicapped individual shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under the program. The regulations governing non-discrimination on the basis of handicap are in Part 27 of this Title.

§ 641.321 Environmental requirements.

For each project selected for funding by UMTA and prior to the obligation of any program funds, the applicant must comply with the environmental procedures described in Part 622 of this Title.

§ 641.323 Labor protection requirements.

(a) Each applicant shall make fair and equitable arrangements to protect the interest of employees affected by an UMTA grant, as required by Section 13(c) of the UMT Act.

(b) Section 13(c) of the UMT Act is administered by the Department of Labor in accordance with guidelines published in 29 CFR Part 215. Section 215.2 of the guidelines sets out the information that must be included in a grant application.

(c) Each application must contain information to assist the Secretary of Labor in certifying that fair and equitable arrangements have been made to protect affected employees. Such information must include the names and addresses of labor unions representing employees of the transit systems to be assisted and any other transportation systems to be affected.

(d) The grant agreement will specify the terms and conditions of the arrangements, as certified by the Secretary of Labor.

641.325 Local Share.

UMTA must be assured by the applicant that at least 20 percent of net project cost is or will be available in a form and derived from sources satisfactory to UMTA.

641.327 Public Hearing Requirement.

(a) After a potential grantee has been invited to submit an application pursuant to § 641.513 of this part, each potential grantee must provide the opportunity for a hearing by publishing a notice that a hearing will be held if a written request for a hearing is received.

(b) Each potential grantee must provide the public at least thirty days to request a public hearing.

(c) If a written request for a hearing is received by a potential grantee after publication of the notice required by paragraph (a), the potential grantee must hold a hearing.

(d) Each notice must be published in a newspaper of general circulation, including newspapers oriented to the minority community, in the proposed service area of the proposal.

(f) Each notice required by paragraph (a) of this section must describe the proposed project in detail sufficient to inform the public of the following:

(1) The name of the potential grantee.

(2) The location or service area of the proposed project.

(3) A description of the proposed project.

(g) Each notice must indicate—

(1) That views of interested parties may be submitted orally or in writing at the hearing.

(2) That a copy of the application and the transcript, if a hearing is held, is available for public inspection, and state the location where the copies are available.

(3) That any person interested in having a public hearing held must request the hearing in writing.

(4) That if any written request is received, a hearing will be held.

(5) The name of the person and the address to which the written request must be sent.

(6) The deadline for submission of request (at least thirty days after publication of the notice).

(h) If a written request for a public hearing is received, a notice containing the subject, date, and location of the hearing must be published at least twice in newspapers of general circulation in the proposed service area of the proposal, including newspapers oriented to the minority community. The first notice must be published at least 30 days before the date of the hearing. The second notice may be published at any time preceding the hearing.

(i) At the hearing, interested persons may submit evidence and recommendations in writing or orally with respect to the proposed projects.

(j) If a public hearing is held, the applicant must assure that—

(1) A transcript of the hearing is made;

(2) The transcript is kept on file; and

(3) The transcript is available for public inspection. (The transcript may be an electronic tape recording.)

(k) Each potential grantee must submit a certified copy of the transcript of a hearing if held, with its application. If no hearing is held, each potential grantee must submit a certified copy of the notice required by paragraph (a) of this section with its application.

(l) If UMTA determines that the notice of intent to hold a public hearing or the public hearing itself (if held) was inadequate to give interested parties an adequate opportunity to present their views with regard to the proposed project, UMTA may require the applicant to publish an additional notice or to conduct an additional hearing.

641.329 Charter bus/School bus.

No recipient may engage in charter or school bus operations using financial assistance provided under this part except as may be allowed by Section 3(f) and (g) of the UMT Act or the implementing regulations in 49 CFR Parts 604 and 605.

641.331 Planning.

The planning requirements of Section 8 of the UMT Act and the Planning Assistance and Standards regulations pertaining to the transportation improvement program and other matters at 49 CFR Part 613 must be met prior to grant award.

641.333 Capability.

The Grantee must demonstrate to UMTA that it has or will have—

(a) The legal, financial, and technical capacity to carry out the proposed project; and

(b) Satisfactory continuing control, through operation or lease or otherwise, over the use of the project equipment or facilities.

Subpart C—Project Selection, Approval, and Management

§ 641.501 Proposal solicitation.

At the start of each fiscal year, the UMTA Administrator will request project proposals for this program.

§ 641.503 Proposal submission.

Potential grantees must submit proposals to the appropriate UMTA regional offices with a copy to the Associate Administrator for Technology Development and Deployment (UTD–1), UMTA Headquarters, Washington, D.C., *no later than December 1.* Proposals shall contain anticipated costs and approximately two pages of technical description. In addition, the proposals shall verify that the candidate technology has met the requirement outlined in § 641.303 of this part.

§ 641.505 Private mass transportation companies.

If the Technology Introduction Program will be used to provide, by contract or otherwise, for the operation of mass transportation facilities or equipment in competition with, or supplementary to, the service provided by an existing private mass transportation company, the proposal must contain sufficient information to permit the UMTA Administrator to find that the assistance is essential to the Transportation Improvement Program (TIP) and that such a project, to the maximum extent feasible, provides for the participation of private mass transportation companies. This information must include:

(a) A description of the nature and the extent of the competitive or supplemental public and private mass transportation services;

(b) An explanation of why the operation assistance is essential to the program of projects in the TIP; and

(c) A description of the extent to which private mass transportation companies in the urbanized area participate in the program of projects in the TIP.

§ 641.507 Proposal evaluation and ranking.

All proposals will be evaluated and ranked by February 1.

§ 641.509 Criteria to be used for proposal evaluation.

Proposal evaluation shall be based on:

(a) Expected and identified benefits of the new products in terms of improving public transportation service and productivity, reducing the total cost of such service, and/or meeting national objectives (such as energy conservation, revitalizing urban centers or improved accessibility of public transportation for handicapped persons);

(b) Suitability of the project for capital funding in terms of technological risks associated with delivering a product acceptable for routine use in transit operations;

(c) Degree to which Federal sponsorship and financial participation of initial deployment of the new product is necessary because of technical or market risks or lack of available private venture capital sufficient to fund initial operational deployment;

(d) Evidence of support for the proposed project by transit operating bodies, potential supplier(s) and potential users of the new or improved product;

(e) Estimated cost of the project (including level of grantee or private participation), whether to be incurred by UMTA and/or the prospective grantee, in proportion to expected benefits and available discretionary capital assistance funding;

(f) Likelihood that the supplier(s) will market the new product to the public transportation industry assuming the project succeeds in establishing its benefits;

(g) Management and technical capability of prospective grantee to successfully conduct and administer the project;

(h) Plans for full implementation of technology by a property if project is successful;

(i) Potential for industry-wide utilization if project is successful; and

(j) The extent to which provision has been made to involve private mass transportation companies.

§ 641.511 Notification to potential grantees.

After the proposals have been evaluated and ranked, the appropriate regional office shall notify a potential grantee of the selected projects. The grantee must update its transportation improvement plan at this time to include the proposed projects.

§ 641.513 Grant application and approval.

(a) After notification of proposal selection the regional office will assist a potential grantee in preparation of a Technology Introduction Program grant application in accordance with the normal grant application, UMTA Order 1000.2, Application Instructions for Capital Grant Projects.

(b) In addition, a Section 6 grant application may be requested for extraordinary project costs.

(c) At a minimum, the project description must contain:

(1) A statement of objectives;

(2) A description of proposed project with a statement of the benefits to be derived;

(3) A cost description of proposed project, including

(i) A description of capital costs;

(ii) A description of other costs;

(4) An identification of other participating organizations and their responsibilities;

(5) A statement of commitment or letter of endorsement by other involved organizations, if any;

(6) A commitment of other Federal, State or local funds or programs to share in the cost of the project;

(7) A description of how project will be monitored and evaluated;

(8) A plan for technical review, technical reporting, and problem reporting;

(9) A project time schedule and funding plan;

(10) A technical description of local funding;

(11) Assurances of testing per § 641.303 of this part; and

(12) A cover summary sheet containing the following:

(i) The name, address and telephone number of the applicant agency;

(ii) The contact person responsible for the proposed project;

(iii) The total amount of Federal funds being requested under the program divided into capital costs, operating costs, and monitoring and evaluation costs;

(iv) The amount of funding commitments or participation of other Federal, State or local programs and contributions; and

(v) The duration of service to be provided.

(d) Applicants shall submit their completed application to the appropriate regional office, which will review them for compliance with administrative requirements specified in this Title. Applications will also be reviewed for technical content by the Office for Technology Development and Deployment before the application is approved for Section 3(a)(1)(C) funding.

§ 641.515 Grant management.

The regional offices will be responsible for the overall management of each project, with the exception of technical management. The Office for Technology Development and Deployment (UTD) will be responsible for the technical management of each project.

§ 641.517 Project evaluation and information dissemination.

The Associate Administrator for Technology Development and Deployment is responsible for conducting evaluations of Technology Introduction Projects and for disseminating those evaluations and other information resulting from such projects.

Theodore C. Lutz,

Administrator.

January 14, 1981.

[FR Doc. 81-1946 Filed 1-16-81; 8:45 am]

BILLING CODE 4190-57-M

federal register

Monday,
January 19, 1981

Part XL

Environmental Protection Agency

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Gaseous Emission Regulations for 1985 and Later Model Year Light-Duty Trucks and 1986 and Later Model Year Heavy-Duty Engines

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS-FRL 1699-8]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Gaseous Emission Regulations for 1985 and Later Model Year Light-Duty Trucks and 1986 and Later Model Year Heavy-Duty Engines

AGENCY: Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Clean Act requires EPA to regulate nitrogen oxides (NO_x) emissions from certain light-duty trucks and heavy-duty engines. This Advance Notice requests information and comment on our preliminary analysis and on possible standards. We expect to propose standards, effective for all 1985 and later model year light-duty trucks (LDTs) and 1986 and later model year heavy-duty engines (HDEs).

Section 202(a)(3(A) of the statute (42 U.S.C. 7521(a)(3)(A)) requires a 75 percent reduction in NO_x emissions (compared to uncontrolled levels) from heavy-duty engines, a requirement that would result in a standard of 1.7 grams per brake horsepower-hour (g/BHP-hr). However, our preliminary analysis indicates that it may not be technologically feasible for diesel-powered heavy-duty trucks to meet this standard by 1986. Section 202(a)(3)(C) of the Act pemits EPA to set a different standard if the 75 percent reduction level cannot be reached "without increasing cost or decreasing fuel economy to an unreasonable degree". Since this appears to be the case, we do not expect to propose 1.7 g/BHP-hr for heavy-duty engines. We are requesting information to help us choose a more feasible standard and to develop a public record to support it.

This Advance Notice also contains a discussion of changes to the HDE and LDT certification processes that we expect to propose with new NO_x standards in the summer of 1981. These include the following: An in-use durability program similar to the one proposed as a part of the 1984 HC and CO rulemakings; a provision requiring manufacturers to show a "reasonable likelihood" that in-use maintenance will be performed on key emission-related components; and minimum maintenance intervals for electronic engine controls. We are requesting comment on the draft regulations embodying these concepts.

DATES: EPA will hold a public hearing on this Advance Notice approximately 30 days after the date of publication. The time and place of the hearing will be announced later by a hearing notice published in the **Federal Register.**

ADDRESSES: Comments should be submitted (4 copies if possible) to: Central Docket Section (A-130), Environmental Protection Agency, Attn: Docket No. A-80-31, 401 M St. SW, Washington, D.C. 20460.

Docket No. A-80-31 also contains supporting material relevant to this rulemaking, and is located in the U.S. Environmental Protection Agency, Central Docket Section, West Tower Lobby, Gallery I, 401 M St., S.W., Washington, D.C. The docket may be inspected between 8 a.m. and 4 p.m. on weekdays, and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Tad Wysor, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668-4497.

SUPPLEMENTARY INFORMATION:

I. Introduction

Initially, we did not plan to issue an Advanced Notice of Proposed Rulemaking (ANPRM) for LDT and HDE NO_x control. An NPRM was prepared and a regulatory analysis performed for a 0.9 gpm standard for light-duty trucks and a 1.7 gpm standard for heavy-duty trucks. However, during the regulatory development process it became apparent that we needed more information to choose and to support appropriate standards. We are issuing this ANPRM announcing our general intentions and requesting information and comment on possible standards. Also included in the ANPRM are certain changes in vehicle certification procedures that the Agency plans to propose.

The discussion and analysis of the economic, environmental and other effects of possible NO_x standards draws heavily on the Draft Regulatory Analysis EPA prepared when we believed we would soon propose truck NO_x standards. Because the Agency is not committed to the standards analyzed in the "Regulatory Analysis," its usefulness is somewhat limited. However, we think that much of the information it contains may be valuable to potential commenters, and are therefore including it (along with a set of draft regulations) in the public docket (referenced earlier).

EPA will consider a number of options in the preparation of a Notice of Proposed Rulemaking. In each of the components of the rulemaking—the standards and their stringency, the revised durability requirements, and the new allowable maintenance provisions—there will be alternatives to consider. Please refer to Chapter VI of the Draft Regulatory Analysis for a more complete discussion of the alternatives.

Under Section 202(a)(3) of the Clean Air Act, EPA is empowered to consider NO_x standards representing a full 75 percent reduction from uncontrolled NO_x levels. However, there are three potential courses of action. First, the standards can be promulgated at that level if they are not changed for feasibility* or health effects reasons pursuant to Sections 202(a)(3)(B) and/or (E). The second path, the one that we expect to follow in this rulemaking, results if there is a feasibility problem, in which case section 202(a)(3)(B) authorizes EPA to promulgate a standard at the level of maximum feasible reduction (assuming an adequate record to support such an action is established). Since we believe there is a feasibility problem for HDDs, we expect to propose a temporary standard under section 202(a)(3)(B) that is less stringent than statutory standard. This course of action is coupled with a requirement to revisit the standard every three years and successively tighten it until the 75 percent reduction is achieved. The third possible scenario relates to the relationship between the level of the standard and the health effects of the pollutant. Under section 202(a)(3)(E), EPA may adjust a standard either up or down to account for effects on public health. Although we expect to follow the second course of action (as indicated above), the choice among these options, and the level of any "revised" standard under option two, will depend largely on the information received in public comments during the rulemaking.

Several other options relating to the stringency of the standards also are available. The disproportionate difficulty which heavy-duty diesel engine manufacturers will experience in meeting the proposed HDE standard compared to HDG engine manufacturers suggests the possibility of two different standards for heavy-duty engines. A second option regarding the standards arises because there are currently two methods of diesel NO_x measurement—bag sampling and direct sampling—and it appears that it may be appropriate to apply to correction factor to the

*"Feasibility" here refers not only to technical aspects but also includes cost, lead time, and fuel economy effects.

standard if direct NO_x measurement is used (since the baseline was based on bagged NO_x sampling). A final option which will be considered involves the issue of whether we should pursue a standard representing equivalent stringency for LDVs and LDTs or whether we must propose a standard based on a mechanical calculation of a 75 percent reduction from the baseline, as will be discussed below in the "Emission Standards" section. All of these options will be considered further as we receive comments. A final alternative that is related to standard stringency, an averaging concept, is being pursued in a separate rulemaking as discussed in Section E below.

We are also considering alternatives to the proposed heavy-duty in-use durability program. Retaining the current dynamometer-based service accumulation procedure is possible but there is considerable agreement (even in the industry) that this method is not realistic. Another option, modifying the dynamometer procedure to be more representative of in-use operation, would cost significantly more than the in-use program we expected to propose. We thus at this time plan to abandon a dynamometer approach in the proposal. An issue paper which goes into some depth on this issue may be found in the public docket for this rulemaking under the title "Heavy-Duty Engine Durability Testing."

The final area in which we have considered alternative paths is allowable maintenance. An issue paper is available from the docket which addresses this issue ("1985 HDV/LDT NO_x NPRM Allowable Maintenance Provisions"). Its conclusion is that an improved version of the regulations proposed in earlier rulemakings (cited above) should be proposed. What we outline here and expect to propose is based heavily on the conclusions of the issue paper.

II. Summary of the ANPRM

While we will continue to consider the options outlined above as well as others that emerge as a result of the information and comments EPA receives as a result of this ANPRM, we nevertheless describe in this ANPRM a more specific program. This program represents our best (if on some points rough) estimate at the present time of what we will be proposing this summer. We believe it is in the interest of responsible rulemaking to lay out this information in as much detail as we have for comment.

This ANPRM announces consideration of a program for implementing (1) the remaining aspects of EPA's direct congressional mandate regarding gaseous emission control for vehicles whose GVWRs (gross vehicle weight ratings) exceed 6,000 lbs., (2) emission standards for light-duty trucks whose GVWRs are 6,000 lbs. or below (these we expect to be the same standards as those proposed for the over-6,000 lbs. GVWR light-duty trucks), (3) changes in the certification process which we proposed earlier in a similar form but did not promulgate, and (4) minor changes to the heavy-duty transient test procedure. This package of anticipated requirements is planned to be another stage in the comprehensive regulatory approach we began in the two recent rulemakings. Following the completion of the heavy-duty nonconformance penalty and diesel particulate rulemakings, most aspects of the LDT and HDE emission control programs will be in place. The following paragraphs detail each of the aspects of this ANPRM.

A. Emission Standards

The "heavy-duty" class created by Congress in the 1977 amendments to the CAA includes not only EPA's "heavy-duty engine" class but a portion of its light-duty truck class as well. Thus, the emission reductions mandated by Congress for vehicles (and engines in vehicles) which exceed 6,000 lbs. GVWR actually apply to two EPA classes—the heavy-duty engine class (engines used in vehicles with GVWRs exceeding 8,500 lbs.) as well as to the upper, "heavy" portion of our light-duty truck class (LDTs between 6,001 and 8,500 lbs. GVWR). for convenience, we will refer to LDTs between 0 and 6,000 lbs. GVWR as "light" LDTs, and LDTs between 6,001 and 8,500 lbs. GVWR as "heavy" LDTs. We anticipate that our rulemaking will propose emission standards for heavy-duty engines and for the entire light-duty truck class (both above and below 6,000 lbs. GVWR). The inclusion of the "light" LDTs is explained later in this section under *"'Light' Light-Duty Trucks"*.

1. Heavy-Duty Engines and "Heavy" Light-Duty Trucks:

As mentioned earlier, the Clean Air Act (Section 202(a)(3)(A)(ii) of the Act, 42 U.S.C. 7521(a)(3)(A)(ii)), contains a requirement for a 75% reduction in heavy-duty truck NO_x. This reduction is to be measured against a baseline sampling of pre-controlled, gasoline-fueled, heavy-duty engines. The reduction also applies to vehicles exceeding 6,000 lbs. GVWR. The NO_x regulations were to apply beginning in the 1985 model year. While we do indeed plan to propose the LDT NO_x standard for 1985, certain leadtime considerations which we discuss later have led us to anticipate proposing the HDE NO_x requirements for 1986.

In order to determine the "baseline" level of NO_x emissions—that is, the level which existed before there were Federal regulations for NO_x control—EPA completed two baseline testing programs, one for LDTs and one for HDEs. While the 1973 model year was the last year before Federal NO_x regulations were enacted, some manufacturers anticipated the change and voluntarily installed NO_x controls on their 1973 models. Therefore, our baseline samples consist of both 1972 and 1973 vehicles and engines, depending on which model year immediately preceded NO_x controls on a given engine. Samples of 25 LDTs and 26 HDEs made up the baseline programs.

The "statutory" heavy-duty standard is computed directly from the results of the baseline testing. The sales-weighted NO_x emission level from the HDE program multiplied by a factor of 0.25 yields a Congressionally mandated 75 percent reduction standard, with a value of 1.7 g/BHP-hr. As discussed later in this document, we do not believe this to be a feasible level for heavy-duty diesel engines. Because of this, EPA will probably revise the standard for heavy-duty engines. Based upon limited (and largely confidential) data currently available to us we believe that an appropriate level for a revised standard would be approximately 4.0 g/BHP-hr. Of course, the standard finally established will have to be based on a publically disclosable record, to be established during this rulemaking.

In the case of LDTs, the 75 percent reduction calculation from the LDT baseline yields a value of 0.9 g/mi. This value would represent a tighter standard than will exist for 1981 and later light-duty *vehicles* (LDVs). Since LDTs are generally larger, have larger engines, and carry heavier loads than LDs, their average emissions are slightly higher. Clearly, it will be more difficult for LDTs to meet a standard of 0.9 g/mi than for LDVs to meet 1.0 g/mi. However, we believe that Congress intended the 75 percent NO_x reduction to parallel the anticipated gains in passenger car NO_x control; i.e., to require approximately equivalent control efforts in the two areas.

In promulgating the *1979* LDT NO_x standard of 2.3 g/mi we applied a "worst-case" formula to the LDV NO_x standard of 2.0 g/mi. The formula was based on the ratio of the emissions of the heaviest LDTs to the heaviest LDVs when both used the same control technology. Applying the same ratio to the new LDV standard of 1.0 g/mi yields

a value of 1.2 g/mi.* We believe this value to be of essentially equal stringency to the LDV standard.

2. *"Light" Light-Duty Trucks:*

We expect to apply the same, presumably revised, standard to all LDTs, above and below 6,000 lbs. GVWR. Although the "light" LDTs (those below 6,000 lbs. GVWR) are not covered by section 202(a)(3)(A)(ii) of the Act, authority for their regulation is found in the general authority of section 202(a)(1), 42 U.S.C. 7521(a)(1). The September 25, 1980 LDT rulemaking invoked this authority in establishing the same HC and CO standards for the "light" LDTs as for the "heavy" LDTs. Each of the prerequisites to the regulation of "light" LDTs under section 202(a)(1) is met. It is clear that NO_x emissions from "light" LDTs contribute to air pollution which endangers public health. (A thorough discussion of the health effects associated with NO_x emissions can be found in Chapter IV of the Draft Regulatory Analysis). The other factors which must be considered before regulating under section 202(a)(1)—leadtime, feasibility, and cost—are each discussed later in this document.

Finally, at least two additional considerations suggest that a single LDT standard should apply to trucks above and below 6,000 lbs. GVWR. First, applyi. ; a stiffer standard to the "light" LDTs than to the "heavy" LDTs (the lighter vehicles are cleaner in NO_x than the heavier ones and hence could meet a lower standard) could discourage the current trend toward downsizing LDTs to more fuel efficient models. Second, it is more consistent to apply a common standard across the entire LDT class and to follow the same regulatory approach for NO_x as was followed for HC and CO. By maintaining this kind of regulatory consistency, both the manufacturers and EPA should be able to manage their respective emission control programs much more efficiently than if two sets of standards existed or if compliance requirements varied among the pollutants.

B. Changes in the Certification Process

In addition to new NO_x standards, EPA anticipates for LDTs and HDEs two significant changes in the way vehicles and engines are certified for production. One is a program that requires that service accumulation be accomplished by in-vehicle, on-the-road operation. The other requires manufacturers to give some indication that the maintenance they recommend to their customers will actually be performed in the field. Both initiatives were proposed earlier during the recent LDT and HDE rulemakings. (Those Notices of Proposed Rulemaking are found in the **Federal Register** at 44 FR 9464 (heavy-duty) and 44 FR 40784 (light-duty trucks)). The two proposed actions were withdrawn from the rulemakings for further consideration, and we plan to repropose them in modified forms.

A third concept which affects certification is discussed later (Part F of Section III) but will not be contained in our anticipated proposal. That concept is a framework which would make it possible to introduce an increased measure of flexibility into the certification process by allowing some form of averaging of emissions. Development of averaging is now proceeding as a separate rulemaking, initiated by the publication of an ANPRM on November 28, 1980 (45 FR 79382).

1. Revised Durability Testing Procedures

The procedures used to determine deterioration factors (DFs) for HDE and LDT engine family certification have recently been changed (as a part of the recent HDE and LDT rulemakings cited earlier). The new provisions, identical for both HDEs and LDTs, resulted from a decision *not* to promulgate a proposed program of in-service mileage accumulation. What was left in each case was the portion of the proposal that described the procedure for determining preliminary, temporary deterioration factors. Whereas in the original proposals these manufacturer-determined deterioration factors would have been eventually superseded by factors calculated from the in-service durability fleet, the removal of the in-service requirements left the "preliminary" deterioration factors as the sole and final factors. The effect of our planned proposal would be to restore to these manufacturer-determined deterioration factors the status of "preliminary" factors and to repropose the associated in-service requirements in a slightly different form. Because they affect testing to determine emission compliance, these changes fall under the authority of section 206 of the Act.

It will be helpful to define the three types of deterioration factors which enter into the program. We have already mentioned "preliminary" DFs. They, in turn, are superseded by "in-use" DFs which, as this section will describe, are derived from in-service operation. However, in-use DFs are to be used while the in-service vehicles are still accumulating mileage as well as after they are finished. Thus, a further refinement into "interim in-use" DFs and "final in-use" Dfs is useful.

The durability regulations which we expect to propose would be rather detailed, but their general thrust would be very straightforward. As the paragraphs above imply, there would be a dual system for determining deterioration factors. Manufacturers would have the complete responsibility for establishing the preliminary DFs, subject only to three constraints. Manufacturers would be required to (1) design any testing so that it simulates, in their judgment, real-world emission deterioration, (2) conduct that testing according to good engineering practice, and (3) comply with the provisions relating to maintenance. Otherwise, the manufacturer would be free to design and conduct any testing and to derive deterioration factors in any manner it chooses. EPA would not approve or disapprove either the testing or the DFs. Once submitted the preliminary DF would be used to project the low-mileage emissions of the emission-data vehicle out to the end of its engine-family's useful life.

Under the expected program, a set of preliminary DFs (one DF for each pollutant) would be submitted and used for each engine family-control system combination (hereafter called a family-system combination), with the exception of those using the small-family waiver discussed later in this document. This would occur for *all* (unwaivered) family-system combinations in the initial model year of the in-use program (1985 for LDTs, 1986 for HDEs). After that, preliminary DFs would be needed each time a manufacturer introduced a new family-system combination or redesigned an existing combination to such an extent that a new combination was created. Preliminary DFs would be used in certification until the manufacturer's in-use durability vehicles had logged enough mileage to become the basis for the second type of deterioration factor, the in-use DF. In-use DFs, either interim or final, would supersede the preliminary DFs under the proposed system and would be used in all subsequent extrapolations of low mileage data.

The in-use mileage accumulation program which would eventually yield interim and/or final in-use DFs would begin early, shortly after preliminary

*The difference in the units of the anticipated HDE and LDT standards reflects the different testing methodologies applied in the two classes. As with passenger cars, LDT emissions are expressed on a per-mile basis; HDE emissions are expressed on a per-unit-of-work basis in order to avoid penalizing an engine which performs more useful work while travelling the same distance.

DFs were first used in certification. First, the manufacturer would choose at least three *production* vehicles (LDT) or engines (HDE) to become durability-data vehicles/engines. The manufacturer's responsibility would then be to make arrangements for placing the vehicles into service (engines would of course have been installed in vehicles), selecting applications which well represented ordinary operation. While we expect to propose the option of operation on a test track or road route, manufacturers would also be able to integrate the durability-date vehicles into their normal corporate operations. For example, LDT durability-data vehicles could become a part of a company motor pool, or heavy-duty durability-data vehicles might serve a second purpose as a part of a corporate truck fleet.

A fundamental reason for the use of preliminary DFs is that it is not practical to collect in-use data prior to the initial year's certification of a new engine family. Such a requirement would impose several years of additional leadtime for the introduction of a new engine family and would not allow the use of actual production engines. Rather than impose such a burden on manufacturers, we would allow the use of preliminary DFs, which would later be confirmed by in-use data. Even if an engine family is taken out of production it would still be necessary to substantiate the preliminary DF which was applied to those engines already sold. The automatic regulatory provisions for what to do if the in-use DF is too large (i.e., change future engines, as discussed below) would no longer apply since they would not be retroactive to engines that have already been produced. However, it would still be the manufacturer's responsibility to verify that it is indeed supplying valid preliminary DFs to EPA. In addition, there are recall provisions in the Clean Air Act which apply to heavy-duty vehicles. Although in-use fleet data would not alone be sufficient to require a recall, it could alert EPA to a potential in-use problem needing investigation. Therefore, even if an engine family goes out of production, it would still be necessary for the manufacturer to continue operating the in-use fleet.

As the durability vehicles accumulated mileage, the manufacturer would periodically test them for emissions. By compiling the results of these tests, manufacturers would assemble a periodically updated base of information about each family/system's on-the-road emission deterioration characteristics. The interim DFs would be calculated from this data and hence would themselves be updated. (The actual calculation of DFs is discussed later). This process of testing, compiling results, and updating the interim DFs would continue until the durability vehicles had reached the end of their useful life (as defined in § 86.084–2, 45 FR 63734). At that time the *final* DF for the family/system would be computed.

At some point the preliminary DFs would be superseded by the in-use DF. Which model year it occurred in would depend to a certain extent on the preference of the manufacturer. This is because for the second model year, the manufacturer would have the option of either carrying over its previous certification based on the preliminary DFs or using an interim in-use DF, provided that the minimum annual mileage had been accumulated (10 percent of the family's useful life). (If the carryover option is chosen, it would still be necessary to submit any accumulated in-use data to EPA at the time of the application.) For the third model year after the preliminary DFs were first used, the regulations would *require* the use of the interim or final in-use DFs.

When the preliminary DFs are superseded, the most current in-use DFs would then be used. Each subsequent year's updated in-use DFs would supersede the previous DF until each durability vehicle has reached its useful life. After that, the final in-use DF would remain in effect for as long as the family/system combination exists.

The manufacturer would be confronted by one of two situations when it substitutes a new in-use DF for a preliminary DF or for an interim in-use DF. On the one hand, it might find that the new DF is smaller than the previous DF, meaning that the earlier DF overestimated the rate at which the emissions were deteriorating. Obviously, this would be a favorable situation from the manufacturer's standpoint. It would mean that when the low-mileage emission values from the emission-data vehicle or engine were projected out to account for deterioration, the result would fall somewhat below the standard. The manufacturer would have exceeded its requirements and would be in compliance with the regulations.

If, on the other hand, the manufacturer found that a subsequent year's in-use DF is greater than the preliminary DF of the previous in-use DF—and the performance of the emission system on the low-mileage emission-data vehicle does not provide enough of a margin of safety to accommodate the larger factors—then the manufacturer would have to act to correct the situation. This most current in-use emission data for that family-system combination would have indicated that the earlier DF underestimated emission deterioration. A small recalibration of the engine or emission system might be enough to compensate and allow a continuation of the certification process. Alternatively, the manufacturer might find it necessary to redesign the family-system combination for lower low-mileage emissions or for reduced deterioration characteristics.

It would be our intent in a proposal to restart the multi-year certification cycle—that is, emission-data collection and preliminary DFs followed by annually-updated in-use DFs—whenever the manufacturer makes a design change which can be expected to affect emission deterioration. To make this criterion more specific, we anticipate that in most cases a design change which affects emission-system durability would include changes in features (called determinants) which distinguish one family-system combination from another. Conversely, we expect that changes in these determinants would usually occur with changes that affect emission deterioration. Therefore, we would key the beginning of the certification cycle to the first year in which a manufacturer applied for a certificate of conformity for a given family-system combination.

A pitfall of such a system would be that a manufacturer might choose to change the engine periodically to avoid ever using an in-use DF. Nothing in the regulations as they are now would prevent this from happening, but two provisions would discourage such a practice. On one hand, it would take a fairly large—and expensive—change to create a new engine family under the current regulations. Thus, such a change would not be a trivial effort. Also, as noted earlier, even if a family went out of production it would be necessary to keep running the durability fleet out to its useful life. The combination of these provisions should prevent large-scale circumventing of the in-use program through engine family changes.

A related problem might arise if a manufacturer wanted to make a change which, although it didn't alter any existing engine family determinants, did have the potential for influencing (and presumably improving) deterioration characteristics. Because the existing determinants would not have changed, the certification cycle would not automatically start again. The Administrator, however, already has the discretion to introduce engine family

determinants not currently specified in the regulations (and an engine family determinant is by definition an engine family-control system determinant). He would be able to take advantage of that discretion if the particular circumstances of a situation indicate that re-starting the certification cycle would be advisable.

As a final note on this subject, it is important to stress that restarting the certification cycle for a new family-system combination would also mean retesting an *emission-data* vehicle or engine which incorporates the new changes.

Because responses to the earlier proposed versions of the in-use durability program revealed some confusion, it is worth stressing the following point. Any increase in the DF resulting from the in-use emissions data would not be retroactive. In other words, the earlier model year(s) of production, certified according to the previous DF, would not be affected. (The recall provisions of the CAA would remain in force however.) What *would* be affected is the next model year's production, which could not proceed until some adjustment or change in the engine or emission system was made and, if it affected engine family determinants, the certification was begun again (emission-data tests, preliminary DF, and subsequent in-use service accumulation). It is likely that the manufacturer would foresee from the accumulating data that by the beginning of the next model year a change would be needed. Thus, enough time to incorporate the change should exist before the next year's production begins.

Any proposal would also likely include a measure of protection for a manufacturer that believed it had made a favorable durability-related change but had failed to persuade the Administrator to restart the certification cycle. That protection would be the ability to start another in-use durability fleet. A manufacturer could at any time place additional fleets into operation. After the new fleet(s) had run to the end of their useful life, the manufacturer would use their emission results for the DF calculation instead of those of the original fleet. In this way, a manufacturer that made an improvement in durability could in all cases begin realizing the benefits of the change within a few model years (that is, when the new fleet had finished), regardless of whether EPA accepted the change as a new family-system combination.

Also a part of the proposal which we expect to issue is an important change in the way deterioration factors are calculated from durability data, a change that corrects a potential deficiency in the method currently used (that is, prior to 1984). Simply put, the present method determines the DF by calculating a linear regression of the mileage/emission level points derived from the durability-data vehicle (or engine). The problem is that if an important component fails on the durability-data vehicle/engine either early in the service accumulation or late in the process, the emissions may suddenly jump upward significantly compared to the gradual deterioration during the remainder of the process. The linear regression, however, would tend to "wash out" the evidence of the failure, giving an incomplete view of the true deterioration.

The current regulations partially guard against this pitfall by prohibiting "line-crossing," meaning the durability-data engine or vehicle may not exceed the standard at any time up to the useful life. Thus a failure in an important component would probably cause "line-crossing." If the manufacturer can show that the failure is unrepresentative, EPA may allow the running of new vehicles, which will in turn either confirm the "statistical freak" or exhibit line-crossing themselves. In the latter case, EPA would be in a position to deny certification.

Under the anticipated proposal line-crossing *would be allowed* during in-use service accumulation. This provision would appear primarily for two reasons. First, the in-use durability program would take years, not months. It would not be practical to start a new vehicle if one vehicle line-crossed. Thus, allowing an individual *durability* vehicle to exceed the standard would be a necessary by-product of the in-use program. Second, allowing line-crossing would be appropriate because there would be much more certainty in the proposed program than in the current program that an individual data point which line-crossed really represented what would happen in the field. The greater certainty would arise because at least three vehicles—*production* vehicles—would be running. A component failure in one or more of them would be likely to also occur in the field and it is important for EPA to know this. In any event, we do not expect that line-crossing would be a frequent phenomenon.

If, however, a data point were far removed from the trend that was set by the rest of the data, we believe it should be reflected in the DF, whether or not line-crossing occurred. The proposed regulations would provide that if an individual vehicle's data point fell beyond a certain distance from the least-squares best-fit line of all the points, then that point would become a candidate for the DF calculation. That is, instead of extending the *best-fit* line out to the appropriate point and dividing the predicted high mileage emissions level by the low-mileage emission level, the *outlying point* itself would be used in the DF calculation. The DF would simply be the ratio of the emission level of the "outlier" to the low-mileage emission level. If this DF were larger than that resulting from the least-squares fit then it would be used as that vehicle's DF in future calculations.

We expect to propose that the measure of whether an average data point is an "outlier" be twice the standard error of the distribution of all points around the best fit line. We believe any point which lies more than that distance from the line would be a real indication of the kind of problem which the DF should reflect.

Two final aspects of the anticipated proposal deserve comment, both of which were not a part of the original proposed programs. The first provision would relate to the DF calculation process, and it would act to reduce the manufacturer's risk when DFs were determined from less-than-full-useful-life data (that is, interim DFs). Because extrapolating early data to a "distant" full-life point might be unrealistic, we would propose that extrapolations be made to a point separated from the test point by no more than 50 percent of the useful life of the family-system combination. Thus, if it happened that the early test points were unrepresentative of the full-life trend, the effect of extending their regression out from these points would be blunted.

The remaining provision we are considering would significantly reduce the effort required by the manufacturers, while retaining the bulk of the benefits of the in-use program. This proposal would be to waive in-use testing requirements for each engine family for which the expected production is less than 5,000 vehicles or engines, up to a total of 5,000 per manufacturer. Use of the waiver by manufacturers for each eligible heavy-duty family would reduce the number of in-use fleets by 52 percent while still allowing for in-use data on 90 percent of the sales. (The impact on the light-duty truck industry would be minimal because of the scarcity of small-volume LDT families). In place of the preliminary and in-use DFs would be an EPA-assigned DF, based on historical data.

Finally, we wish to make clear to the reader that the foregoing discussion

covers only the most substantial aspects of the program we expect to propose. The complete requirements are found in §§ 86.085–21 through 26, 28, and 30 of the draft regulations available in the public docket.

2. Proof of In-Use Maintenance

The recently-published LDT and HDE rulemakings restricted allowable maintenance which is done on certification engines and vehicles. By limiting emission-related maintenance to no more often than certain specified intervals, we hoped to encourage the design of more durable emission-oriented components. While the success of this program will reduce the amount of maintenance which needs to be done to keep the emission systems operating, the program lacks any way of assuring that necessary maintenance will actually be performed.

An emission system that tends to be neglected by the owner—because it too often requires maintenance or because the neglect has no effect on the operation of the vehicle, for example—may not serve the purpose for which it was installed. We believe that if a "critical" emission-related component* requires attention or replacement during the useful life of the vehicle or engine, the manufacturer should accept the burden of showing that the work is likely to be performed by the owners. Otherwise, the installation of the control system could be a mere formality that is exercised to receive a certificate but then fails to accomplish its intended emission reduction in the actual on-the-road vehicles. The additional maintenance regulations which we are considering proposing, like the maintenance restrictions already in place, would help to re-focus the attention of manufacturers from simply passing a laboratory certification test toward designing and mass producing vehicles and engines which remain clean in actual use.

Specifically, we anticipate provisions which would require for each "critical" emission-related component that the manufacturer establish a "reasonable likelihood" that proper maintenance will be performed in actual use. The manufacturer could establish "reasonable likelihood" by compliance with one of four criteria, designed to cover several kinds of situations. We expect that manufacturers would most often install an audible and/or visual signal to indicate that maintenance is due, followed up by a survey to gauge the success of the signal in encouraging proper maintenance. It would also be an acceptable indication of "likelihood" if a manufacturer chose to bear the cost of the maintenance or replacement. For components which had already been in service long enough to have accumulated in-use experience, a survey showing that proper maintenance was currently performed would fulfill the "reasonable likelihood" requirement. And finally, if failing to perform a maintenance item seriously harmed the performance of the vehicle, EPA would consider that to be enough assurance that the maintenance would be done by the owners. We expect to propose the regulations in such a way that EPA could approve a different method of meeting this requirement if it confirmed the likelihood of proper in-use maintenance.

In addition, minimum maintenance intervals are expected to be proposed for certain new emission-related components. Maintenance on electronic engine controls and related sensors and actuators during mileage accumulation would be proposed to be limited to every 100,000 miles. The authority for establishing minimum maintenance intervals is found in sections 206(d) and 207(c)(3)(A) of the Act.

C. Changes in the Heavy-Duty Test Procedure

As we have accumulated experience on the new transient heavy-duty test procedure promulgated in the January 21, 1980 rulemaking (referenced earlier), we have been able to make minor improvements in several aspects of the test. We intend to incorporate them into a proposed revised Subpart N and will include adjustments to the forced-cool-down procedure and the mapping methodology as well as various equipment specifications.

III. Major Issues and Impacts

This section presents an overview of the analyses and discussions found in our preliminary Draft Regulatory Analysis document (referenced at the end of this Notice). Because the analyses were done at a time when it still appeared that this notice might be issued much earlier, 1985 is used as the first year of implementation of the regulations for both LDTs and HDEs. The one year postponement in the effectives model year which we expect to propose for HDEs would have little effect on the conculsions of the analyses,* and we have left them as they originally were—with 1985 as the initial model year.**

We discuss 1.2 and 4.0 because we think they are the most likely alternative levels. Others may be more appropriate, however, depending on comments received as a result of this ANPRM.

A. Technological Feasibility and Leadtime

An analysis of the feasibility of the NO_x standards need to be broken down according to class (HDE and LDT) and by engine technology (gasoline and diesel). As the following discussion will detail, the degree of difficulty which would be likely to be encountered by manufacturers in complying with the standards by the proposed model years varies considerably.

At one extreme fall gasoline-powered light-duty trucks, which appear to be within reach of a 1.2 g/mi standard. Three-way catalyst/feedback carburetor systems are available today which allow light-duty *vehicles* to comply with the 1981 standard of 1.0 g/mile. And one 1980 LDT is already certified at 0.7 g/mi using a 3-way/feedback system, even though EGR was not used. Because of the similarity in emission control technology between LDVs and LDTs, LDTs would probably be able to meet a 1.2 g/mi standard by 1985.

The most uncertain aspect of gasoline LDT feasibility seems to be maintaining the conversion efficiency of three-way systems at high mileage. We believe that such common approaches as increased catalyst loading and sizing would be effective in addressing this problem.

Diesel LDTs would not have the benefit of three-way systems, but other control options are available. EGR, or increased EGR where it is already in place, would be the most abvious approach. Also, combustion chamber and/or injector re-design, retarded injector timing and advanced (higher pressure) fuel injection are paths which would be open to some manufacturers. Finally, the popularization of electronic controls in gasoline engines suggests that this technology may soon be applied to diesels for such purposes as modulating the EGR or varying the injector timing. It is also significant that the manufacturers have up until now had to expend very little effort to meet the existing 2.3 g/mi NO_x standard with diesel LDTs. Accordingly, past efforts are probably not indicative of the

*Defined as a component installed for the sole purpose of complying with emission standards.

*The industry would have an extra year to rebound, probably making capital formation easier. The additional year would also provide more time for the optimization of electronic controls. In general, though, costs, leadtime, feasibility, and air quality benefits would remain aprpoximately as we analyzed them.

**To avoid unnecessary confusion in this Preamble, however, we have substituted "1986" for "1985" where it is appropriate. For the same reason, the dates in the title of the preliminary Draft Regulatory Analysis have also been changed.

amount of control that could be achieved.

On the one hand, some manufacturers are already beginning to work which would make the task of reaching the anticipated NO_x standard (in the presence of a tight particulate standard) easier with respect to diesel LDTs. Both General Motors and Volkswagen were recently granted waivers of the 1981 light-duty *vehicle* standard for their diesel powered passenger cars. The two-year waivers of the 1.0 g/mi standard were granted specifcally to allow the companies to do development work toward reaching that standard without excessive harm to fuel economy, particulate control, and durability. Work is also progressing toward meeting the 1985 LDV particulate standard under the current NO_x standard. Since LDT diesel engines are currently very similar to LDV diesel engines, these two manufacturers (who are the only diesel LDT makers at this time) are in effect beginning development work now toward the equivalent stringency LDT NO_x standard we anticipate proposing in this rulemaking, as well as the 1985 LDT particulate standard. It is reasonable to conclude at this point that a standard in the 0.9–1.2 g/mi range would be a realistic goal for 1985 light-duty diesel trucks.

Turning now to heavy-duty engines, we find a sharp contrast in the ability of gasoline and diesel engines to reach the statutory 1.7 g/BHP-hr standard by 1986. In the case of HDGs, we can point to a clear technological path to compliance. On the other hand, it appears that no HDDs would be able to reach the 1.7 g/BHP-hr level. Thus, revising the standard upward to near 4.0 g/BHP-hr for the whole heavy-duty class will probably be necessary. (Reasons for including gasoline engines in the revised standard are discussed presently). We would expect to propose such a revised standard based on information currently in our hands and the information we receive or develop as a result of this Advanced Notice.

For heavy-duty gasoline engines, it appears technologically feasible to reduce emissions to a level of 1.7 g/BHP-hr by 1986. As in the case of gasoline LDTs, three-way/feedback systems could be used, perhaps in conjunction with oxidation catalysts (to clean up residual HC and CO). In an ongoing test program at the EPA Motor Vehicle Emission Laboratory, we have already been able to closely approach the required target emission level with a 1978 IHC 404 engine retrofitted with a three-way plus-oxidation-catalyst system (see our Draft Regulatory Analysis for details). Without ignoring the durability issue, the ease with which EPA has been able to assemble a well performing NO_x control system for a rather large engine speaks to the strong potential for 1986 HDG compliance with the proposed standards. Further, since three-way systems are not conceptually new and have already seen extensive development and use in passenger cars, compliance by 1985 may even be possible.

Given the preceding discussion, one could conclude that a revision of the HDE standard to a level near to 4.0 g/BHP-hr would place manufacturers of gasoline engines in an easy compliance posture. Indeed, manufacturers might be able to comply without adopting three-way systems. There would be the potential for a fuel economy penalty if less expensive means like EGR were used, but even in that case we believe a penalty could be avoided.

In the case of heavy-duty diesel engines (HDDs) we find no current engines which even approach the statutory 1.7 g/BHP-hr level. Indeed, up until now there has been little pressure to develop low-NO_x technology for HDDs. But while we believe that substantial NO_x reductions can be obtained, it appears that such a standard would be out of reach.

We believe that a combination of conventional approaches and more advanced techniques could offer significant HDD NO_x reduction. The more familiar approaches of EGR and retarded injector timing are inexpensive but can result in lost fuel economy and increased particulate emissions. More promising are such things as electronic engine controls, electronic fuel injection, advanced inter-/aftercooling, high-pressure injection, and design modifications to engines, combustion chambers, and injectors. Electronic controls are perhaps the most promising technology because of their potential to modulate injector timing, EGR, degree of aftercooling, and other parameters throughout the range of engine operating conditions.

There is another NO_x control approach which is less promising but nevertheless deserves mentioning. We know of one manufacturer which has developed a working ammonia-injection catalyst. The ammonia catalyst has been demonstrated to EPA, and preliminary data indicates that it could be capable of attaining the 1.7 g/BHP-hr standard. Use of this tecnology can result in lower NO_x levels for diesels. On the other hand, there are clear enforceability problems because the ammonia supply would need to be frequently replenished. Also, establishing a distribution system to make ammonia readily available would be very difficult. Lastly, the cost of adopting this technology could be quite high. Therefore, we do not believe such a system will be practicable for the 1986 model year. We request that comments on this system (particularly hardware and operating costs) and other advanced technologies be included in response to the requests for comments found later in this Preamble.

The Agency also has been exploring a fundamental technological alternative to conventional approaches to oxides of nitrogen and particulate control. This alternative is the use of methanol as a fuel. Methanol may be attractive from several perspectives: (1) it is readily available from plentiful domestic sources such as coal and biomass, (2) it can probably be produced by more thermally efficient and environmentally acceptable processes than many processes which yield syncrude, (3) it can be prodcued with readily available, commerically proven technology which requires less capital investment than syncrude production processes, and (4) methanol appears to have the potential for very low particulate, oxides of nitrogen, hydrocarbon and biologically active organic emissions. EPA is currently evaluating a Volvo heavy-duty engine equipped with diesel fuel pilot injection and methanol combustion (i.e., a dual injection system). We are testing this engine for emissions (including unregulated pollutants) as part of the heavy-duty test program at Southwest Research Institute. The results of these studies will certainly influence the degree to which the government actively pursues this alternative. In any case, we do not today view widespread conversion to methanol as a possibility for the 1986 model year.

Revision of the Heavy-Duty Standard

Based on the analysis highlighted above, we expect to propose a revised standard for all HDEs for 1986, based on the limitations of diesel NO_x control. Such a revision to the Congressionally mandated 75 percent reduction standards would be proposed pursuant to Section 202(a)(3)(B) and would depend on EPA's being able to make the findings specified in subsections (3)(B) and (3)(C) of that section. The limited data we have seen so far, combined with our projections of technological progress lead us to a preliminary conclusion that a NO_x standard in the area of 4.0 g/BHP-hr would be attainable by diesels without increasing other pollutants or affecting fuel consumption to an unreasonable degree. We expect that manufacturers would

use combinations of the following approaches: Electronic controls and/or electronic fuel injection, inter-/aftercoolers (perhaps modulated), higher pressure fuel injection engine or injector modifications, and perhaps limited EGR and retarded injector timing. Later in this Preamble we request specific comments and data on both the 1.7 and 4.0 g/BHP-hr levels (as well as higher or lower levels), and we will rely heavily on this data in making any findings under subsection (3)(c). In determining an appropriate level for a revised standard we have had to rely on information which manfacturers to date have considered confidential. It is our intention to make decisions for the NPRM and eventual final rulemaking based upon information available in the public record of the rulemaking and available to all interested parties. It is crucial that the information submitted by the manufacturers during this rulemaking present an accurate portrayal of all NO_x control strategies, their potential, their trade-offs, and their leadtime characteristics. We are confident that significant reductions in NO_x are achievable.

The attainment of any substantial NO_x reduction for heavy-duty diesels without significant fuel economy degradation would require time-consuming development and testing work. At this time we do not believe such a effort could be completed in time for the 1985 model year. Therefore, we expect to propose that 1986 be the effective model year for heavy-duty engines, rather than the 1985 model year specified in the Act. On the other hand, we believe that the reductions required for LDTs can be attained by 1985. Therefore, we expect to propose the LDT standard for the 1985 model year. Consistent with the position we took in the recent HDE and LDT rulemakings, we believe that if enough leadtime is available, the statutory model year of compliance should be retained.

We expect to propose a single revised heavy-duty standard covering gasoline engines as well as diesels. The Clean Air Act clearly places both types of engines in a single heavy-duty engine class, and EPA has always applied the same standard to both types of engines. We believe that it would be inequitable to establish different requirements for competing engines within the same class. By applying the same standards to both gasoline and diesel engines, we hope to avoid the appearance of treating one power plant more favorably than another one with which it must compete in the heavy-duty market. If diesel manufacturers would have relatively more difficulty than gasoline engine manufacturers in meeting a given heavy-duty standard, this is because of the inherently higher NO_x emissions of diesels—not because of inequitable treatment by EPA. In addition, the fraction of gasoline heavy-duty engines sold relative to diesels has been rapidly diminishing (Tables II–Y and II–Z, Draft Regulatory Analysis, Chapter II), and we project this trend to continue, reducing each year the contribution of emissions from gasoline engines.

Finally, if gasoline engines were required to incorporate the additional hardware and engine modifications necessary to reduce their NO_x emissions from 4.0 to 1.7 g/BHP-hr, then the stringent standard would accelerate the decline of the gasoline engine—simply because it could be made to comply with the standard. Since the engines displacing the gasoline engines would be diesels emitting at the 4.0 g/BHP-hr level, it seems both inequitable and illogical to force the cleaner engine out of production and have it replaced by the higher emitting engine. (Diesels also emit much higher levels of fine particulate than gasoline engines.) In addition, the basic structure of the Clean Air Act contemplates application of the same standard to any engine or vehicle within a a given class without regard to its design.

EPA is required to review any "revised" standard every three years and tighten it until the statutory standard is reached. During the three years following the promulgation of a revised standard we would be looking at new ways of improving NO_x control (without increasing other pollutants or harming fuel economy), of which the most promising seems to be new fuels such as methanol. We fully expect to be able to adopt a significantly lower NO_x standard for HDEs by the end of that time, perhaps even the 1.7 g/BHP-hr statutory standard itself.

Particulate/NO_x Interaction

A matter relating to HDDs is the question of particulate emissions. In parallel with this NO_x rulemaking, EPA recently proposed a particulate standard for heavy-duty diesel engines. Since some NO_x control techniques can adversely affect particulate emissions, the relationship between these two pollutants will need to be considered in establishing final NO_x levels.

We determined in the particulate NPRM (referenced earlier) that a feasible level of engine-out particulate emissions (that is, prior to any exhaust aftertreatment device) is 0.41 g/BHP-hr, and we have used this level in developing our proposed particulate standard. In the analysis for that proposal, we established as a constraint that we would not consider engine modifications which reduce particulates but at the same time increase NO_x. Thus, 0.41 g/BHP-hr represents what we believe to be the best feasible particulate level if NO_x emissions are not to be compromised. Conversely, in determining a proposed NO_x standard we will use a level which can be attained without having to increase engine-out particulate levels above 0.41 g/BHP-hr. This constraint should not be interpreted to mean that we are excluding consideration of NO_x control techniques which, if applied alone, would increase particulates above 0.41 g/BHP-hr. That would be unnecessarily limiting. We will rather be evaluating an overall combination of techniques, including particulate-reducing engine modifications not otherwise required to meet the particulate proposal.

Particulate/NO_x tradeoffs are also an issue for diesel LDTs, and we will, of course, consider the final stage of the LDT particulate regulations as we determine a proposed LDT NO_x standard.

Fuel Economy

Finally, establishment of stringent NO_x reductions would have the potential to affect the fuel economy of LDTs and HDEs. Gasoline-powered light-duty trucks might experience an actual improvement in fuel economy from moving to three-way/feedback systems. This improvement could occur as well in gasoline HDEs if they, too, were to adopt feedback systems. If EGR and/or retarded spark time were used instead, then fuel consumption might increase. In the case of diesels, we believe that substantial fuel economy penalties could be avoided by sing a proper mix of controls. (Fuel economy will certainly be considered in establishing proposed levels.) Again, however, reliance on substantial EGR or retarded timing might harm fuel economy. We have little data to indicate how much fuel economy improvement or penalty might occur and are requesting comment on this issue. We have not attempted to quantify or attribute a cost to changes in fuel economy. We have, however, calculated the sensitivity of lifelong operating costs to fuel economy penalties (Chapter V, Draft Regulatory Analysis).

B. Environmental Impact

Atmospheric nitrogen and oxygen combine in the high-temperature environment of the combustion chamber to form NO and a comparatively small amount of NO_2. In the atmosphere, the

NO is converted into NO_2 by direct reaction with oxygen and through photochemical processes. It is NO_2 that is responsible for most of the adverse effects of NO_x emissions. NO_2 in the atmosphere also acts as a precursor to ozone formation.

Elevated levels of NO_2 in the air have been correlated with both long-term and short-term harm to the respiratory system. In addition to these health effects, NO_2 damages some materials and impairs visibility with a brownish haze. Further, NO_x emissions have been implicated in contributing to the formation of "acid rain," which is capable of eliminating life from lakes and streams, leaching nutrients from the soil, and causing damage to crops and such materials as steel, paint, and concrete.

As noted previously, our initial preparation of this action was based on the planned proposal of the statutory standards (0.9 g/mi for LDTs, 1.7 g/BHP-hr for HDEs). We have done a preliminary environmental impact analysis based on the assumption of compliance with these standards. We have not yet analyzed the environmental impact of either a 1.2 g/mi LDT standard or a 4.0 g/BHP-hr HDE standard. Such an analysis will be done in our proposal for whatever levels we actually propose.

In reviewing the results of our preliminary analysis, it is important to emphasize the assumption of compliance with the statutory 75 percent reduction levels. This is especially true in the case of heavy-duty diesels, for which the feasibility of the 1.7 g/BHP-hr level has not been established. As the environmental analysis shows, compliance with this standard would result in considerably greater emission improvements for diesel HDEs than for the other truck classes. Clearly, if less stringent standards are promulgated, there will be some reduction in emission benefits, and we will carefully analyze these in the proposal.

A look at the per-vehicle NOx emission reductions which would be achieved highlights immediately the contribution of heavy-duty diesels were they to meet a 1.7 g/BHP-hr standard. Low-altitude non-California vehicles would experience lifetime NOx reductions of 0.19 ton, 0.92 ton, and 7.82 tons for LDTs, HDGs, and HDDs, respectively, as compared to 1984 LDTs and 1985 HDEs. On a percentage basis, the reductions are 59 percent for LDTs, 77 percent for HDGs, and 79 percent for HDDs.

Currently, the ambient NOx problem is somewhat localized; only a few air quality regions exceeded the ambient NO_2 standard in 1976. It is crucial to realize, however, that the growth of NOx emission sources, especially in the absence of these regulations, would cause a substantial increase in NOx emissions over the next decades. The regulations noticed here would help minimize that growth.

The impact of such regulations on urban air quality—and hence on health—is best analyzed by looking at the specific regions that already have high ambient NO_2 levels. Using 1976 as a base year, our analysis of these regions indicates that (if the unrevised standards were adopted) there would be an improvement of approximately 30 percent compared to what would occur without the new standards. In the absence of any new NOx regulations for HDE and LDTs, there would be a large net loss in air quality in those regions.

On the other hand, *nationwide* emission reductions are important from the standpoint of welfare effects, such as damage to materials, reduced visibility, and acid rain. The per-vehicle reductions estimated above translate into a 12 percent reduction in the nationwide NOx emissions which would otherwise occur by 1999.

C. Economic Impact

Although a great amount of information about the costs of compliance is not available at this early stage of the rulemaking process, we have been able to construct a reasonable projection of the economic impact. The analysis is very detailed and attempts to look at all possible economic costs which are likely to fall on the manufactures of LDTs and HDEs, on consumers, and on the nation as a whole.The basis for much of this analysis is our projection of the probable emission control strategies which would be pursued in response to the 75 percent reduction emission levels (0.9 g/BHP-hr for LDTs, 17. g/BHP for HDEs). (Chapter III, Regulatory Analysis). In the probable event that less stringent standards are proposed, costs will accordingly be less in most cases. (HDDs are in exception, since their costs here are actually based on the same technology we believe would be used to reach 4.0 g/BHP-hr.)

1. Light-duty Trucks

The costs attributable to the regulations as we expect to propose them go toward 1) research and development, 2) emission control hardware, 3) certification, 4) the in-use durability program, and 5) the new allowable maintenance requirements. We have made estimates for each of these costs and have summed them to arrive at the total manufacturers' cost. Translating this into a sales-weighted average cost results in a per-vehicle first-price increase of $153, the lion's share of which ($146) would go for emission control hardware. If diesel LDTs are broken out, we estimate a $47 rise in their prices. Because the fuel consumption of gasoline LDTs would be unlikely to increase if these regulations are proposed, their owners would not experience an increase in operating costs. But fuel costs might go up for owners of diesel LDTs since some NOx control measures can hurt fuel economy.

We have calculated aggregate cost to the nation from the array of detailed cost estimates. The total cost over five years of production is found to be equivalent to a $2.4 billion investment at the beginning of 1985, expressed in 1980 dollars using a discount rate of 10 percent. Since we are not able to quantify the extent to which fuel economy would be affected, this cost does not include any increased fuel costs.

2. Heavy-Duty Engines

Gasoline and diesel HDEs were treated separately in the analysis but in general would both require the same types of costs: development, production, and installation of new systems, certification, in-use testing, and costs associated with the new allowable maintenance requirements (the latter would apply to diesels only if electronic controls were adopted).

The first price of the average gasoline HDE would increase by about $284, or (at most) 2.8 percent of the price of a new heavy-duty vehicle if the statutory standard were adopted. HDDs would increase by $741, or (at most) 7.4 percent of the vehicle price. While we do not think a fuel economy penalty need occur among the gasoline engines, there might be some increase in fuel costs for operators of heavy-duty diesels if EGR or retarded timing were used. Our lack of certainty about the types of emission controls which HDD manufacturers would pursue and how successful they could be in achieving low NOx emissions makes it unwise for us to attempt to quantify a loss in fuel economy.

Finally, we have computed an estimated aggregate cost to the nation of the heavy-duty portion of these regulations if the 1.7 g/BHP-hr standard were promulgated. Expressing this cost as a lump sum spent at the beginning of 1986, in 1980 dollars, the aggregate cost would be $1.8 billion. This number is calculated assuming that gasoline HDEs would meet the statutory 1.7 g/BHP-hr NOx level. In the anticipated range of

the revised HDE standard, this aggregate cost would be less because some manufacturers would be able to comply without EECs or three-way catalysts.

D. Cost Effectiveness

Cost effectiveness analysis is a way of gauging the "economic efficiency" of a regulatory program. In the case of air pollution regulations, cost effectiveness is generally expressed in dollars per ton of pollutant reduced.

We have calculated cost effectiveness in two distinct ways—on an incremental basis and an integrated basis. The incremental analysis shows the effect of removing each of the individual components of the proposal from the "package" of regulations. The second approach looks at the cost effectiveness of the total package as an integrated strategy. Only the overall cost effectiveness numbers appear below; the figures for the individual components are found in Chapter VII of the Draft Regulatory Analysis with the complete cost effectiveness discussion.

Because the Draft Regulatory Analysis is based on the original 75 percent reduction standards, the cost effectiveness numbers need special explanation. In the case of light-duty trucks, the numbers are based on compliance with the 0.9 g/mi level. Costs and benefits will be slightly less if a 1.2 g/mi standard is proposed, but the cost effectiveness values should not change greatly. The heavy-duty gasoline engine cost effectiveness number was calculated assuming compliance with the 1.7 g/BHP-hr level. At a revised level in the vicinity of 4.0 g/BHP-hr, benefits and possibly costs would drop since three-way systems are unlikely to be pursued.

Because of the special problem of heavy-duty diesel feasibility, HDD benefits are based on the estimated 40.0 g/BHP-hr revised level; the original costs are valid. The original cost effectiveness analysis which appears in the Regulatory Analysis assumed HDD compliance with the 1.7 g/BHP-hr standard.

None of the overall cost effectiveness numbers, which are presented in the following table, include fule-related costs:

Cost Effectiveness*—($/ton of NOx reduction)

LDT (gasoline)—900.
LDT (diesel)—276.
HDE (gasoline)—326.
HDE (diesel)—157.

These values are cost effective as compared to other NOx control regulations. For example, the 90 percent control performance standard for utility boilers has an estimated cost-effectiveness value of $1200 per ton (Interagency Task Force on Motor Vehicle Goals Beyond 1980, March 1976).

E. The Concept of Averaging

EPA is considering a sweeping change in the way motor vehicle certification has been done for nearly a decade. The goal is to introduce some method of emissions "averaging" in order to inject some flexibility and presumably some cost savings into the certification program. Any such averaging system would need to be designed (1) to maintain the same average NO_x emission benefits as are offered by the non-averaging system we expect to propose in this rulemaking and (2) to be consistent with existing programs (such as recall and inspection/maintenance). Of course, such a system would not change the NO_x standard but rather would change how EPA assesses compliance. The design would also have to take into account the Clean Air Act's intent that *each vehicle* pass the standard, the concept that is embodied in the 10 percent Acceptable Quality Level used in the Selective Enforcement Auditing Program. To design and implement such a program is clearly a major task.

The prospect that a carefully designed averaging system could increase flexibility for the industry while at the same time retaining the air quality benefits of the existing programs makes it nearly certain that EPA will soon propose such a system. A task force has been established to explore concrete ideas, and a workshop with industry representatives is scheduled for January 29 and 30 in Ann Arbor. We have initiated the beginning stages of an averaging rulemaking, and an Advance Notice of Proposed Rulemaking was published recently (45 FR 79382, November 28, 1980). We will attempt to complete any resulting rulemaking as close as possible to the final action on the proposal contemplated by today's Notice.

F. Nonconformance Penalties

Section 206(g) of the Clean Air Act provides for nonconformance penalties (NCPs) "* * * in the case of any class or category of heavy-duty vehicles or engines to which a standard promulgated under Section 202(a) of this Act applies * * *." Accordingly, the emission standards we expect to propose for 1985 light-duty trucks (LDTs) over 6,000 pounds GVWR for 1986 heavy-duty engine (HDEs) will be subject to nonconformance penalties.

As discussed elsewhere in this document, EPA, at this time, has varying degrees of certainty depending on the class or category of engines or vehicles, concerning the technological feasibility of LDTs and HDEs complying with the NO_x emission standards we expect to propose. The technological feasibility section of this document indicates that for each class or category of engines or vehicles, a manufacturer may need to do substantial development work and/or make substantial modifications to existing emission control techniques to both certify and produce HDEs and LDTs capable of complying with all regulatory requirements. In such instances, there is some risk that unforeseen circumstances could result in "technological laggards," i.e., manufacturers whose HDEs or LDTs are incapable of complying with the regulatory requirements. EPA intends to make NCPs available for any proposed NO_x emission standards for this reason. The effect of all of the regulatory changes contemplated in this notice on a manufacturer's ability to both certify and produce HDEs and LDTs capable of complying with all regulatory requirements could also necessitate making NCPs available for other appropriate pollutant standards in the 1985 and 1986 model years.

We do not anticipate proposing NCPs in the NPRM. These will be proposed at a later date through a separate rulemaking, with full opportunity for public comment. EPA's intention to offer NCPs does not affect leadtime considerations in meeting the NO_x emission standards and all other regulatory requirements in the applicable model years. When the NO_x emission standards are issued, if not before, all manufacturers should begin making good faith efforts toward compliance. We intend to structure the NCPs, as required by the Act, to remove any competitive disadvantage to manufacturers complying with the regulatory requirements. The penalty will also increase periodically to provide a further incentive to bring nonconforming vehicles/engines into compliance as expeditiously as possible or to develop new replacement engines.

As discussed elsewhere in this document, EPA has a number of alternatives to evaluate in developing the proposed rulemaking. The use of any of these alternative courses of action might affect the Agency's posture on the applicability of NCPs to any pollutant affected by the regulatory requirements of the final rule.

Requests for Specific Comments:

In the past, rulemakings similar to this one have prompted the submission of a large volume of comments. However, many of these comments have been of little use to EPA in preparing proposed or final rules because of their lack of specificity, clarity, completeness, and/or factual support. As indicated above EPA's choice among alternative options in this rulemaking may depend heavily on information submitted in public comments. Accordingly, the following requests for comments are arranged to encourage submission of more helpful information. We ask that commenters follow the outline in their submissions, indicating the number of the question to which a particular comment responds. If a particular question is not addressed, we would appreciate a short explanation as to why it is not. Finally, we do not in any way intend to limit the range or nature of comments, and we will, of course, consider comments which do not fall within the boundaries of the outline.

Responses should include specific quantitative values whenever possible, as well as supporting data for such values. Failure to include such data will make it difficult for us to meaningfully evaluate your comments.

All comments should be submitted to the Public Docket, at the address given earlier in this Notice (see "ADDRESS").

I. Technology and Feasibility (please specify LDT or HDE and gasoline or diesel.)

A. What techniques/technology do you believe are or could be effective in reducing NO_x emissions?

B. Which of these approaches would you consider available for the anticipated applicable model year (1985 for LTDs, 1986 for HDEs).

C. If the list in Question I.B. is different from that in Question I.A., why is this so? When would the remaining items become available?

D. To the extent possible, please identify the effectiveness of each the various approaches listed in your response to Question I.A. in reducing NO_x emissions. Do you have test data which illustrates this effectiveness? What are the incremental emission reductions associated with each approach?

E. If tradeoffs in such things as fuel economy, durability, and particulate emissions are excluded for the moment, is (are) the standard(s) contemplated in this notice feasible using the approaches you identified in Question I.A.? For what model year? Please answer as well for an approximate revised heavy-duty engine standard of 4.0 g/BHP-hr and for the 75 percent reduction LDT level of 0.9 g/mi.

F. If you believe an anticipated proposed standard is not feasible for the applicable model year, identify the lowest NO_x level which you believe is feasible for that model year, subject to the qualifications of Question I.E. above. Provide supporting data and rationale.

G. To whatever extent you can, please show how each of the following items changes, and how they interact, as the level of NO_x emissions is reduced. Please be as specific as possible and include as wide a range of NO_x levels as you can. Also, please include all supporting data. A matrix-style table may be the best way to present this information.

1. Fuel economy.
2. Engine durability.
3. Particulate or other emissions.
4. Earliest model year of production.

H. Are the effects from Question I.G. a function of the control approach that is used? What approach(es) is the information in I.G. based on?

I. If other pollutants are increased by NO_x control techniques, please answer Question I.D. for any additional controls necessary for those other pollutants.

J. Heavy-duty only: If the trends demonstrated in Question I.G. are based on steady-state or bench testing, can you estimate how those trends would be different in transient engine testing, and to what degree? Please supply any test data which you might have to verify this.

K. For gasoline-fueled LTDs and HDEs, please discuss the fuel economy impacts on the following:

1. Eliminating or reducing air injection requirements with three-way catalyst systems.

2. For HDEs, attainment (where possible) of the 4.0 g/BHP-hr approximate revised level by other means than a three-way system (e.g., EGR). At what NO_x level does a three-way system become necessary in order to avoid an unacceptable fuel economy penalty? Please compare the fuel economy impacts of your likely response to each of the possible proposed standards of 1.7 and 4.0 g/BHP-hr.

3. Fully interactive electronic engine controls.

4. The efficient use of fuel purged from the evaporative emission canister.

II. Leadtime

A. Please place estimates for the period of time necessary for each of the following items on a time-line. Assume the use of the control approaches which are most likely to be used to comply with the regulations. For gasoline HDEs, please do parallel analyses assuming a standard of 1.7 g/BHP-hr and a standard of 4.0 g/BHP-hr. For HDDs, assume a standard of 4.0 g/BHP-hr (or the nearest feasible standard if you believe 4.0 g/BHP-hr is out of reach). In addition, please show the maximum reasonable amount of overlap among the items which can occur. The time-line should at least cover 1981, 82, 83, 84, 85, and, for HDEs, 1986. Please indicate how the time-line might be different for different engine families.

If you believe that a standard could not be reached, please complete the timeline assuming the greatest degree of control you think is possible.

1. Research and development.
2. Tooling.
3. Determination of the deterioration factor.
   a. Preliminary DF.
   b. Interim DF.
   c. Date of beginning of in-use fleet.
4. Certification.
5. Date of engine job #1.
6. Date of vehicle job #1 (if applicable).

B. Please analyze the effect on leadtime of implementation of the other technologies identified in question I.A.

III. Cost

A. To the extent possible, please break out anticipated costs separately for *each* of the program(s) outlined in Section II according to the following outline.

Wherever the choice of control technique affects the cost, please provide separate data for each technique identified in Section I. If techniques vary among families or configurations, please show how costs would subsequently vary. Also, please indicate the year(s) during which each expenditure is likely to take place. Finally, where it is not clear, please give the methodology used in the calculations.

1. Research and development costs.
2. Emission control system costs. Please respond in as much detail as you can.
3. Certification costs.
   a. Preliminary DF assessment.
   b. In-use durability testing.
   c. Emission-data testing.
   d. Other costs.
4. Costs resulting from new maintenance requirements.
5. Aggregate cost to the manufacturer (present value at start of 1985 (for LDTs) or 1986 (for HDEs), 10 percent discount rate, 1980 dollars).

B. Can you give a specific estimate of how the demand for your vehicles or engines would change as a result of the additional cost? As a result of other

factors related to this rulemaking (e.g., fuel economy)?

C. How will operators' costs change if these regulations are proposed and finalized (for example, a penalty or bonus in fuel economy)?

D. Please comment on EPA's estimated fleetwide sales projections and characteristics for LDTs and HDEs (dieselization and engine downsizing).

E. Please summarize the anticipated capital investment and give a schedule of expenditures and amortization of the costs.

IV. Policy Issues

A. Please comment on the issue of whether it would be appropriate to revise the statutory standard for diesel—but not gasoline-fueled—HDEs. To some extent this is an issue of equity. For example, is it important to retain standards of equal numerical stringency for both engine technologies, or would an emphasis on equal effort of compliance for both gasoline and diesel engine manufacturers (i.e., through separate standards) be more reasonable? If an equal effort approach is favored, what would be the appropriate measure of effort?

B. Please comment on any perceived anti-competitive effects of this rulemaking. In particular, comments are requested on possible anti-competitive effects from the proof of in-use maintenance provisions, where the manufacturer may establish the "reasonable likelihood" of maintenance being performed by assuming the cost and/or providing the maintenance free to vehicle owners. We welcome suggestions for specific steps which we could take to accomplish the desired end without creating a potential or perceived disruption of the marketplace.

V. Environmental Impact

A. Do you see any flaws in the *methodology* used in EPA's preliminary calculation of the emission reductions and air quality benefits of this rulemaking? Please be specific.

B. Please analyze and evaluate the environmental impact of a revised standard of 4.0 g/BHP-hr for HDEs.

VI. Additional Requests

A. What is the variability (standard deviation divided by the mean) of NOx emissions in your current production vehicles or engines on an engine family-control system configuration basis? How will this change with the control technologies required to meet the standards which we expect to propose?

B. What would be the anticipated low-mileage emission target levels for NOx? How might the target levels for other pollutants be affected by the contemplated regulations?

Administrative Designation and Regulatory Analysis

Since we expect that a proposed action along the lines of this notice will be a "significant" regulation, as mentioned earlier, while we were working towards the proposal itself we prepared a preliminary document entitled "Draft Regulatory Analysis, Environmental Impact Statement, and NOx Pollutant Specific Study for Proposed Gaseous Emission Regulations for 1985 and Later Model Year Light-Duty Trucks and 1986 and Later Model Year Heavy-Duty Engines." It includes assessments of environmental and economic impacts, feasibility, and alternative actions as well as an analysis of Urban and Community Impacts. This document may be found in the Public Docket (as described early in this Preamble). Also, free single copies are available upon request through the Director, Emission Control Technology Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Attn: Heavy-Duty Section.

Pollutant Specific Study

Section 202(a)(3)(E)(i) of the 1977 amended Clean Air Act calls for the preparation of pollutant specific studies "concerning the effects of each air pollutant emitted from heavy-duty vehicles or engines and from other sources of mobile source related pollutants on the public health and welfare." In the case of NOx, the document described in the preceding paragraph also incorporates a preliminary draft of the pollutant specific study, and when finalized (with the final regulations), it will be published in the **Federal Register** and submitted to Congress.

Draft Regulations

A set of draft regulations embodying the concepts discussed in this ANPRM have been prepared and are available in the docket. These should be referred to for further understanding of the concepts EPA expects to propose.

Authority for this rulemaking is found in Sections 202, 206, 207, 208, and 301 of the Clean Air Act (42 U.S.C. 7521, 7525, 7541, 7542, and 7601).

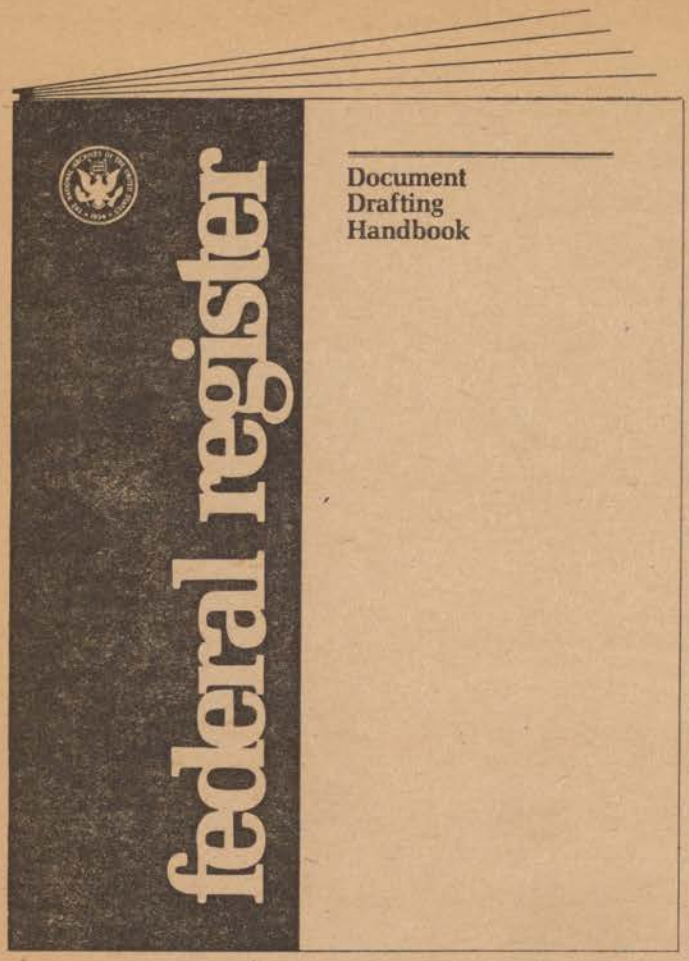
Dated: January 13, 1981.

Douglas M. Costle,

Administrator.

[FR Doc. 81-1933 Filed 1-16-81; 8:45 am]

BILLING CODE 6560-26-M



Now Available !

Federal Register Document Drafting Handbook

A Handbook for Regulation Drafters

This handbook is designed to help Federal agencies prepare documents for publication in the Federal Register. The updated requirements in the handbook reflect recent changes in regulatory development procedures, document format, and printing technology.

Price $1.50

ORDER FORM To: Superintendent of Documents. U.S. Government Printing Office, Washington, D.C. 20402

Enclosed is $ _____ ☐ check,
☐ money order, or charge to my
Deposit Account No.
☐☐☐☐☐☐☐-☐

Order No._____

VISA

MasterCard

Credit Card Orders Only

Total charges $_____ Fill in the boxes below.

Credit
Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date
Month/Year ☐☐☐☐

Please send me ___ copies of the DOCUMENT DRAFTING HANDBOOK at $1.50 per copy. Stock No. 022-001-00088-4.

PLEASE PRINT OR TYPE

Name—First, Last

Company name or additional address line

Street address

City State ZIP Code

(or Country)

For Office Use Only	
Quantity	Charges
..... Enclosed	.....
..... To be mailed	.....
..... Subscriptions	.....
Postage	.....
Foreign handling	.....
MMOB	.....
OPNR	.....
..... UPNS	
..... Discount	
..... Refund	